

HOUSE No. 2747

The Commonwealth of Massachusetts

PRESENTED BY:

Mike Connolly

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/19/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/19/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>1/26/2023</i>
<i>Steven Owens</i>	<i>29th Middlesex</i>	<i>1/26/2023</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>1/27/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>1/30/2023</i>
<i>Simon Cataldo</i>	<i>14th Middlesex</i>	<i>1/31/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/4/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>2/6/2023</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>2/7/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>2/8/2023</i>
<i>Tricia Farley-Bouvier</i>	<i>2nd Berkshire</i>	<i>2/9/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/10/2023</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>2/14/2023</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>2/14/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/15/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/27/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/28/2023</i>

<i>Carlos González</i>	<i>10th Hampden</i>	<i>3/1/2023</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>3/9/2023</i>

HOUSE No. 2747

By Representative Connolly of Cambridge, a petition (accompanied by bill, House, No. 2747) of Mike Connolly and others for legislation to support affordable housing with a local option for a fee to be applied to certain real estate transactions. Revenue.

The Commonwealth of Massachusetts

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

An Act granting 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 is hereby amended, in
2 subsection (c), by inserting, in line 8, after the figure “44B” the following words: - “and section
3 55D of chapter 44”.

4 SECTION 2. Said section 55C of Chapter 44 of the General Laws is hereby amended by
5 inserting, in line 45, after the word “revenue” the following words: - “provided further, that any
6 such money received from section 55D shall be used exclusively for adaptive reuse, production
7 or preservation of affordable housing or affordable housing purposes as that term is defined in
8 section 55D”.

9 SECTION 3. Said section 55C of Chapter 44 of the General Laws is hereby amended, in
10 subsection (d), in line 99, by inserting after the word “fee” the following words: - “, transfer fee”.

11 SECTION 4. Chapter 44 of the General Laws is hereby amended by inserting after
12 section 55C the following section:

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

15 “Affidavit of transfer fee”, an affidavit signed under the pains and penalties of perjury by
16 the settlement agent that attests to (a) the true and complete purchase or sale price of the transfer
17 of the real property interest; (b) the amount of the fee owed or the basis, if any, upon which the
18 transfer is exempt from the fee imposed by said transfer; (c) the amount that the purchaser and
19 seller are responsible for paying as required by the bylaw, ordinance or regulation allocating the
20 transfer fee in accordance with this section; and (d) the obligation of the settlement agent to
21 make payment of the transfer fee to the city, town or regional affordable housing commission.

22 “Affordable housing purposes” uses allowed by the municipal affordable housing trust
23 fund or regional affordable housing commission fund into which funds are deposited hereunder.

24 “Affordable housing restriction”, a recorded instrument held by a qualified holder which
25 encumbers or restricts a real property interest so that the real property interest is perpetually or
26 for a term of at least thirty years limited to use as a residence occupied by a low or moderate
27 income household with Area Median Income, as defined by the federal department of Housing
28 and Urban Development, not to exceed the income limits to which the Municipal Affordable
29 Housing Trust Fund or Regional Affordable Housing Commission is subject. A “qualified
30 holder” is a governmental body or charitable corporation or trust which qualifies under the terms
31 of chapter 184 to hold an affordable housing restriction.

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

34 “Municipal affordable housing trust fund”, a municipal affordable housing trust fund
35 established pursuant to Section 55C of this chapter, or any other municipal trust fund established
36 pursuant to a law of the commonwealth providing for the creation and preservation of affordable
37 housing in a particular city or town.

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

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

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

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

63 “Regional affordable housing commission”, a regional trust, bank, board or like entity
64 created pursuant to general or special law for the creation and preservation of affordable housing
65 as described in the general or special law establishing such entity, and whose membership
66 includes two or more cities or towns. If a city or town is a member of a regional affordable
67 housing commission, any authority granted to a city, town, or regional affordable housing
68 commission pursuant to this Section shall be exercised solely by the regional affordable housing
69 commission.

70 “Regional affordable housing commission fund” a fund established by general or special
71 law for the use of a regional affordable housing commission for the creation and preservation of
72 affordable housing as defined in the general or special law establishing such fund.

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

74 “Settlement Agent”, an escrow agent, real estate attorney, or representative of a lender or
75 title company that conducts the closing or settlement of the sale or transfer of a real property
76 interest including the coordination of the attendance and document signing for all the parties,
77 verification that each party to the transfer has performed their required responsibilities as

78 outlined in the contract and the disbursement of all funds, along with the title and deed, to the
79 appropriate parties after checking that all conditions are met at the close of the transfer
80 transaction.

