

SENATE No. 1771

The Commonwealth of Massachusetts

PRESENTED BY:

Joanne M. Comerford

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act granting a local option for a real estate transfer fee to fund affordable housing.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|---------------------------------|--|------------------|
| <i>Joanne M. Comerford</i> | <i>Hampshire, Franklin and Worcester</i> | |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | <i>1/30/2023</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>1/31/2023</i> |
| <i>Michael J. Barrett</i> | <i>Third Middlesex</i> | <i>2/2/2023</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | |
| <i>Mike Connolly</i> | <i>26th Middlesex</i> | <i>2/6/2023</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>2/10/2023</i> |
| <i>Susannah M. Whipps</i> | <i>2nd Franklin</i> | <i>2/15/2023</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>2/15/2023</i> |
| <i>Julian Cyr</i> | <i>Cape and Islands</i> | <i>2/22/2023</i> |
| <i>Adam Gomez</i> | <i>Hampden</i> | <i>2/28/2023</i> |
| <i>Cindy F. Friedman</i> | <i>Fourth Middlesex</i> | <i>3/6/2023</i> |
| <i>Michael D. Brady</i> | <i>Second Plymouth and Norfolk</i> | <i>3/9/2023</i> |
| <i>Liz Miranda</i> | <i>Second Suffolk</i> | <i>5/17/2023</i> |
| <i>Carmine Lawrence Gentile</i> | <i>13th Middlesex</i> | <i>5/25/2023</i> |
| <i>Mindy Domb</i> | <i>3rd Hampshire</i> | <i>6/12/2023</i> |

SENATE No. 1771

By Ms. Comerford, a petition (accompanied by bill, Senate, No. 1771) of Joanne M. Comerford, Patricia D. Jehlen, Sal N. DiDomenico, Michael J. Barrett and other members of the General Court for legislation to grant a local option for a real estate transfer fee to fund affordable housing. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act granting a local option for a real estate transfer fee to fund affordable housing.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (c) of section 55C of chapter 44 of the General Laws, as
2 appearing in the 2020 Official Edition, is hereby amended by inserting after the figure “44B”, in
3 line 8, the following words:- and section 55D.

4 SECTION 2. Said section 55C of said chapter 44, as so appearing is hereby further
5 amended by inserting after the word “revenue”, in line 45, the following words:- provided
6 further, that any such money received from section 55D shall be used exclusively for adaptive
7 reuse, production or preservation of affordable housing or affordable housing purposes as that
8 term is defined in section 55D.

9 SECTION 3. Subsection (d) of said section 55C of said chapter 44, as so appearing, is
10 hereby further amended by inserting after the word “fee”, in line 99, the following words:- ,
11 transfer fee.

12 SECTION 4. Chapter 44 of the General Laws is hereby amended by inserting after
13 section 55C the following section:-

14 Section 55D. (a) For purposes of this section, the following terms shall, unless the
15 context clearly requires otherwise, have the following meanings:

16 “Affidavit of transfer fee”, an affidavit signed under the pains and penalties of perjury by
17 the settlement agent that attests to (a) the true and complete purchase or sale price of the transfer
18 of the real property interest; (b) the amount of the fee owed or the basis, if any, upon which the
19 transfer is exempt from the fee imposed by said transfer; (c) the amount that the purchaser and
20 seller are responsible for paying as required by the bylaw, ordinance or regulation allocating the
21 transfer fee in accordance with this section; and (d) the obligation of the settlement agent to
22 make payment of the transfer fee to the city, town or regional affordable housing commission.

23 “Affordable housing purposes”, uses allowed by the municipal affordable housing trust
24 fund or regional affordable housing commission fund into which funds are deposited hereunder.

25 “Affordable housing restriction”, a recorded instrument held by a qualified holder which
26 encumbers or restricts a real property interest so that the real property interest is perpetually
27 or for a term of at least 30 years limited to use as a residence occupied by a low or moderate
28 income household with Area Median Income, as defined by the federal department of Housing
29 and Urban Development, not to exceed the income limits to which the Municipal Affordable
30 Housing Trust Fund or Regional Affordable Housing Commission is subject. A “qualified
31 holder” is a governmental body or charitable corporation or trust which qualifies under the terms
32 of chapter 184 to hold an affordable housing restriction.

33 “Member cities and towns”, cities or towns that are members of a regional affordable
34 housing commission.

