

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Joanne M. Comerford

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 enabling a local option for a real estate transfer fee to fund affordable housing.

PETITION OF:

NAME:

Joanne M. Comerford

DISTRICT/ADDRESS:

Hampshire, Franklin and Worcester

SENATE No.

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1771 OF 2023-2024.]

The Commonwealth of Massachusetts

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

An Act enabling a local option for a real estate transfer fee to fund affordable housing.

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. Section 55C of chapter 44 of the General Laws, as appearing in the 2022
2 Official Edition, is hereby amended, by inserting after the word “fee,” in line 99, the following
3 words:- transfer fee

4 SECTION 2. Said chapter 44, as so appearing, is hereby further amended by inserting
5 after section 55C the following section:-

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

8 “Affidavit of transfer fee”, an affidavit signed under the pains and penalties of perjury by
9 the settlement agent that attests to (i) the true and complete purchase or sale price of the transfer
10 of the real property interest; (ii) the amount of the transfer fee owed or the basis, if any, upon

11 which the transfer is exempt from the fee imposed by said transfer; (iii) the amount that the seller
12 shall pay as required by the bylaw, ordinance or regulation; and (iv) the obligation of the
13 settlement agent to make payment of the transfer fee to the city or town.

14 “Affordable housing purposes”, uses allowed by the municipal affordable housing trust
15 fund or regional affordable housing commission fund into which funds are deposited hereunder,
16 which shall include the acquisition, construction, rehabilitation and preservation of affordable
17 housing for the benefit of low- and moderate-income households as defined in such municipal
18 affordable housing trust fund or regional affordable housing commission fund, assistance to a
19 housing authority as defined under section 1 of chapter 121B or other affordable housing
20 purposes pursuant to regulations promulgated by the executive office of housing and livable
21 communities.

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

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

30 “Municipal affordable housing trust fund”, a municipal affordable housing trust fund
31 established pursuant to section 55C, or any other municipal trust fund established pursuant to a
32 law of the commonwealth providing for the creation and preservation of affordable housing in a

33 particular city or town for the benefit of low- and moderate-income households or for the
34 funding of community housing, as defined in and in accordance with chapter 44B.

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

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

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

51 "Real property interest", any present or future legal or equitable interest in or to real
52 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
53 which holds any legal or equitable interest in real property, the interest of a partner or member in
54 a partnership or limited liability company, the interest of a stockholder in a corporation, the

55 interest of a holder of an option to purchase real property, the interest of a purchaser or seller
56 under a contract for purchase and sale of real property and the transferable development rights
57 created under chapter 183A; but shall not include any interest which is limited to any of the
58 following: the dominant estate in any easement or right of way; the right to enforce any
59 restriction; any estate at will or at sufferance; any estate for years having a term of less than 30
60 years; any reversionary right, condition, or right of entry for condition broken; and the interest of
61 a mortgagee or other secured party in any mortgage or security agreement.

62 “Regional affordable housing commission”, a regional planning and land use commission
63 created by any general or special law with authority to prepare and oversee the implementation
64 of a regional land-use policy plan for a region of the commonwealth comprising at least one
65 county, and whose membership includes all of the cities or towns in such region; provided, that
66 the regional commission’s statutory purposes and authority shall include promoting the creation
67 of fair affordable housing for low-income and moderate-income persons; provided further, that a
68 regional affordable housing commission may be an agency within the structure of a regional
69 government, including, but not limited to the Cape Cod regional government, known as
70 Barnstable county; and provided further, that said regional government may require additional
71 procedures for member cities and towns to adopt a transfer fee that are not inconsistent with this
72 section, including, but not limited to procedures for adopting bylaws and ordinances, establishing
73 a transfer fee and administering the collection of a transfer fee established pursuant to this
74 section.

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

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

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

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

90 "Transfer fee", a fee, to be paid by the seller pursuant to this section, upon the transfer of
91 a real property interest between a seller and a buyer.

92 (b) (1) A city or town that has established a municipal affordable housing trust fund, or a
93 regional affordable housing commission that has established a regional affordable housing
94 commission fund, as applicable, may, pursuant to subsection (e), impose a fee upon the transfer
95 of any real property interest in any real property situated in the city or town, or real property
96 situated in the member cities and towns, as described and as subject to conditions and
97 exemptions described herein; provided, that a city or town that is an MBTA community as
98 defined in section 1A of chapter 40A shall not impose a transfer fee pursuant to this section
99 unless such city or town has been determined by the executive office of housing and livable

100 communities to be in compliance with section 3A of chapter 40A; and provided further, that
101 member cities and towns shall not impose a fee pursuant to this section if a transfer fee is in
102 effect pursuant to the adoption of such fee by the applicable regional affordable housing
103 commission under subsection (e).

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

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

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

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

128 (6) The transfer fee shall be paid within 7 days of the time of transfer by the settlement
129 agent to the city or town, or its designee, or to the regional affordable housing commission or its
130 designee, as applicable and shall be accompanied by a copy of the deed or other instrument
131 recorded or registered with the registry of deeds for the county in which the real property interest
132 is located, or the assistant recorder for the registry district of the county in which the real
133 property interest is located, and a copy of the affidavit of transfer fee. The city or town, or its
134 designee, or the regional affordable housing commission, or its designee as applicable, shall
135 promptly thereafter execute and issue a certificate indicating that the appropriate fee has been
136 paid.

137 (7) Upon receipt of a transfer fee by a city or town, the treasurer of the city or town shall
138 deposit the transfer fee in the city or town's municipal affordable housing trust fund. Upon
139 receipt of a transfer fee by a regional affordable housing commission, or its designee, the
140 regional affordable housing commission, or its designee, shall deposit the transfer fee into the
141 regional affordable housing commission fund.

142 (c) (1) The following transfers of real property interests shall be exempt from a transfer
143 fee established pursuant to this section;

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

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

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

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

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

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

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

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

163 (ix) Transfers made in partition of land and improvements thereto, pursuant to chapter
164 241;

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

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

175 (xii) Transfers consisting of the division of marital assets under the provisions of section
176 34 of chapter 208 or other provisions of law; and

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

185 (2) Any city, town or regional affordable housing commission, as applicable, may,
186 through local ordinance or bylaw, exempt certain other transactions from a transfer fee
187 established pursuant to this section, including but not limited to:

188 (i) transfers to first-time homebuyers;

189 (ii) transfers to or from persons eligible for the senior circuit breaker tax credit
190 established in paragraph (2) of subsection (k) of section 6 of chapter 62; and

191 (iii) transfers from taxpayers that are subject to the residential tax exemption pursuant to
192 section 5C of Chapter 59, or who otherwise would meet the requirements of said exemption.

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

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

202 (e)(1) The adoption of any transfer fee pursuant to subsection (b) shall be determined by
203 either (i) a majority vote by the city or town's legislative body or (ii) with respect to a regional
204 affordable housing commission, by the terms of, or in accordance with, the procedures
205 established by such commission; provided, that member cities and towns may adopt a transfer

206 fee pursuant to clause (i) if a transfer fee is not in effect for the applicable regional affordable
207 housing commission pursuant to clause (ii); and provided further, that a transfer fee adopted by
208 any member cities and towns shall have no force or effect upon the effective date of a transfer
209 fee adopted by the applicable regional affordable housing commission pursuant to clause (ii).
210 The adoption of a transfer fee pursuant to subsection (b) shall take effect on the first day of the
211 calendar quarter following 30 days after its acceptance pursuant to this subsection or on the first
212 day of a later calendar quarter as the city or town or regional housing commission, as applicable,
213 may designate.

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

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

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

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

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

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

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