

# SENATE . . . . . No. 2848

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Senate, June 27, 2024 -- Text of amendment (301) (offered by Senator Miranda) to the Ways and Means amendment (Senate, No. 2834) to the Senate Bill relative to the Affordable Housing Act

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## The Commonwealth of Massachusetts

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

1 by adding the following sections:

2 SECTION XX. (a) For the purposes of this section, the following terms shall have the  
3 following meanings unless the context clearly requires otherwise:

4 “Local approval”, by a majority vote of the: (i) city council with the approval of the  
5 mayor in the case of a city with a mayor elected to serve as the chief executive officer of the city;  
6 (ii) city council in every other city; (iii) annual town meeting or a special town meeting called for  
7 that purpose in the case of a municipality with a town meeting form of government; or (iv) town  
8 council in the case of a municipality with a town council form of government.

9 (b) The executive office of housing and livable communities shall establish a  
10 demonstration project in which cities and towns may, notwithstanding any other general or  
11 special law to the contrary, adopt and amend a transfer fee pursuant to Section 55D of Section  
12 44.

13 (c) The executive office of housing and livable communities shall approve not more than  
14 22 applications for participation in the demonstration project under this section. No city or town  
15 shall apply for acceptance into the demonstration project until it has received local approval and

16 has submitted a home rule petition to the general court on the subject matter of this section;  
17 provided, that the department shall issue approvals under this section to not more than 22  
18 applications in the order in which cities and towns have submitted or submit home rule petitions  
19 to the general court.

20

21 (e) The executive office of housing and livable communities shall collect data from cities  
22 and towns approved under this section to monitor impacts of the transfer fees by this section on  
23 real estate transfers, housing construction, affordable housing construction, and other criteria as  
24 set by the department in consultation with participating cities and towns and the secretary of  
25 housing and livable communities. Not later than September 30, 2026, and every 2 years  
26 thereafter, executive office of housing and livable communities shall compile a report to be filed  
27 not later than September 30 for the 2 previous calendar years with the senate and house  
28 committees on ways and means, the joint committee on housing and the joint committee on  
29 Revenue. The report shall summarize the data required to be collected under this paragraph and  
30 shall include, but not be limited to, an analysis on housing production, housing affordability,  
31 home sales, municipal revenues, and any other matters set forth by the department after  
32 consultation with municipalities and with individuals, organizations and institutions  
33 knowledgeable about issues of housing. The report shall also include recommendations for the  
34 continuation or termination of the demonstration project.

35 (f) The executive office of housing and livable communities, in consultation with the  
36 Department of Revenue, may promulgate regulations to implement this section. If regulations are  
37 promulgated, said regulations shall be promulgated no later than July 1, 2025.

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

48

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

52

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

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

57           “Affidavit of transfer fee”, an affidavit signed under the pains and penalties of perjury by  
58 the settlement agent that attests to (i) the true and complete purchase or sale price of the transfer

59 of the real property interest; (ii) the amount of the transfer fee owed or the basis, if any, upon  
60 which the transfer is exempt from the fee imposed by said transfer; (iii) the amount that the seller  
61 shall pay as required by the bylaw, ordinance or regulation; and (iv) the obligation of the  
62 settlement agent to make payment of the transfer fee to the city or town.

63 “Affordable housing purposes” uses allowed by the municipal affordable housing trust  
64 fund or regional affordable housing commission fund into which funds are deposited hereunder,  
65 which shall include the acquisition, construction, rehabilitation, and preservation of affordable  
66 housing for the benefit of low- and moderate-income households as defined in such municipal  
67 affordable housing trust fund or regional affordable housing commission fund, assistance to a  
68 housing authority as defined under section 1 of chapter 121B or other affordable housing  
69 purposes pursuant to regulations promulgated by the executive office of housing and livable  
70 communities.

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

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

79 “Municipal affordable housing trust fund”, a municipal affordable housing trust fund  
80 established pursuant to section 55C, or any other municipal trust fund established pursuant to a

81 law of the commonwealth providing for the creation and preservation of affordable housing in a  
82 particular city or town for the benefit of low- and moderate-income households or for the  
83 funding of community housing, as defined in and in accordance with chapter 44B.

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

85 "Purchase price" or "sale price," all consideration paid or transferred by or on behalf of a  
86 purchaser to a seller or the seller's nominee, or for the seller's benefit, for the transfer of any real  
87 property interest, and shall include, but not be limited to: (i) all cash or its equivalent so paid or  
88 transferred; (ii) all cash or other property paid or transferred by or on behalf of the purchaser to  
89 discharge or reduce any obligation of the seller; (iii) the principal amount of all notes or their  
90 equivalent, or other deferred payments, given or promised to be given by or on behalf of the  
91 purchaser to the seller or the seller's nominee; (iv) the outstanding balance of all obligations of  
92 the seller which are assumed by the purchaser or to which the real property interest transferred  
93 remains subject after the transfer, determined at the time of transfer, but excluding real estate  
94 taxes and other municipal liens or assessments which are not overdue at the time of transfer; (v)  
95 the fair market value, at the time of transfer, of any other consideration or thing of value paid or  
96 transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or  
97 services paid, transferred or rendered in exchange for such real property interest.

98 "Qualified holder", a governmental body or charitable corporation or trust which  
99 qualifies under the terms of chapter 184 to hold an affordable housing restriction.

