SENATE DOCKET, NO. 1947 FILED ON: 1/17/2025

SENATE . . . . . No. 1434

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to funding affordable housing and incentivizing zoning reform.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Julian Cyr	*Cape and Islands*	
Patricia D. Jehlen	*Second Middlesex*	*8/6/2025*

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SENATE . . . . . No. 1434

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 1434) of Julian Cyr for legislation to fund affordable housing and incentivize zoning reform by imposing a fee upon the transfer of real property interest in any real property situated within the city or town. Municipalities and Regional Government.

The Commonwealth of Massachusetts

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

An Act relative to funding affordable housing and incentivizing zoning reform.

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. Section 55C of chapter 44, as appearing in the 2022 Official Edition, is hereby further amended, by inserting after the word “fee,”, in line 99, the following words:- transfer fee pursuant to section 55D.

SECTION 2. Said chapter 44 is hereby further amended by inserting after section 55C the following section:-

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

“Affidavit of transfer fee”, an affidavit signed under the pains and penalties of perjury by the 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 seller

shall pay as required by the bylaw, ordinance or regulation; and (iv) the obligation of the settlement agent to make payment of the transfer fee to the city or town.

"Affordable housing purposes" uses allowed by the municipal affordable housing trust fund, regional affordable housing commission fund or year-round housing trust fund into which funds are deposited hereunder, which shall include the acquisition, construction, rehabilitation, and preservation of (1) affordable or attainable housing for the benefit of low- and moderate-income households and (2) year-round housing in municipalities designated as seasonal communities. All activities shall be subject to the income limits as are applicable to such municipal affordable housing trust fund, regional affordable housing commission fund, assistance to a housing authority as defined under section 1 of chapter 121B, year-round housing trust fund or other affordable housing purposes pursuant to regulations promulgated by the executive office of housing and livable communities.

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

"Attainable housing", as defined by the executive office of housing and livable communities.

"Low or moderate income household", a household with gross income at or less than 150 per cent of area median income as most recently determined by the United States Department of Housing and Urban Development, adjusted for household size.

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

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

“Municipal affordable housing trust fund”, a municipal affordable housing trust fund established under section 55C, 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, as defined in and in accordance with chapter 44B.

"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 chapter 184 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; 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 affordable housing commission”, a regional trust, bank, board or like entity, whose membership includes two or more municipalities.

“Regional affordable housing commission fund”, a fund established by the regional affordable housing commission for the creation and preservation of affordable or attainable housing.

"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, to be paid by the party designated by the city or town pursuant to this section, upon the transfer of a real property interest between a seller and a purchaser.

“Year-round housing”, housing for occupancy by persons or families who occupy either rental or other housing as their principal residence for not less than 10 months a year.

“Year-Round Housing Trust Fund”, a fund established under section 32 of chapter 23B to provide for the creation and preservation of affordable and attainable housing in seasonal communities for the benefit of year-round residents and for the funding of programs available to seasonal communities.

(b) (1) A city or town that has established a municipal affordable housing trust fund, year-round housing trust fund or a regional affordable housing commission fund may, pursuant to subsection (e), impose a fee upon the transfer of real property interest in any real property situated within the city or town, or real property situated in the member cities and towns, provided that 10 per cent of all funds collected by the fee established under this section shall be subject to appropriation and shall be used for affordable and attainable housing related expenses by the executive office of housing and livable communities for the purposes of supportive housing and housing production in gateway municipalities as defined at section 1of Chapter 40V and rural communities as defined at section 66 of Chapter 23A and further provided that the city or town satisfies at least 4 of the following criteria:

(i) For a city or town that is an MBTA community as defined in section 1A of chapter 40A, that the city or town has been determined by the executive office of housing and livable communities to be in compliance with section 3A of chapter 40A.

(ii) The city or town or members cities or towns have imposed the maximum property tax surcharge under section 3 of chapter 44B of which an average of at least 40 percent of funds received through said surcharge have been appropriated for housing creation and housing preservation in the 2-year period immediately prior to enacting a transfer fee.

(iii) The city or town has imposed a local excise tax established under section 3A of chapter 64G.

(iv) The city or town has appropriated at least 50 per cent of all community impact fee receipts collected under section 3D of chapter 64G to wastewater, housing, or municipal

infrastructure projects that advance affordable, attainable or year-round housing development in the two years prior to the enactment of the transfer fee.

(v) A city or town with a population of at least 1,500 residents has adopted a zoning ordinance or by-law that allows for multi-family housing in at least 5 per cent of residentially zoned areas within the boundaries of the city or town.

(vi) A city or town has adopted a zoning ordinance or by-law that permits parcels of less 0.5 acre in at least 50 per cent of residentially zoned areas within the boundaries of the city or town.