35 “Municipal affordable housing trust fund”, a municipal affordable housing trust fund
36 established pursuant to section 55C, or any other municipal trust fund established pursuant to a
37 law of the commonwealth providing for the creation and preservation of affordable housing in a
38 particular city or town.

39 "Purchaser", the transferee, grantee, or recipient of any real property interest.

40 "Purchase price" or “sale price,” all consideration paid or transferred by or on behalf of a
41 purchaser to a seller or the seller’s nominee, or for the seller’s benefit, for the transfer of any
42 real property interest, and shall include, but not be limited to: (i) all cash or its equivalent so paid
43 or transferred; (ii) all cash or other property paid or transferred by or on behalf of the purchaser
44 to discharge or reduce any obligation of the seller; (iii) the principal amount of all notes or their
45 equivalent, or other deferred payments, given or promised to be given by or on behalf of the
46 purchaser to the seller or the seller’s nominee; (iv) the outstanding balance of all obligations of
47 the seller which are assumed by the purchaser or to which the real property interest transferred
48 remains subject after the transfer, determined at the time of transfer, but excluding real
49 estate taxes and other municipal liens or assessments which are not overdue at the time of
50 transfer; (v) the fair market value, at the time of transfer, of any other consideration or thing of
51 value paid or transferred by or on behalf of the purchaser, including, but not limited to, any
52 property, goods or services paid, transferred or rendered in exchange for such real property
53 interest.

54 "Real property interest", any present or future legal or equitable interest in or to real
55 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
56 which holds any legal or equitable interest in real property, the interest of a partner or member
57 in a partnership or limited liability company, the interest of a stockholder in a corporation,
58 the interest of a holder of an option to purchase real property, the interest of a purchaser or
59 seller under a contract for purchase and sale of real property, and the transferable development
60 rights created under chapter 183A; but shall not include any interest which is limited to any of
61 the following: the dominant estate in any easement or right of way; the right to enforce
62 any restriction; any estate at will or at sufferance; any estate for years having a term of less than
63 30 years; any reversionary right, condition, or right of entry for condition broken; and the interest
64 of a mortgagee or other secured party in any mortgage or security agreement.

65 "Regional affordable housing commission", a regional trust, bank, board or like entity
66 created pursuant to general or special law for the creation and preservation of affordable housing
67 as described in the general or special law establishing such entity, and whose membership
68 includes two or more cities or towns. If a city or town is a member of a regional affordable
69 housing commission, any authority granted to a city, town, or regional affordable housing
70 commission pursuant to this section shall be exercised solely by the regional affordable housing
71 commission.

72 "Regional affordable housing commission fund" a fund established by general or special
73 law for the use of a regional affordable housing commission for the creation and preservation of
74 affordable housing as defined in the general or special law establishing such fund.

75 "Seller", the transferor, grantor, or immediate former owner of any real property interest.

76 “Settlement Agent”, an escrow agent, real estate attorney, or representative of a lender or
77 title company that conducts the closing or settlement of the sale or transfer of a real property
78 interest including the coordination of the attendance and document signing for all the parties,
79 verification that each party to the transfer has performed their required responsibilities as
80 outlined in the contract and the disbursement of all funds, along with the title and deed, to the
81 appropriate parties after checking that all conditions are met at the close of the transfer
82 transaction.

83 "Time of transfer", of any real property interest, shall mean the time at which such
84 transfer is legally effective as between the parties thereto, and, in any event, with respect to a
85 transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with
86 the assistant recorder of the appropriate registry district, not later than the time of such recording
87 or filing.

88 (b) A city or town that has established a municipal affordable housing trust fund pursuant
89 to section 55C or any other municipal affordable housing trust fund established by a law of the
90 commonwealth providing for the creation and preservation of affordable housing in
91 municipalities for the benefit of low and moderate income households or for the funding of
92 community housing, as defined in and in accordance with chapter 44B, or a regional affordable
93 housing commission, as applicable, may impose a fee upon the transfer of any real property
94 interest in any real property situated in the city or town, or member cities and towns, as described
95 and as subject to conditions and exemptions described herein.

96 (i) A city, town, or regional affordable housing commission, as applicable, may establish
97 different transfer fees for categories of properties, defined by the tax classification and the value

98 of a property; provided, however, that the fee shall be no less than .5 per cent and no more than 2
99 per cent of the purchase price of such real property interest.

100 (ii) The city or town or regional affordable housing commission, as applicable, shall have
101 the authority to designate whether the transfer fee shall be borne by the purchaser, the seller or
102 how it will be allocated between the two.

