

SENATE No. 2949

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 authorizing the town of Nantucket to impose a real estate transfer fee for affordable and workforce housing and related capital improvements.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Julian Cyr

Cape and Islands

Dylan A. Fernandes

Barnstable, Dukes and Nantucket

SENATE No. 2949

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 2949) of Julian Cyr and Dylan A. Fernandes (by the vote of the town) for legislation to authorize the town of Nantucket to impose a real estate transfer fee for affordable and workforce housing and related capital improvements. Revenue. [Local Approval Received.]

The Commonwealth of Massachusetts

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

An Act authorizing the town of Nantucket to impose a real estate transfer fee for affordable and workforce housing and related capital improvements.

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. For purposes of this act, the words and phrases set forth in this section shall
2 have the following meanings:

3 "Affordable Housing Restriction" is a recorded instrument held by a qualified holder
4 which encumbers and/or restricts a real property interest so that the real property interest is
5 perpetually or for a term of at least thirty (30) years limited to use as a residence occupied by a
6 low or moderate income household which earns less than a specified income level, the upper
7 limit of which may not exceed two hundred forty percent (240%) of the Nantucket median
8 income. A "qualified holder" is a governmental body or charitable corporation or trust which
9 qualifies under the terms of chapter one hundred eight-four of the General Laws ("Chapter 184")
10 to hold an affordable housing restriction. Without limiting the generality of the foregoing,
11 "Affordable Housing Restriction" includes but is not limited to any instrument which conforms

12 to the requirements of (i) a Nantucket Housing Needs Covenant as described in Chapter 301 of
13 the Acts of 2002 and defined in the Town of Nantucket Code.

14 "Housing and Community Development Fund", shall refer to a discrete fund or account,
15 established by the county treasurer of the Nantucket County under the provisions of this act.

16 "Eligible Applicants", shall refer to non-profit and for-profit corporations and
17 organizations, individuals, and public entities.

18 "Purchaser", shall refer to the transferee, grantee or recipient of any real property interest.

19 "Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a seller or
20 his nominee, or for his benefit, for the transfer of any real property interest, and shall include, but
21 not be limited to, all cash or its equivalent so paid or transferred; all cash or other property paid
22 or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller;
23 the principal amount of all notes or their equivalent, or other deferred payments, given or
24 promised to be given by or on behalf of the purchaser to the seller or his nominee; the
25 outstanding balance of all obligations of the seller which are assumed by the purchaser or to
26 which the real property interest transferred remains subject after the transfer, determined at the
27 time of transfer, but excluding real estate taxes and other municipal liens or assessments which
28 are not overdue at the time of transfer; the fair market value, at the time of transfer, of any other
29 consideration or thing, of value paid or transferred by or on behalf of the purchaser, including,
30 but not limited to, any property, goods or services paid, transferred or rendered in exchange for
31 such real property interest.

32 "Real property interest", shall refer to any present or future legal or equitable interest in
33 or to real property, and any beneficial interest therein, including the interest of any beneficiary in

34 a trust which holds any legal or equitable interest in real property, the interest of a partner or
35 member in a partnership or limited liability company, the interest of a stockholder in a
36 corporation, the interest of a holder of an option to purchase real property, the interest of a buyer
37 or seller under a contract for purchase and sale of real property, and the transferable development
38 rights created under chapter one hundred eighty-three A of the General Laws; but shall not
39 include any interest which is limited to any of the following: the dominant estate in any easement
40 or right of way; the right to enforce any restriction; any estate at will or at sufferance; any estate
41 for years having a term of less than 30 years; any reversionary right, condition, or right of entry
42 for condition broken; and the interest of a mortgagee or other secured party in any mortgage or
43 security agreement.

44 "Seller", shall refer to the transferor, grantor or immediate former owner of any real
45 property interest.

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

51 "Town" shall refer to the Town of Nantucket acting by and through the Select Board.

52 SECTION 2. There is hereby imposed a fee equal to one half per cent($\frac{1}{2}\%$) of the
53 purchase price upon the transfer of any real property interest in any real property situated in
54 Nantucket County. Said fee shall be the liability of the seller of such real property interest, and
55 any agreement between the purchaser and the seller or any other person with reference to the

56 allocation of the responsibility for bearing said fee shall not affect such liability of the seller. The
57 fee shall be paid to the Town of Nantucket, or its designee, and shall be accompanied by a copy
58 of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under
59 oath or under the pains and penalties of perjury by the purchaser or his legal representative and
60 the seller or his legal representative, attesting to the true and complete purchase price and the
61 basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee
62 imposed hereby. The Town, or its designee, shall promptly thereafter execute and issue a
63 certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the
64 fee, stating the basis for the exemption.

