HOUSE DOCKET, NO. 3381 FILED ON: 1/17/2025

HOUSE . . . . . No. 3193

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas W. Moakley

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 establishing the Martha's Vineyard housing bank.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Thomas W. Moakley	*Barnstable, Dukes and Nantucket*	*1/17/2025*

HOUSE DOCKET, NO. 3381 FILED ON: 1/17/2025

HOUSE . . . . . No. 3193

By Representative Moakley of Falmouth, a petition (accompanied by bill, House, No. 3193) of Thomas W. Moakley for legislation to establish the Martha's Vineyard housing bank. Revenue.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act establishing the Martha's Vineyard housing bank.

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

SECTION 1: For purposes of this act, the words and phrases set forth in this section shall have the following meanings:

"Affidavit of transfer fee", an affidavit signed under the pains and penalties of perjury by the purchaser or settlement agent that attests to (i) the true and complete purchase or sale price of the transfer of the real property interest; (ii) the amount of the transfer fee owed or the basis, if any, upon which the transfer is exempt from the fee imposed by said transfer; (iii) the amount that the purchaser shall pay as required by the bylaw or regulation; and (iv) the obligation of the purchaser or settlement agent to make payment of the transfer fee to the regional year-round housing trust, as applicable.

"Attainable housing" and "affordable and attainable housing", shall have the same meanings as set forth in section 32(a) of chapter 23B of the General Laws.

"Attainable housing restriction", a recorded instrument held by a qualified holder which encumbers or restricts a real property interest so that the real property which is subject to the real property interest is perpetually or for a term of at least 30 years limited to use as a year-round residence or residential units occupied by a household with income under the level set in accordance with 32(a) of chapter 23B of the General Laws at the time such restriction is created.

"Member towns", towns that are members of a regional year-round housing trust.

"Municipal affordable housing trust fund", a municipal affordable housing trust fund established pursuant to section 55C of chapter 44 of the General Laws, or any other municipal trust fund established pursuant to a law of the commonwealth providing for the creation and preservation of affordable housing in a particular city or town for the benefit of low- and moderate-income households or for the funding of community housing..

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

"Purchase price" or "sale price", all consideration paid or transferred by or on behalf of a purchaser to a seller or the seller's nominee, or for the seller's benefit, for the transfer of any real property interest, and shall include, but not be limited to: (i) all cash or its equivalent so paid or transferred; (ii) all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; (iii) the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or the seller's nominee; (iv) the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of transfer, but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of transfer; (v)

the fair market value, at the time of transfer, of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for such real property interest.

"Qualified holder", a governmental body or charitable corporation or trust which qualifies under the terms of sections 31 through 33 of chapter 184 of the General Laws to hold an affordable housing restriction.

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

"Regional year-round housing trust", a trust or other entity or arrangement that maintains a regional year-round housing trust fund.

"Regional year-round housing trust fund", a year-round housing trust fund established by two or more towns located in Dukes County pursuant to section 32(d)(iv) of chapter 23B of the General Laws.

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

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

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

“Transfer fee”, a fee established pursuant to section 5 of this act to be paid by the purchaser upon the transfer of a real property interest between a seller and a purchaser.

“Year-round housing”, shall have the same meaning as set forth in section 32(a) of chapter 23B of the General Laws.

“Year-round housing trust”, a year-round housing trust fund established by a single town located in Dukes County pursuant to section 32(d)(iv) of chapter 23B of the General Laws.

SECTION 2: (a) Any town or group of towns located on Martha’s Vineyard may, by a majority vote of its or their respective legislative bodies, establish or rescind a fee upon the

transfer of any real property interest in any real property situated in such town or towns, as described and as subject to the conditions and exemptions described herein.

(b) A town or group of towns may establish different transfer fee rates for different classifications of properties, defined by the tax classification of such properties, and the purchase price of a property; provided, however, that any transfer fee shall be not less than 0.5 per cent and not more than 2 per cent of the portion of the purchase price of such real property interest in excess of the exemption threshold established pursuant to section 3(a)(i) of this act.

(c) The transfer fee shall be borne by the purchaser.

(d) The purchaser or settlement agent shall, in advance of the time of transfer, request and the town or regional year-round housing trust, or its designee, as applicable, shall provide to said purchaser or settlement agent in advance of the time of transfer a certificate indicating the dollar amount of the transfer fee owed based on the agreed upon purchase price as evidenced by an executed purchase and sale agreement, contract for sale or other document evidencing the agreed upon purchase price or that the transfer is exempt from the transfer fee, stating the basis for the exemption.

(e) Whenever the transfer of a real property interest will occur at or about the same time as a conveyance of personalty related thereto, the calculation of the fee with respect to such transfer shall be determined by the town or regional year-round housing trust, or its designee, as applicable; provided, that the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the calculation of the transfer fee due pursuant to this act.

(f) The transfer fee shall be paid within 7 days of the date of transfer by the purchaser or settlement agent to the town or regional year-round housing trust or its designee, as applicable, and shall be accompanied by a copy of the deed or other instrument recorded or registered with the registry of deeds for the county in which the real property interest is located, or the assistant recorder for the registry district of the county in which the real property interest is located, and a copy of the affidavit of transfer fee. The town or the regional year-round housing trust or its designee, as applicable, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the fee and stating the basis for the exemption.