103 (iii) A purchaser, seller, or settlement agent in advance of the time of transfer shall
104 request and the city or town or regional affordable housing commission, as applicable, shall
105 provide to a purchaser, seller or settlement agent in advance of the time of transfer a certificate
106 indicating the dollar amount of the transfer fee owed based on the agreed upon purchase price as
107 evidenced by an executed purchase and sale agreement, contract for sale or other document
108 evidencing the agreed upon purchase price or that the transfer is exempt from the transfer fee,
109 stating the basis for the exemption.

110 (iv) Whenever the transfer of a real property interest will occur at or about the same time
111 as a conveyance of personalty related thereto, the allocations of payments between real estate
112 and personalty agreed to by the purchaser and seller shall not determine the calculation of the
113 transfer fee due pursuant to this section; instead, the calculation of the fee with respect to such
114 transfer shall be determined by the city, town, or regional affordable housing commission, as
115 applicable.

116 (v) The transfer fee shall be paid within 7 days of the time of transfer by the settlement
117 agent to the city or town, or its designee, or to the regional affordable housing commission or its
118 designee, as applicable, and shall be accompanied by a copy of the deed or other instrument
119 recorded or registered with the registry of deeds for the county in which the real property interest

120 is located, or the assistant recorder for the registry district of the county in which the real
121 property interest is located, and a copy of the affidavit of transfer fee. The city or town, or its
122 designee, or the regional affordable housing commission, or its designee, as applicable, shall
123 promptly thereafter execute and issue a certificate indicating that the appropriate fee has been
124 paid.

125 (vi) Upon receipt of a transfer fee by a city or town, the treasurer of the city or town shall
126 deposit the transfer fee in the city or town's municipal affordable housing trust fund established
127 pursuant to section 55C or any other municipal affordable housing trust fund established by a
128 law of the commonwealth providing for the creation and preservation of affordable housing in
129 municipalities for the benefit of low and moderate income households or for the funding of
130 community housing, as defined in and in accordance with chapter 44B. Upon receipt of a transfer
131 fee by a regional affordable housing commission, the regional affordable housing commission
132 shall deposit the transfer fee into the regional affordable housing commission fund.

133 (c) The following transfers of real property interests shall be exempt from the fees
134 established by this section; provided, however, that any city, town or regional affordable housing
135 commission, as applicable, may adopt further exemptions in addition to those provided herein;
136 provided, further, that except as otherwise required, the seller or purchaser or both parties, who
137 are required to pay the transfer fee as specified in the bylaw or ordinance establishing a transfer
138 fee pursuant to this section, or, with respect to the member cities and towns of a regional
139 affordable housing commission, regulations adopted by such regional affordable housing
140 commission, shall have the burden of proving that any transfer is exempt; and provided, further,
141 that any otherwise exempt transfer shall not be exempt in the event that such transfer, by itself or

142 as part of a series of transfers, was made for the primary purpose of evading the fee established
143 pursuant to this section.

144 (i) Transfers for less than \$1,000,000 or such higher threshold amount as set by the
145 municipality or regional affordable housing commission adopting a transfer fee pursuant to this
146 legislation except to the extent that the median single family sale price for the county in which
147 the municipality resides is less than \$750,000 may adopt a threshold no lower than 100 per cent
148 of the median single family home sales price for that county. County median sales price for a
149 single family home which shall be determined annually by April 1st of each calendar year by the
150 department of housing and community development shall be exempt in their entirety; provided,
151 however, that the amount of this threshold for imposing a transfer fee may be increased by the
152 bylaw or ordinance establishing a transfer fee pursuant to this section or, with respect to the
153 member cities and towns of a regional affordable housing commission, a regulation adopted by
154 the regional affordable housing commission;

155 (ii) Transfers made as gifts with consideration less than \$100; provided, however, that in
156 any proceedings to determine the amount of any fee due hereunder, it shall be presumed that any
157 transfer for consideration of less than fair market value of the real property interest transferred
158 was made as a gift without consideration to the extent of the difference between the fair market
159 value of the real property interest transferred and the amount of consideration claimed by the
160 purchaser to have been paid or transferred, if the seller shall have been at the time of transfer the
161 spouse, the lineal descendant, or the lineal ancestor of the purchaser, by blood or adoption, and
162 otherwise it shall be presumed that consideration was paid in an amount equal to the fair market
163 value of the real property interest transferred, at the time of transfer;