65 The register of deeds for Nantucket County, and the assistant recorder for the registry
66 district of Nantucket County, shall not record or register, or receive or accept for recording or
67 registration, any deed, except a mortgage deed, to which has not been affixed such a certificate
68 executed by the Town or its designee. Failure to comply with this requirement shall not affect the
69 validity of any instrument. The Town shall deposit all fees received hereunder with the Town
70 treasurer. The treasurer shall deposit such fees in the Affordable Housing Trust Fund. The fee
71 imposed hereunder shall be due simultaneously with the time of transfer of the transfer upon
72 which it is imposed.

73 Notwithstanding the foregoing, whenever there is a conveyance of real property interests
74 and a conveyance of personalty related thereto at or about the same time, the allocations of
75 payments between real estate and personalty agreed to by the purchaser and seller shall not
76 determine the amount of the fee due pursuant to this section; instead, the Town may require
77 payment of the fee referred to in real property interests so conveyed as determined by the Town.

78 SECTION 3. At any time within seven days following the issuance of the certificate of
79 payment of the fee imposed by section two, the seller or his legal representative may return said
80 certificate to the Town or its designee for cancellation, together with an affidavit signed under
81 oath or under the pains and penalties of perjury that the transfer, with respect to which such
82 certificate was issued, has not been consummated, and thereupon the fee paid with respect to
83 such transfer shall be forthwith returned to the seller or his legal representative.

84 SECTION 4. The following transfers of real property interests shall be exempt from the
85 fee established by section 10. Except as otherwise provided, the seller shall have the burden of
86 proof that any transfer is exempt under this section and any otherwise exempt transfer shall not
87 be exempt in the event that such transfer (by itself or as part of a series of transfers) was made
88 for the primary purpose of evading the fee imposed by section 10.

89 (a) Transfers to the government of the United States, the commonwealth, and any of
90 their instrumentalities, agencies or subdivisions, including but not limited to transfers to the
91 Town of Nantucket, the County of Nantucket.

92 (b) Transfers which, without additional consideration, confirm, correct, modify or
93 supplement a transfer previously made.

94 (c) Transfers made as gifts without consideration. In any proceedings to determine
95 the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of
96 less than fair market value of the real property interest transferred was made as a gift without
97 consideration to the extent of the difference between the fair market value of the real property
98 interest transferred and the amount of consideration claimed by the seller to have been paid or
99 transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal

100 descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be
101 presumed that consideration was paid in an amount equal to the fair market value of the real
102 property interest transferred, at the time of transfer.

103 (d) Transfer to the trustees of a trust in exchange for a beneficial interest received by
104 the purchaser in such trust; distributions by the trustees of a trust to the beneficiaries of such
105 trust.

106 (e) Transfers by operation of law without actual consideration, including but not
107 limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property
108 interest.

109 (f) Transfers made in partition of land and improvements thereto, under chapter two
110 hundred and forty-one of the General Laws.

111 (g) Transfers to any charitable organization as defined in clause Third of section five
112 of chapter fifty-nine of the General Laws, or any religious organization, provided that the real
113 property interest so transferred will be held by the charitable or religious organization solely for
114 its public charitable or religious purposes.

115 (h) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee,
116 and transfers of the property subject to a mortgage to the mortgagee in consideration of the
117 forbearance of the mortgagee from foreclosing said mortgage.

118 (i) Transfers made to a corporation or partnership or limited liability company at the
119 time of its formation, pursuant to which transfer no gain or loss is recognized under the
120 provisions of section three hundred and fifty-one or seven hundred and twenty-one of the

121 Internal Revenue Code of 1986, as amended; provided, however, that such transfer shall be
122 exempt only in the event that (1) with respect to a corporation, the transferor retains an interest in
123 the newly formed corporation which is equivalent to the interest the transferor held prior to the
124 transfer, or (2) with respect to a partnership or limited liability company, the transferor retains
125 after such formation rights in capital interests and profit interests within such partnership or
126 limited liability company which are equivalent to the interest the transferor held prior to the
127 transfer.

128 (j) Transfers made to a stockholder of a corporation in liquidation or partial
129 liquidation of the corporation, and transfers made to a partner of a partnership or to a member of
130 a limited liability company in dissolution or partial dissolution of the partnership or limited
131 liability company; but the transfer shall be exempt only if (i) with respect to a corporation, the
132 transferee receives property (including real property interests and other property received) which
133 is the same fraction of the total property of the transferor corporation as the fraction of the
134 corporation's stock owned by the transferee prior to the transfer or (ii) with respect to a
135 partnership or limited liability company, the transferee receives property (including real property
136 interests and other property received) which is the same fraction of the property of the
137 partnership or limited liability company as the fraction of the capital and profit interests in the
138 transferor formerly owned by the transferee.

139 (k) Transfers consisting of the division of marital assets under the provisions of
140 section thirty- four of chapter two hundred and eight of the General Laws or other provisions of
141 law.