(g) Upon receipt of a transfer fee by a regional year-round housing trust or its designee, the regional year-round housing trust or its designee shall deposit the transfer fee in the regional year-round housing trust fund. Transfer fees shall be held by the regional year-round housing trust in accordance with or pursuant to the terms of the agreement or other instrument establishing the regional year-round housing trust.

(h) If a town receives a transfer fee within two years after the date that this act takes effect and such town is not a member of a regional affordable housing trust at the time such transfer fee becomes effective, the town shall deposit the transfer fee with the Dukes County treasurer. The Dukes County treasurer shall hold all such transfer fees in segregated accounts for each town from which transfer fees have been received. Upon the establishment of a regional year-round housing trust, the Dukes County treasurer shall transfer all funds held on behalf of such regional year-round housing trust's member towns to the regional year-round housing trust fund to be used for the creation and preservation of year-round and attainable housing within the

regional year-round housing trust's member towns in accordance with or pursuant to the terms of the agreement establishing the regional year-round housing trust.

(i) If a town on behalf of whom the Dukes County treasurer holds transfer fees does not become a member of a regional year-round housing trust within two years after the date that this act takes effect: (1) the Dukes County treasurer shall transfer all transfer fees held on behalf of such town to the town's year-round housing trust, if one has been established, to be used for the purposes of the year-round housing trust, or otherwise to the town's municipal affordable housing trust fund to be used for the purposes of the municipal affordable housing trust fund; and (2) the town's transfer fee shall remain in effect and all additional transfer fees received by the town shall be deposited in the town's year-round housing trust, if one has been established, to be used for the purposes of the year-round housing trust, or otherwise to the town's municipal affordable housing trust fund, to be used for the purposes of such municipal affordable housing trust fund, until the town becomes a member of a regional year-round housing trust, establishes a year-round housing trust, or rescinds its transfer fee in accordance with section 2(a) of this act.

(j) If a town establishes a transfer fee pursuant to this act more than two years after the date that this act takes effect and such town is not a member of a regional affordable housing trust at the time such transfer fee becomes effective, transfer fees received by the town shall be deposited in the town's year-round housing trust, if one has been established, to be used for the purposes of the year-round housing trust, or otherwise to municipal affordable housing trust fund, to be used for the purposes of such municipal affordable housing trust fund, until the town becomes a member of a regional year-round housing trust, establishes a year-round housing trust, or rescinds its transfer fee in accordance with section 2(a) of this act.

SECTION 3. (a) The following transfers of real property interests shall be exempt from a transfer fee adopted pursuant to this act:

(i) Transfers for less than $1,000,000; provided, that a town, or a regional year-round housing trust acting pursuant to or in accordance with the terms of the agreement establishing the regional year-round housing trust, may adopt a higher threshold;

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

(iii) Transfers between family members as defined by bylaw or regulations adopted by a regional year-round housing trust, as applicable;

(iv) Transfers to the government of the United States, the Commonwealth and any of their instrumentalities, agencies, or subdivisions, including but not limited to transfers from the town, local housing authority or regional year-round housing trust;

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

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

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

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

(ix) Transfers made in partition of land and improvements thereto, pursuant to chapter 241 of the General Laws;

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

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

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

(xiii) Transfers of an interest in real property containing not less than 3 residential units in which not less than 1 residential unit or 25 per cent of the residential units, whichever is greater, is governed by affordable or attainable housing restrictions; provided, however, that the affordable or attainable housing restriction, as applicable, has a term remaining at the time of the transfer of not less than 5 years; and provided further, that if less than 100 per cent of the residential units are governed by affordable or attainable housing restrictions, the exemption shall apply only to the portion of the property that is governed by affordable or attainable housing restrictions and the transfer fee imposed pursuant to this act shall be proportionately

reduced based on the percentage of residential units subject to affordable or attainable housing restrictions, as compared to the total number of units located on that property.

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

SECTION 4. (a) Any one or more of the member towns of a regional year-round housing trust, as applicable, may provide for the enforcement and collection of a transfer fee adopted pursuant to this act, including, but not limited to the denial, revocation or suspension of local licenses and permits pursuant to section 57 of chapter 40 of the General Laws and the authority to impose a lien on real property pursuant to section 58 of chapter 40 of the General Laws.

(b) A town or regional year-round housing trust that receives real estate transfer fees pursuant to this act may issue rules, regulations, policies and procedures to effectuate the terms of this act.

(c) A town or regional year-round housing trust that receives real estate transfer fees pursuant to this act shall adopt regulations which establish a procedure by which an aggrieved person may appeal the transfer fee amount, in whole or in part, or the denial of an exemption.

(d) Any person aggrieved by a denial of relief pursuant to a regulation established pursuant to paragraph (c) may, within 60 days from the receipt of the notice of such denial, petition the appellate tax board under the provisions of chapter 58A of the General Laws.

(e) A town or a regional year-round housing trust that receives real estate transfer fees pursuant to this act shall submit an annual report to the executive office of housing and livable communities, or its successor and the department of revenue, detailing the total fees collected and the amounts used or planned to be used for year-round and attainable housing purposes in accordance with this act. A regional year-round housing trust shall provide a copy of such report to each of its member towns.