100 "Real property interest", any present or future legal or equitable interest in or to real  
101 property, and any beneficial interest therein, including the interest of any beneficiary in a trust  
102 which holds any legal or equitable interest in real property, the interest of a partner or member in

103 a partnership or limited liability company, the interest of a stockholder in a corporation, the  
104 interest of a holder of an option to purchase real property, the interest of a purchaser or seller  
105 under a contract for purchase and sale of real property, and the transferable development rights  
106 created under chapter 183A; but shall not include any interest which is limited to any of the  
107 following: the dominant estate in any easement or right of way; the right to enforce any  
108 restriction; any estate at will or at sufferance; any estate for years having a term of less than 30  
109 years; any reversionary right, condition, or right of entry for condition broken; and the interest of  
110 a mortgagee or other secured party in any mortgage or security agreement.

111 “Regional affordable housing commission”, a regional planning and land use commission  
112 created by any general or special law with authority to prepare and oversee the implementation  
113 of a regional land-use policy plan for a region of the Commonwealth comprising at least one  
114 county, and whose membership includes all of the cities or towns in such region; provided, that  
115 the regional commission’s statutory purposes and authority shall include promoting the creation  
116 of fair affordable housing for low-income and moderate-income persons; provided further, that a  
117 regional affordable housing commission may be an agency within the structure of a regional  
118 government, including, but not limited to the Cape Cod regional government, known as  
119 Barnstable county; and provided further, that said regional government may require additional  
120 procedures for member cities and towns to adopt a transfer fee that are not inconsistent with this  
121 section, including, but not limited to procedures for adopting bylaws and ordinances, establishing  
122 a transfer fee and administering the collection of a transfer fee established pursuant to this  
123 section.

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

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

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

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

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

141           (b) (1) A city or town that has established a municipal affordable housing trust fund, or a  
142 regional affordable housing commission that has established a regional affordable housing  
143 commission fund, as applicable, may, pursuant to subsection (e), apply to participate in a  
144 demonstration project, in order to impose a fee upon the transfer of any real property interest in  
145 any real property situated in the city or town, or real property situated in the member cities and

146 towns, as described and as subject to conditions and exemptions described herein; provided, that  
147 a city or town that is an MBTA community as defined in section 1A of chapter 40A shall not  
148 impose a transfer fee pursuant to this section unless such city or town has been determined by the  
149 executive office of housing and livable communities to be in compliance with section 3A of  
150 chapter 40A; and provided further, that member cities and towns shall not impose a fee pursuant  
151 to this section if a transfer fee is in effect pursuant to the adoption of such fee by the applicable  
152 regional affordable housing commission under subsection (e).

153 (2) A city, town or regional affordable housing commission, as applicable, may establish  
154 different transfer fee rates for different classifications of properties, defined by the tax  
155 classification of such properties, and the purchase price of a property; provided, however, that  
156 any transfer fee shall be not less than 0.5 per cent and not more than 2 per cent of the portion of  
157 the purchase price of such real property interest in excess of the exemption threshold established  
158 pursuant to paragraph (1) of subsection (c).

159 (3) The transfer fee shall be borne by the seller.

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



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

173 (6) The transfer fee shall be paid within 7 days of the time of transfer by the settlement  
174 agent to the city or town, or its designee, or to the regional affordable housing commission or its  
175 designee, as applicable and shall be accompanied by a copy of the deed or other instrument  
176 recorded or registered with the registry of deeds for the county in which the real property interest  
177 is located, or the assistant recorder for the registry district of the county in which the real  
178 property interest is located, and a copy of the affidavit of transfer fee. The city or town, or its  
179 designee, or the regional affordable housing commission, or its designee as applicable, shall  
180 promptly thereafter execute and issue a certificate indicating that the appropriate fee has been  
181 paid.

182 (7) Upon receipt of a transfer fee by a city or town, the treasurer of the city or town shall  
183 deposit the transfer fee in the city or town's municipal affordable housing trust fund. Upon  
184 receipt of a transfer fee by a regional affordable housing commission, or its designee, the  
185 regional affordable housing commission, or its designee, shall deposit the transfer fee into the  
186 regional affordable housing commission fund.

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

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

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

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

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

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

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

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

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

208 (ix) Transfers made in partition of land and improvements thereto, pursuant to chapter  
209 241;

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

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

220 (xii) Transfers consisting of the division of marital assets under the provisions of section  
221 34 of chapter 208 or other provisions of law; and

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

230 (2) The payor of the transfer fee shall have the burden of proving that an exemption  
231 applies to a transfer of real property interest pursuant to this section; and provided further, that

232 any otherwise exempt transfer shall not be exempt in the event that such transfer, by itself or as  
233 part of a series of transfers, was made for the primary purpose of evading the fee established  
234 pursuant to this section.

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

239 (e)(1) The adoption of any transfer fee pursuant to subsection (b) shall be determined by  
240 either (i) a majority vote by the city or town's legislative body or (ii) with respect to a regional  
241 affordable housing commission, by the terms of, or in accordance with, the procedures  
242 established by such commission; provided, that member cities and towns may adopt a transfer  
243 fee pursuant to clause (i) if a transfer fee is not in effect for the applicable regional affordable  
244 housing commission pursuant to clause (ii); and provided further, that a transfer fee adopted by  
245 any member cities and towns shall have no force or effect upon the effective date of a transfer  
246 fee adopted by the applicable regional affordable housing commission pursuant to clause (ii).

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

251 (2) A city, town or any of the member cities or towns of a regional affordable housing  
252 commission may provide for the enforcement and collection of a transfer fee established  
253 pursuant to this section, including, but not limited to the denial, revocation or suspension of local

254 licenses and permits pursuant to section 57 of chapter 40 and the authority to impose a lien on  
255 real property pursuant to section 58 of chapter 40.

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

258 (4) A city, town or regional affordable housing commission that adopts this section shall  
259 submit an annual report to the executive office of housing and livable communities and the  
260 department of revenue detailing the total fees collected and the amounts used or planned to be  
261 used for affordable housing purposes in accordance with this section.

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

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

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

274