164 (iii) Transfers to the government of the United States, the Commonwealth and any of
165 their instrumentalities, agencies or subdivisions, including but not limited to transfers to the city,
166 town, or regional housing commission, to the extent that the city, town or regional affordable
167 housing commission has designated that the transfer fee shall be borne by the purchaser;

168 (iv) Transfers from the government of the United States, the Commonwealth and any of
169 their instrumentalities, agencies, or subdivisions, including but not limited to transfers from the
170 city, town or regional affordable housing commission, to the extent that the city, town or regional
171 affordable housing commission has designated that the transfer fee shall be borne by the seller;

172 (v) Distributions by the trustees of a trust to the beneficiaries of such trust;

173 (vi) Transfers to the trustees of a trust in exchange for a beneficial interest received by the
174 seller in such trust;

175 (vii) Transfers between family members as defined by bylaw or ordinance or regulations
176 adopted by a regional affordable housing commission;

177 (viii) Transfers to first-time homebuyers as defined by bylaw, ordinance or regulations
178 adopted by a municipality or regional affordable housing commission; provided, that said first-
179 time homebuyer must be a natural person; and provided further, that for real property sold for a
180 value that exceeds the median single family home price in the county where the transaction
181 occurs, the exemption shall only apply to the value equal to the median single family home price
182 in said county; provided that any municipality or region may elect to increase said exemption.

183 (ix) Transfers which, without additional consideration, confirm, correct, modify, or
184 supplement a transfer previously made;

185 (x) Transfers by operation of law without actual consideration, including but not limited
186 to transfers occurring by virtue of the death or bankruptcy of the owner of a real property
187 interest;

188 (xi) Transfers made in partition of land and improvements thereto, under chapter 241;

189 (xii) Transfers to any charitable organization, as defined in clause Third of section 5 of
190 chapter 59, or any religious organization; provided, however, that the real property interest so
191 transferred will be held by the charitable or religious organization solely for affordable housing-
192 related uses that are consistent with the uses allowed by the regional affordable housing
193 commission fund, if one exists, or the municipality's affordable housing trust fund; and provided,
194 further, that such uses must be available to the general public;

195 (xiii) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee,
196 and transfers of the property subject to a mortgage to the mortgagee in consideration of the
197 forbearance of the mortgagee from foreclosing said mortgage;

198 (xiv) Transfers consisting of the division of marital assets under the provisions of section
199 34 of chapter 208 or other provisions of law; and

200 (xv) Transfers of a real property interest that include 1 or more residential units governed
201 by affordable housing restrictions; provided, however, that the fee imposed under the provisions
202 of this section shall be proportionately reduced based on the assessed value of residential units
203 subject to affordable housing restrictions as compared to the total assessed value of the property,
204 or the percentage of residential units subject to affordable housing restrictions, as compared to
205 the total number of units located on that property, or such other method as may be required by
206 the bylaw, ordinance, warrant article or other local law establishing a transfer fee pursuant to this

207 section or, with respect to member cities and towns of a regional affordable housing omission, a
208 regulation adopted by the regional affordable housing commission.

209 (d) The city or town's treasurer shall keep a full and accurate account stating when, from
210 or to whom, and on what account money has been paid or received relative to the activities of the
211 municipal affordable housing trust fund. With respect to a regional affordable housing
212 commission, the regional affordable housing commission's treasurer or such other person as may
213 be designated in the law establishing the regional affordable housing commission, shall keep a
214 full and accurate account stating when, from or to whom, and on what account money has been
215 paid or received relating to the regional affordable housing commission fund.

216 (e) (i) The adoption of any non-mandatory exemptions shall be determined by a majority
217 vote by the city or town's legislative body or, with respect to a regional affordable housing
218 commission, by the terms of or in accordance with the procedures established by the general or
219 special law creating such commission.

220 (ii) A city or town that establishes a transfer fee pursuant to this section, or a regional
221 affordable housing commission that receives funds hereunder may provide for the collection and
222 lien of any outstanding transfer fee. Such city, town or regional affordable housing
223 commission shall have the same remedies to collect said amount as provided by law with respect
224 to the collection of real property taxes.

225 (iii) A city or town enacting a real estate transfer fee pursuant to this section, or a regional
226 affordable housing commission that receives funds hereunder, is authorized to issue rules,
227 policies, and procedures to effectuate its terms.

228 (iv) A city or town that adopts this section, or a regional affordable housing commission
229 that receives funds hereunder shall provide to the Regional Planning Office publicly available
230 reports on the total fees collected and disbursed in accordance with this section.