

SENATE No. 1786

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 relative to a local option real estate transfer fee to create and preserve housing.

PETITION OF:

NAME:

Julian Cyr

DISTRICT/ADDRESS:

Cape and Islands

SENATE No. 1786

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 1786) of Julian Cyr for legislation relative to a local option real estate transfer fee to create and preserve housing. Revenue.

The Commonwealth of Massachusetts

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

An Act relative to a local option real estate transfer fee to create and preserve 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. Section 55C of Chapter 44 of the General Laws is hereby amended, in
2 subsection (c), by inserting, in line 8, after the figure “44B” the following words: - “and section
3 55D of chapter 44”.

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

9 SECTION 3. Said section 55C of Chapter 44 of the General Laws is hereby amended, in
10 subsection (d), in line 99, by inserting after the word “fee” the following words: - “, transfer fee”.

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

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

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

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

24 “Affordable housing restriction”, a recorded instrument held by a qualified holder which
25 encumbers or restricts a real property interest so that the real property interest is perpetually
26 or for a term of at least thirty years limited to use as a residence occupied by a low or moderate
27 income household which earns less than a specified income level, the upper limit of which may
28 not exceed 240 per cent of the applicable household area median income in that city or town as
29 determined by the federal Department of Housing and Urban Development, or such lower limit
30 to which the applicable municipal affordable housing trust fund or regional affordable housing
31 commission fund is subject. A “qualified holder” is a governmental body or charitable
32 corporation or trust which qualifies under the terms of chapter 184 to hold an affordable housing
33 restriction.

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

36 “Multi-family housing”, a building with 3 or more residential dwelling units or 2 or more
37 buildings on the same lot with more than 1 residential dwelling unit in each building.

38 “Municipal affordable housing trust fund”, a municipal affordable housing trust fund
39 established pursuant to Section 55C of this chapter, or any other municipal trust fund established
40 pursuant to a law of the commonwealth providing for the creation and preservation of affordable
41 housing in a particular city or town.

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

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

55 property, goods or services paid, transferred or rendered in exchange for such real property
56 interest.

57 "Real property interest", any present or future legal or equitable interest in or to real
58 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
59 which holds any legal or equitable interest in real property, the interest of a partner or member
60 in a partnership or limited liability company, the interest of a stockholder in a corporation,
61 the interest of a holder of an option to purchase real property, the interest of a purchaser or
62 seller under a contract for purchase and sale of real property, and the transferable development
63 rights created under chapter 183A; but shall not include any interest which is limited to any of
64 the following: the dominant estate in any easement or right of way; the right to enforce
65 any restriction; any estate at will or at sufferance; any estate for years having a term of less than
66 30 years; any reversionary right, condition, or right of entry for condition broken; and the interest
67 of a mortgagee or other secured party in any mortgage or security agreement.

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

75 “Regional affordable housing commission fund” a fund established by general or special
76 law for the use of a regional affordable housing commission for the creation and preservation of
77 affordable housing as defined in the general or special law establishing such fund.

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

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

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

91 (b) Establishment and Requirements of a Transfer Fee. A city or town that has
92 established a municipal affordable housing trust fund pursuant to section 55C or any other
93 municipal affordable housing trust fund established by a law of the commonwealth providing for
94 the creation and preservation of affordable housing in municipalities for the benefit of low and
95 moderate income households or for the funding of community housing, as defined in and in
96 accordance with chapter 44B, or a regional affordable housing commission, as applicable, may

97 impose a fee upon the transfer of any real property interest in any real property situated in the
98 city or town, or member cities and towns, as described and as subject to conditions and
99 exemptions described herein.

100 (i) In order to enact a transfer fee, a city, town, or regional affordable housing
101 commission, as applicable, shall demonstrate compliance with not less than 4 of the 7 provisions
102 herein. A city, town, or regional affordable housing commission, as applicable, shall:

103 Demonstrate a commitment for the creation and preservation of affordable housing
104 production prior to enactment of a transfer fee.

105 Demonstrate an average distribution of at least 50 per cent of Community Preservation
106 Act funds, a dedicated to housing creation and preservation in the two years prior to enactment.
107 To be eligible for this provision, a city, town, or regional affordable housing commission must
108 levy a 3 per cent surcharge on property taxes dedicated to Community Preservation Act funds.

109 Dedicate at least 50 per cent of all room occupancy tax receipts collected from a Local
110 Room Occupancy Tax, if so enacted by the city, town, or regional affordable housing
111 commission, to wastewater, housing, or municipal infrastructure projects that advance affordable
112 housing development.

113 A city, town or regional housing commission with a population of 2,500 residents or
114 more shall designate a minimum of 5 percent of the residential zoned area as multi-family.

115 Limit .5 acre or greater single family residential zoning to not more than half of a city,
116 town, or regional affordable housing commission's residential zoned area.

117 Enact an accessory dwelling unit bylaw that is compliant with the definition of accessory
118 dwelling unit in accordance with chapter 40A(1a).

119 Enact an approved smart growth zoning district, as defined in section 3 of chapter 40R.

120 (ii) A city, town, or regional affordable housing commission, as applicable, may establish
121 different transfer fees for categories of properties, defined by the tax classification and the value
122 of a property; provided, however, that the fee shall be no less than .5 per cent and no more than 3
123 per cent of the purchase price of such real property interest.

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

127 (iv) A purchaser, seller, or settlement agent in advance of the time of transfer shall
128 request and the city or town or regional affordable housing commission, as applicable, shall
129 provide to a purchaser, seller or settlement agent in advance of the time of transfer a certificate
130 indicating the dollar amount of the transfer fee owed based on the agreed upon purchase price as
131 evidenced by an executed purchase and sale agreement, contract for sale or other document
132 evidencing the agreed upon purchase price or that the transfer is exempt from the transfer fee,
133 stating the basis for the exemption.