(vii) The city or town has implemented a zoning ordinance or bylaw adopting a smart growth zoning district established under section 3 of chapter 40R;

(viii) The city or town has developed and implemented a housing production plan as defined under section 2 of chapter 40R.

The city of town may determine whether the fee shall be borne by the purchaser or the seller of property subject to the fee established under this section.

(2) A city, town or regional affordable housing commission or its designee, as applicable, 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 paragraph (1) of subsection (c).

(3) The party bearing the fee established under this section or settlement agent shall, in advance of the time of transfer, request and the city or town or regional affordable housing commission, as applicable, shall provide to said party 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.

(4) 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 city or town or regional affordable housing commission 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 section.

(5) The transfer fee shall be paid within 7 days of the time of transfer by the settlement agent to the city or town, or its designee, or to the regional affordable housing commission 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 city or town, or its designee, or the regional affordable housing commission, or its designee as applicable, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid.

(6) Upon receipt of a transfer fee by a city or town, the treasurer of the city or town shall deposit the transfer fee in the city or town's municipal affordable housing trust fund or year-round housing trust fund. Upon receipt of a transfer fee by a regional affordable housing commission, or its designee, the regional affordable housing commission, or its designee, shall deposit the transfer fee into the regional affordable housing commission fund.

(c) (1) A city or town, in adopting the fee established under this section, shall exempt the following transfers of real property interests from said fee:

(i) Transfers for less than $2,000,000; provided, however, that a municipality or regional affordable housing commission, as applicable, may adopt a higher threshold pursuant to this section.

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

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

(iv) Transfers consisting of the division of marital assets under the provisions of section 34 of chapter 208 or other provisions of law;

(v) transfers of property in which the party bearing the fee established under this section is a beneficiary of a city-approved homebuyer program.

(vi) 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 housing restrictions; provided, however, that if less than 100 per cent of the residential units are governed by affordable housing restrictions, the exemption shall apply only to the portion of the property that is governed by affordable housing restrictions and the transfer fee imposed pursuant to this section shall be proportionately reduced based on the percentage of residential units subject to affordable housing restrictions, as compared to the total number of units located on that property;

(2) A city or town, in adopting the fee established under this section, may exempt the following transfers of real property interests from said fee:

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

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

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

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

(v) 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;

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

(vii) 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 housing-related uses that are consistent with the uses allowed by the municipal affordable housing trust fund, year-round housing trust fund or regional affordable housing commission fund, as applicable; 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;

(viii) 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;

(ix) a vulnerable senior, as may be defined by ordinance;

(x) transfers of property subject to a year-round or other deed restriction;

(xi) transfers of property in which the purchaser is a first-time homebuyer who lives in the home for a specified number years, provided that such exemption is available in cities and towns in which the fee established under this section is borne by the purchaser; and

(3) The city or town may, by ordinance, accept and determine the amount of the fee and adjust the exempted value to assess the entire value of the transaction.

(4) The payor of the transfer fee 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 fee established pursuant to this section.

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

(e)(1) The adoption of any transfer fee pursuant to subsection (b) shall be determined by majority vote by the city or town's legislative body. The adoption of a transfer fee pursuant to subsection (b) shall take effect on the first day of the calendar quarter following 30 days after its acceptance pursuant to this subsection or on the first day of a later calendar quarter as the city or town or regional housing commission, as applicable, may designate.

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

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

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

(5) a city, town or regional affordable housing commission that adopts this section shall adopt a bylaw, ordinance or regulation, as the case may be, which establishes a procedure by

which an aggrieved person may appeal the transfer fee amount, in whole or in part, or the denial of an exemption.

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

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

(g) Two or more municipalities within the same county may join together to create a regional affordable housing commission for the purposes of creating and preserving affordable or attainable housing for the benefit of low-and-moderate income households or year-round residents in municipalities designated as seasonal communities. If a municipality is a member of a regional affordable housing commission, any authority granted to a city or town under this section shall be exercised solely by the regional affordable housing commission, including administration of the fee established under this section. Municipalities may, by a majority vote of their respective legislative bodies, establish or disband by intermunicipal contract a regional affordable housing commission. Such contract shall set forth: (i) the rights, powers and obligations of the regional affordable housing commission; (ii) the number, composition, method of selection, and terms of office of commissioners serving on such commission; (iii) the manner by which the regional affordable housing commission may establish a transfer fee pursuant to

this section, and the amount of such transfer fee including any different rates based on property classifications, if any; (iv) low- and moderate- income limits applicable to the regional affordable housing commission fund as determined to be appropriate by the member cities and towns based on housing needs and market conditions within such member cities and towns (v) the method by which the contract may be amended or terminated; (vi) the term of the contract, not exceeding twenty-five years; and (vii) any other matters, not incompatible with this section, which the member cities and towns may deem advisable.