142 (1) Transfers of property consisting in part of real property interests situated in Nantucket
143 County and in part of other property interests, to the extent that the property transferred consists
144 of property other than real property situated in Nantucket County; provided that the purchaser
145 shall furnish the Town with such information as it shall require or request in support of the claim
146 of exemption and manner of allocation of the consideration for such transfers.

147 (m) The first \$2 million of the sale price of any transfer or series of transfers of real
148 property interests in a single transaction. Said exemption may be adjusted as determined annually
149 by the affirmative vote of two-thirds of voters at an annual or special town meeting.

150 (n) Transfers of minority interests in corporations, trusts, partnerships or limited liability
151 companies which are publicly traded, which trades are not part of a series of transfers which
152 together constitute a transfer of control of a corporation, trust, partnership or limited liability
153 company.

154 SECTION 5. (a) The Town treasurer shall keep a full and accurate account stating when,
155 from or to whom, and on what account money has been paid or received relative to the activities
156 of the Trust Fund and the Housing Fund. Said account shall be subject to examination by the
157 director of accounts or his agent pursuant to section forty-four of chapter thirty-five of the
158 General Laws.

159 (b) Schedules of beneficiaries of trusts, list of stockholders of corporations and lists of
160 partnerships filed with the Trust Fund for the purpose of determining or fixing the amount of the
161 fee imposed under section ten or for the purpose of determining the existence of any exemption
162 under section twelve shall not be public records for the purposes of section ten of chapter sixty-
163 six of the General Laws.

164 SECTION 6. A seller who fails to pay all or any portion of the fee established by section
165 two on or before the time when the same is due shall be liable for the following additional
166 payments in addition to said fee:

167 (a) Interest: The seller shall pay interest on the unpaid amount of the fee to be calculated
168 from the time of transfer at a rate equal to fourteen per cent per annum.

169 (b) Penalties: Any person who, without fraud or willful intent to defeat or evade a fee
170 imposed by this chapter, fails to pay all or a portion of the fee within thirty days after the time of
171 transfer, shall pay a penalty equal to five per cent of the outstanding fee as determined by the
172 Town for each month or portion thereof thereafter that the fee is not paid in full; provided,
173 however, that in no event shall the amount of any penalty imposed hereunder exceed twenty-five
174 per cent of the unpaid fee due at the time of transfer. Whenever the Town determines that all or a
175 portion of a fee due under this chapter was unpaid due to fraud with intent to defeat or evade the
176 fee imposed by this chapter, a penalty equal to the amount of said fee as determined by the Town
177 shall be paid by the seller in addition to said fee.

178 SECTION 7. (a) The Town shall notify the purchaser and the seller by registered or
179 certified mail of any failure to discharge in full the amount of the fee due under this Act and any
180 penalty or interest assessed. The Town shall grant a hearing on the matter of the imposition of
181 said fee, or of any penalty or interest assessed, if a petition requesting such hearing is received by
182 the Town within thirty days after the mailing of said notice. The Town shall notify the purchaser
183 and the seller in writing by registered or certified mail of its determination concerning the
184 deficiency, penalty or interest within fifteen days after said hearing. Any party aggrieved by a
185 determination of the Town concerning a deficiency, penalty or interest may, after payment of

186 said deficiency, appeal to the district or superior court within three months after the mailing of
187 notification of the determination of the Town. Upon the failure to timely petition for a hearing, or
188 appeal to said courts, within the time limits hereby established, the purchaser and seller shall be
189 bound by the terms of the notification, assessment or determination, as the case may be, and shall
190 be barred from contesting the fee, and any interest and penalty, as determined by the Town. All
191 decisions of said courts shall be appealable. Every notice to be given under this section by the
192 Town shall be effective if mailed by certified or registered mail to the purchaser or the seller at
193 the address stated in a recorded or registered instrument by virtue of which the purchaser holds
194 any interest in land, the transfer of which gives rise to the fee which is the subject of such notice;
195 and if no such address is stated or if such transfer is not evidenced by an instrument recorded or
196 registered in the public records in Nantucket County, such notice shall be effective when so
197 mailed to the purchaser or seller in care of any person appearing of record to have a fee interest
198 in such land, at the address of such person as set forth in an instrument recorded or registered in
199 Nantucket County.

200 (b) All fees, penalties and interest required to be paid pursuant to this chapter shall
201 constitute a personal debt of the seller and may be recovered in an action of contract or in any
202 other appropriate action, suit or proceeding brought by the Town; said action, suit or proceeding
203 shall be subject to the provisions of chapter two hundred and sixty of the General Laws.

