

SENATE No. 2845

Senate, June 27, 2024 -- Text of amendment (242) (offered by Senator Comerford) to the Ways and Means amendment (Senate, No. 2834) to the Senate Bill relative to the Affordable Housing Act

The Commonwealth of Massachusetts

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

1 by adding the following sections:-

2 “SECTION XX. Paragraph (1) of subsection (c) of section 55C of chapter 44, as
3 appearing in the 2022 Official Edition, is hereby amended by inserting in line 35, after the words
4 “money from chapter 44B”, the following words:- and section 55D; provided, however, that any
5 such money received from section 55D shall be used exclusively for adaptive reuse, production
6 or preservation of affordable housing, uses allowed by the municipal affordable housing trust
7 fund established hereunder or a regional affordable housing commission fund established by
8 general or special law, for assistance to a housing authority as defined under section 1 of chapter
9 121B or other affordable housing purposes as determined by the Executive Office of Housing
10 and Livable Communities.

11 SECTION XX. Said section 55C of said chapter 44, as so appearing, is hereby further
12 amended, by inserting after the word “fee,” in line 99, the following words:- transfer fee
13 pursuant to section 55D.

14 SECTION XX. Said chapter 44 is hereby further amended by inserting after section 55C
15 the following section:-

16 Section 55D. (a) For purposes of this section, the following words shall, unless the
17 context clearly requires otherwise, have the following meanings:-

18 “Affidavit of transfer fee”, an affidavit signed under the pains and penalties of perjury by
19 the settlement agent that attests to (i) the true and complete purchase or sale price of the transfer
20 of the real property interest; (ii) the amount of the transfer fee owed or the basis, if any, upon
21 which the transfer is exempt from the fee imposed by said transfer; (iii) the amount that the seller
22 shall pay as required by the bylaw, ordinance or regulation; and (iv) the obligation of the
23 settlement agent to make payment of the transfer fee to the city or town.

24 “Affordable housing purposes”, uses allowed by the municipal affordable housing trust
25 fund or regional affordable housing commission fund into which funds are deposited hereunder,
26 which shall include the acquisition, construction, rehabilitation, and preservation of affordable
27 housing for the benefit of low- and moderate-income households as defined in such municipal
28 affordable housing trust fund or regional affordable housing commission fund, assistance to a
29 housing authority as defined under section 1 of chapter 121B or other affordable housing
30 purposes pursuant to regulations promulgated by the executive office of housing and livable
31 communities.

32 “Affordable housing restriction”, a recorded instrument held by a qualified holder which
33 encumbers or restricts a real property interest so that the real property interest is perpetually or
34 for a term of at least 30 years limited to use as a residence occupied by a low or moderate income
35 household with area median income, as defined by the United States Department of Housing and
36 Urban Development, not to exceed the income limits to which the municipal affordable housing
37 trust fund or regional affordable housing commission fund is subject.

38 "Member cities and towns", cities or towns that are members of a regional affordable
39 housing commission.

40 "Municipal affordable housing trust fund", a municipal affordable housing trust fund
41 established pursuant to section 55C, or any other municipal trust fund established pursuant to a
42 law of the commonwealth providing for the creation and preservation of affordable housing in a
43 particular city or town for the benefit of low- and moderate-income households or for the
44 funding of community housing, as defined in and in accordance with chapter 44B.

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

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

59 “Qualified holder”, a governmental body or charitable corporation or trust which
60 qualifies under the terms of chapter 184 to hold an affordable housing restriction.

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

72 “Regional affordable housing commission”, a regional planning and land use commission
73 created by any general or special law with authority to prepare and oversee the implementation
74 of a regional land-use policy plan for a region of the Commonwealth comprising at least one
75 county, and whose membership includes all of the cities or towns in such region; provided, that
76 the regional commission’s statutory purposes and authority shall include promoting the creation
77 of fair affordable housing for low-income and moderate-income persons; provided further, that a
78 regional affordable housing commission may be an agency within the structure of a regional
79 government, including, but not limited to the Cape Cod regional government, known as
80 Barnstable county; and provided further, that said regional government may require additional
81 procedures for member cities and towns to adopt a transfer fee that are not inconsistent with this

82 section, including, but not limited to procedures for adopting bylaws and ordinances, establishing
83 a transfer fee and administering the collection of a transfer fee established pursuant to this
84 section.

85 “Regional affordable housing commission fund”, a fund established by general or special
86 law for the creation and preservation of affordable housing, as defined in the general or special
87 law establishing such fund, in a particular region comprising at least one county.

88 “Seller”, the transferor, grantor, or immediate former owner of any real property interest.
89

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

97 “Time of transfer”, the time at which a transfer of a real property interest is legally
98 effective as between the parties thereto, and, in any event, with respect to a transfer evidenced by
99 an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder
100 of the appropriate registry district, not later than the time of such recording or filing.