134 (v) Whenever the transfer of a real property interest will occur at or about the same time
135 as a conveyance of personalty related thereto, the allocations of payments between real estate
136 and personalty agreed to by the purchaser and seller shall not determine the calculation of the
137 transfer fee due pursuant to this section; instead, the calculation of the fee with respect to such

138 transfer shall be determined by the city, town, or regional affordable housing commission, as
139 applicable.

140 (vi) The transfer fee shall be paid within seven days of the time of transfer by the
141 settlement agent to the city or town, or its designee, or to the regional affordable housing
142 commission or its designee, as applicable, and shall be accompanied by a copy of the deed or
143 other instrument recorded or registered with the registry of deeds for the county in which the real
144 property interest is located, or the assistant recorder for the registry district of the county in
145 which the real property interest is located, and a copy of the affidavit of transfer fee. The city or
146 town, or its designee, or the regional affordable housing commission, or its designee, as
147 applicable, shall promptly thereafter execute and issue a certificate indicating that the appropriate
148 fee has been paid.

149 (vii) Upon receipt of a transfer fee by a city or town, the treasurer of the city or town shall
150 deposit the transfer fee in the city or town's municipal affordable housing trust fund established
151 pursuant to section 55C or any other municipal affordable housing trust fund established by a
152 law of the commonwealth providing for the creation and preservation of affordable housing in
153 municipalities for the benefit of low and moderate income households or for the funding of
154 community housing, as defined in and in accordance with chapter 44B. Upon receipt of a transfer
155 fee by a regional affordable housing commission, the regional affordable housing commission
156 shall deposit the transfer fee into the regional affordable housing commission fund.

157 (c) Exemptions: The following transfers of real property interests shall be exempt from
158 the fees established by this section; provided, however, that any city, town or regional affordable
159 housing commission, as applicable, may adopt further exemptions in addition to those provided

160 herein; provided, further, that except as otherwise required, the seller or purchaser or both
161 parties, who are required to pay the transfer fee as specified in the bylaw or ordinance
162 establishing a transfer fee pursuant to this Section, or, with respect to the member cities and
163 towns of a regional affordable housing commission, regulations adopted by such regional
164 affordable housing commission, shall have the burden of proving that any transfer is exempt; and
165 provided, further, that any otherwise exempt transfer shall not be exempt in the event that such
166 transfer, by itself or as part of a series of transfers, was made for the primary purpose of evading
167 the fee established pursuant to this section.

168 (i) Transfers for less than 200 per cent of the county median sale price of a single family
169 home shall be exempt in their entirety; provided, however, that the amount of this threshold for
170 imposing a transfer fee may be increased by the bylaw or ordinance establishing a transfer fee
171 pursuant to this Section or, with respect to the member cities and towns of a regional affordable
172 housing commission, a regulation adopted by the regional affordable housing commission;

173 (ii) Transfers made as gifts with consideration less than \$100; provided, however, that in
174 any proceedings to determine the amount of any fee due hereunder, it shall be presumed that any
175 transfer for consideration of less than fair market value of the real property interest transferred
176 was made as a gift without consideration to the extent of the difference between the fair market
177 value of the real property interest transferred and the amount of consideration claimed by the
178 purchaser to have been paid or transferred, if the seller shall have been at the time of transfer the
179 spouse, the lineal descendant, or the lineal ancestor of the purchaser, by blood or adoption, and
180 otherwise it shall be presumed that consideration was paid in an amount equal to the fair market
181 value of the real property interest transferred, at the time of transfer;

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

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

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

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

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

196 (viii) Transfers to first-time homebuyers as defined by bylaw or ordinance or regulations
197 adopted by a regional affordable housing commission;

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

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

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

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

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

213 (xiv) Transfers consisting of the division of marital assets under the provisions of section
214 34 of chapter 208 or other provisions of law; and

215 (xv) Transfers of a real property interest that include one or more residential units
216 governed by affordable housing restrictions; provided, however, that the fee imposed under the
217 provisions of this Section shall be proportionately reduced based on the assessed value of
218 residential units subject to affordable housing restrictions as compared to the total assessed value
219 of the property, or the percentage of residential units subject to affordable housing restrictions, as
220 compared to the total number of units located on that property, or such other method as may be
221 required by the bylaw, ordinance, warrant article or other local law establishing a transfer fee
222 pursuant to this section or, with respect to member cities and towns of a regional affordable
223 housing omission, a regulation adopted by the regional affordable housing commission.

224 (xvi) The first transfer of real property is exempt if built in accordance with an
225 inclusionary zoning bylaw or in compliance with provisions established in chapter 40B

226 (d) Accounting: The city or town’s treasurer shall keep a full and accurate account
227 stating when, from or to whom, and on what account money has been paid or received relative to
228 the activities of the municipal affordable housing trust fund. With respect to a regional
229 affordable housing commission, the regional affordable housing commission’s treasurer or such
230 other person as may be designated in the law establishing the regional affordable housing
231 commission, shall keep a full and accurate account stating when, from or to whom, and on what
232 account money has been paid or received relating to the regional affordable housing commission
233 fund.

234 (e) Implementation and Enforcement: (i) The establishment of a transfer fee pursuant to
235 this section, the determination of the fee amount, the determination as to whether the bylaw,
236 ordinance or law establishing the transfer fee shall have a time-limited sunset provision, and the
237 adoption of any non-mandatory exemptions shall be determined by a majority vote by the city or
238 town’s legislative body or, with respect to a regional affordable housing commission, by the
239 terms of or in accordance with the procedures established by the general or special law creating
240 such commission.

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

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

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