204 (c) If any seller liable to pay the fee established by this act neglects or refuses to pay
205 the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the
206 Town upon all property and rights to property, whether real or personal, belonging to either such
207 purchaser or such seller. Said lien shall arise at the time of transfer and shall continue until the
208 liability for such amount is satisfied. Said lien shall in any event terminate not later than six years

209 following the time of transfer. Said lien shall not be valid as against any mortgagee, pledgee,
210 purchaser or judgment creditor unless notice thereof has been filed by the Town (i) with respect
211 to real property or fixtures, in the registry of deeds for Nantucket County, or (ii) with respect to
212 personal property, in the office in which a security or financing statement or notice with respect
213 to the property would be filed in order to perfect a nonpossessory security interest belonging to
214 the person named in the relevant notice, subject to the same limitations as set forth in section
215 fifty of chapter sixty-two C of the General Laws.

216 (d) Sellers applying for an exemption under subsections (a) through (n) of section
217 four shall be required at the time of application for exemption to execute an agreement legally
218 binding on sellers and separately legally binding upon any Legal Representative of the sellers (1)
219 assuming complete liability for any fee, plus interest and penalties if any, waived on account of
220 an allowed exemption subsequently determined to have been invalid, and (2) submitting to the
221 jurisdiction of the trial court of the commonwealth sitting in Nantucket County. Fees, plus
222 interest and penalties if any, shall be calculated as of the date of the initial property transfer.
223 Execution of the above-described agreement shall not be required of any mortgagee, pledge,
224 purchaser or judgment creditor unless notice of the agreement has been recorded or filed by the
225 Town.

226 In any case where there has been a refusal or neglect to pay any fee, interest or penalties
227 imposed by this act, whether or not levy has been made, the Town, in addition to other modes of
228 relief, may direct a civil action to be filed in a district or superior court of the commonwealth to
229 enforce the lien of the Town under this section with respect to such liability or to subject any
230 property of whatever nature, of the delinquent, or in which he has any right, title or interest, to
231 the payment of such liability.

232 The Town may issue a waiver or release of any lien imposed by this section. Such waiver
233 or release shall be conclusive evidence that the lien upon the property covered by the waiver or
234 release is extinguished.

235 SECTION 8. The fee described in section 2 shall be of a ten-year duration from the date
236 this act shall take effect. This fee may continue for five-year periods by a majority vote at a
237 Town Meeting authorizing the fee. The fee described by section 2 may be (1) decreased, or (2)
238 eliminated by two-thirds vote of Town Meeting. In the event that Town Meeting votes to
239 eliminate the fee, the balance of any fees previously collected shall be transferred to the Town of
240 Nantucket and held by the treasurer in a separate account, and shall first be used to satisfy any
241 outstanding liabilities or obligations incurred by the Town of Nantucket or the Affordable
242 Housing Trust as a result of imposition of the fee, and the remainder may be expended without
243 further appropriation by the Select Board for affordable housing purposes. In the event that the
244 liabilities and obligations of the Town of Nantucket or the Affordable Housing Trust exceed the
245 amounts transferred to the Town, the fee shall remain in full force and effect until such liabilities
246 and obligations have been satisfied.

247 SECTION 9. The provisions of this act are severable, and if any provision hereof,
248 including without limitation any exemption from the fee imposed hereby, shall be held invalid in
249 any circumstances such invalidity shall not affect any other provisions or circumstances. This act
250 shall be construed in all respects so as to meet all constitutional requirements. In carrying out the
251 purposes and provisions of this act, all steps shall be taken which are necessary to meet
252 constitutional requirements whether or not such steps are required by statute.

253 SECTION 10. If the Town has determined that a fee is due by asserting the application of
254 the evasion of fee doctrine described in section 2 then the seller shall have the burden of
255 demonstrating by clear and convincing evidence as determined by the Town that the transfer, or
256 series of transfers, possessed both: (i) a valid, good faith business purpose other than avoidance
257 of the fee set forth in section 2 and (ii) economic substance apart from the asserted fee avoidance
258 benefit. In all such cases, the transferee shall also have the burden of demonstrating by clear and
259 convincing evidence as determined by the Town that the asserted non-fee-avoidance business
260 purpose is commensurate with the amount of the fee pursuant to section 2 to be thereby avoided.

261 SECTION 11. Pursuant to state enabling legislation pending with the General Court for
262 the adoption of an act providing cities and towns the option to support affordable housing with a
263 fee on certain real estate transactions, the legislative body of a city or town by a majority vote
264 may adopt said act upon the passage of said act by the Senate and the House of Representatives
265 of the General Court, and furthermore, a favorable majority vote of this Article by this Town
266 Meeting is also deemed to be a vote by Town Meeting to adopt said act providing cities and
267 towns the option to support affordable housing with a fee on certain real estate transactions,
268 provided the provisions contained herein are consistent with the provisions of said act.

269 SECTION 12. This act shall take effect ninety (90) days following the date of passage.