101 “Transfer fee”, a fee, to be paid by the seller pursuant to this section, upon the transfer of
102 a real property interest between a seller and a buyer.

103 (b) (1) A city or town that has established a municipal affordable housing trust fund, or a
104 regional affordable housing commission that has established a regional affordable housing
105 commission fund, as applicable, may, pursuant to subsection (e), impose a fee upon the transfer
106 of any real property interest in any real property situated in the city or town, or real property
107 situated in the member cities and towns, as described and as subject to conditions and
108 exemptions described herein; provided, that a city or town that is an MBTA community as
109 defined in section 1A of chapter 40A shall not impose a transfer fee pursuant to this section
110 unless such city or town has been determined by the executive office of housing and livable
111 communities to be in compliance with section 3A of chapter 40A; and provided further, that
112 member cities and towns shall not impose a fee pursuant to this section if a transfer fee is in
113 effect pursuant to the adoption of such fee by the applicable regional affordable housing
114 commission under subsection (e).

115 (2) A city, town or regional affordable housing commission, as applicable, may establish
116 different transfer fee rates for different classifications of properties, defined by the tax
117 classification of such properties, and the purchase price of a property; provided, however, that
118 any transfer fee shall be not less than 0.5 per cent and not more than 2 per cent of either (i) the
119 full amount of the purchase price of such real property interest, (ii) the portion of the purchase
120 price of such real property interest in excess of the exemption threshold established pursuant to
121 paragraph (1) of subsection (c), or (iii) a different amount between (i) and (ii) at the discretion of
122 the city, town, or regional affordable housing commission, as applicable.

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

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

133 (5) Whenever the transfer of a real property interest will occur at or about the same time
134 as a conveyance of personalty related thereto, the calculation of the fee with respect to such
135 transfer shall be determined by the city or town or regional affordable housing commission, as
136 applicable; provided, that the allocations of payments between real estate and personalty agreed
137 to by the purchaser and seller shall not determine the calculation of the transfer fee due pursuant
138 to this section.

139 (6) The transfer fee shall be paid within 7 days of the time of transfer by the settlement
140 agent to the city or town, or its designee, or to the regional affordable housing commission or its
141 designee, as applicable and shall be accompanied by a copy of the deed or other instrument
142 recorded or registered with the registry of deeds for the county in which the real property interest
143 is located, or the assistant recorder for the registry district of the county in which the real
144 property interest is located, and a copy of the affidavit of transfer fee. The city or town, or its
145 designee, or the regional affordable housing commission, or its designee as applicable, shall
146 promptly thereafter execute and issue a certificate indicating that the appropriate fee has been
147 paid.

148 (7) Upon receipt of a transfer fee by a city or town, the treasurer of the city or town shall
149 deposit the transfer fee in the city or town’s municipal affordable housing trust fund. Upon
150 receipt of a transfer fee by a regional affordable housing commission, or its designee, the
151 regional affordable housing commission, or its designee, shall deposit the transfer fee into the
152 regional affordable housing commission fund.

153 (8) A city or town may authorize the chief executive of a city or town to suspend a
154 transfer fee adopted pursuant to this section in any year where there has been a declared public
155 health emergency or state of emergency in the commonwealth, or any other similar declared
156 emergency applicable to the commonwealth.

157 (c)(1) The following transfers of real property interests shall be exempt from a transfer
158 fee established pursuant to this section:

159 (i) Transfers for less than the greater of \$1,000,000 or 100 per cent of the median single
160 family home sales price for that county; provided, that a municipality or regional affordable
161 housing commission, as applicable, may adopt a higher threshold pursuant to this section. The
162 county median sales price for a single-family home shall be determined annually by April 1st of
163 each calendar year by the executive office of housing and livable communities.

164 (ii) Transfers made as gifts with consideration of less than \$100;

165 (iii) Transfers from the government of the United States, the Commonwealth and any of
166 their instrumentalities, agencies, or subdivisions, including but not limited to transfers from the
167 city, town, local housing authority or regional housing commission;

168 (iv) Distributions by the trustees of a trust to the beneficiaries of such trust;

169 (v) Transfers to the trustees of a trust in exchange for a beneficial interest received by the
170 seller in such trust;

171 (vi) Transfers between family members as defined by bylaw, ordinance or regulations
172 adopted by a city, town or regional affordable housing commission, as the case may be;

173 (vii) Transfers which, without additional consideration, confirm, correct, modify, or
174 supplement a transfer previously made;

175 (viii) Transfers by operation of law without actual consideration, including but not
176 limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property
177 interest;

178 (ix) Transfers made in partition of land and improvements thereto, pursuant to chapter
179 241;

180 (x) Transfers to any charitable or religious organization, as defined pursuant to section 5
181 of chapter 59; provided, however, that the real property interest so transferred will be held by the
182 charitable or religious organization solely for affordable housing-related uses that are consistent
183 with the uses allowed by the municipal affordable housing trust fund or regional affordable
184 housing commission fund, as applicable; and provided, further, that such housing shall be subject
185 to an affirmative fair housing marketing plan approved by the executive office of housing and
186 livable communities;

187 (xi) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and
188 transfers of the property subject to a mortgage to the mortgagee in consideration of the
189 forbearance of the mortgagee from foreclosing said mortgage;

190 (xii) Transfers consisting of the division of marital assets under the provisions of section
191 34 of chapter 208 or other provisions of law; and

192 (xiii) Transfers of an interest in real property containing not less than 3 residential units
193 in which not less than 1 residential unit or 25 per cent of the residential units, whichever is
194 greater, is governed by affordable housing restrictions; provided, however, that if less than 100
195 per cent of the residential units are governed by affordable housing restrictions, the exemption
196 shall apply only to the portion of the property that is governed by affordable housing restrictions
197 and the transfer fee imposed pursuant to this section shall be proportionately reduced based on
198 the percentage of residential units subject to affordable housing restrictions, as compared to the
199 total number of units located on that property.

200 (2) Any city, town or regional affordable housing commission, as applicable, may adopt
201 further exemptions in addition to those provided herein.

202 (3) The payor of the transfer fee shall have the burden of proving that an exemption
203 applies to a transfer of real property interest pursuant to this section; and provided further, that
204 any otherwise exempt transfer shall not be exempt in the event that such transfer, by itself or as
205 part of a series of transfers, was made for the primary purpose of evading the fee established
206 pursuant to this section.

207 (d) The city or town's treasurer, or the treasurer or other person designated by the
208 regional affordable housing commission, as applicable, shall keep a full and accurate account
209 stating when, from or to whom, and on what account, money has been paid or received relative
210 to the activities of the municipal or regional affordable housing trust fund.

211 (e)(1) The adoption of any transfer fee pursuant to subsection (b), or any amendment
212 thereto, shall be determined by either (i) a majority vote by the city or town’s legislative body or
213 (ii) with respect to a regional affordable housing commission, by the terms of, or in accordance
214 with, the procedures established by such commission; provided, that member cities and towns
215 may adopt a transfer fee pursuant to clause (i) if a transfer fee is not in effect for the applicable
216 regional affordable housing commission pursuant to clause (ii); and provided further, that a
217 transfer fee adopted by any member cities and towns shall have no force or effect upon the
218 effective date of a transfer fee adopted by the applicable regional affordable housing commission
219 pursuant to clause (ii).

220 The adoption of a transfer fee pursuant to subsection (b) shall take effect on the first day
221 of the calendar quarter following 30 days after its acceptance pursuant to this subsection or on
222 the first day of a later calendar quarter as the city or town or regional housing commission, as
223 applicable, may designate.

224 (2) A city, town or any of the member cities or towns of a regional affordable housing
225 commission may provide for the enforcement and collection of a transfer fee established
226 pursuant to this section, including, but not limited to the denial, revocation or suspension of local
227 licenses and permits pursuant to section 57 of chapter 40 and the authority to impose a lien on
228 real property pursuant to section 58 of chapter 40.

229 (3) A city, town or regional affordable housing commission enacting a real estate transfer
230 fee pursuant to this section, may issue rules, policies and procedures to effectuate its terms.

231 (4) A city, town or regional affordable housing commission that adopts this section shall
232 submit an annual report to the executive office of housing and livable communities and the

233 department of revenue detailing the total fees collected and the amounts used or planned to be
234 used for affordable housing purposes in accordance with this section.

235 (5) A city, town or regional affordable housing commission that adopts this section shall
236 adopt a bylaw, ordinance or regulation, as the case may be, which establishes a procedure by
237 which an aggrieved person may appeal the transfer fee amount, in whole or in part, or the denial
238 of an exemption.

239 (6) Any person aggrieved by a denial of relief pursuant to a bylaw, ordinance or
240 regulation established pursuant to paragraph (5) may, within 60 days from the receipt of the
241 notice of such denial, petition the appellate tax board under the provisions of chapter 58A.

242 (f) The executive office of housing and livable communities, in consultation with the
243 department of revenue, shall promulgate regulations to carry out the provisions of this section,
244 which shall include, but not be limited to regulations that provide for the forfeiture of revenue
245 collected pursuant to this section to said executive office if such revenue has not been used for
246 affordable housing purposes within a reasonable amount of time.

247 (g) Notwithstanding any general or special law to the contrary, the secretary of
248 administration and finance may prohibit the enforcement and collection of a transfer fee in the
249 commonwealth in any year where there has been a declared public health emergency or state of
250 emergency in the commonwealth, or any other similar declared emergency applicable to the
251 commonwealth.”.