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

86 (b) Establishment and Requirements of a Transfer Fee. A city or town that has
87 established a municipal affordable housing trust fund pursuant to section 55C or any other
88 municipal affordable housing trust fund established by a law of the commonwealth providing for
89 the creation and preservation of affordable housing in municipalities for the benefit of low and
90 moderate income households or for the funding of community housing, as defined in and in
91 accordance with chapter 44B, or a regional affordable housing commission, as applicable, may
92 impose a fee upon the transfer of any real property interest in any real property situated in the
93 city or town, or member cities and towns, as described and as subject to conditions and
94 exemptions described herein.

95 (i) A city, town, or regional affordable housing commission, as applicable, may establish
96 different transfer fees for categories of properties, defined by the tax classification and the value
97 of a property; provided, however, that the fee shall be no less than .5 percent and no more than 2
98 percent of the purchase price of such real property interest.

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

102 (iii) A purchaser, seller, or settlement agent in advance of the time of transfer shall
103 request and the city or town or regional affordable housing commission, as applicable, shall
104 provide to a purchaser, seller or settlement agent in advance of the time of transfer a certificate
105 indicating the dollar amount of the transfer fee owed based on the agreed upon purchase price as
106 evidenced by an executed purchase and sale agreement, contract for sale or other document
107 evidencing the agreed upon purchase price or that the transfer is exempt from the transfer fee,
108 stating the basis for the exemption.

109 (iv) Whenever the transfer of a real property interest will occur at or about the same time
110 as a conveyance of personalty related thereto, the allocations of payments between real estate
111 and personalty agreed to by the purchaser and seller shall not determine the calculation of the
112 transfer fee due pursuant to this section; instead, the calculation of the fee with respect to such
113 transfer shall be determined by the city, town, or regional affordable housing commission, as
114 applicable.

115 (v) The transfer fee shall be paid within seven days of the time of transfer by the
116 settlement agent to the city or town, or its designee, or to the regional affordable housing
117 commission or its designee, as applicable, and shall be accompanied by a copy of the deed or
118 other instrument recorded or registered with the registry of deeds for the county in which the real
119 property interest is located, or the assistant recorder for the registry district of the county in
120 which the real property interest is located, and a copy of the affidavit of transfer fee. The city or

121 town, or its designee, or the regional affordable housing commission, or its designee, as
122 applicable, shall promptly thereafter execute and issue a certificate indicating that the appropriate
123 fee has been paid.

124 (vi) Upon receipt of a transfer fee by a city or town, the treasurer of the city or town shall
125 deposit the transfer fee in the city or town's municipal affordable housing trust fund established
126 pursuant to section 55C or any other municipal affordable housing trust fund established by a
127 law of the commonwealth providing for the creation and preservation of affordable housing in
128 municipalities for the benefit of low and moderate income households or for the funding of
129 community housing, as defined in and in accordance with chapter 44B. Upon receipt of a transfer
130 fee by a regional affordable housing commission, the regional affordable housing commission
131 shall deposit the transfer fee into the regional affordable housing commission fund.

132 (c) Exemptions: The following transfers of real property interests shall be exempt from
133 the fees established by this section; provided, however, that any city, town or regional affordable
134 housing commission, as applicable, may adopt further exemptions in addition to those provided
135 herein; provided, further, that except as otherwise required, the seller or purchaser or both
136 parties, who are required to pay the transfer fee as specified in the bylaw or ordinance
137 establishing a transfer fee pursuant to this Section, or, with respect to the member cities and
138 towns of a regional affordable housing commission, regulations adopted by such regional
139 affordable housing commission, shall have the burden of proving that any transfer is exempt; and
140 provided, further, that any otherwise exempt transfer shall not be exempt in the event that such
141 transfer, by itself or as part of a series of transfers, was made for the primary purpose of evading
142 the fee established pursuant to this section.

143 (i) Transfers for less than \$1,000,000 or such higher threshold amount as set by the
144 municipality or regional affordable housing commission adopting a transfer fee pursuant to this
145 legislation except to the extent that the median single family sale price for the county in which
146 the municipality resides is less than \$750,000 may adopt a threshold no lower than 100% of the
147 median single family home sales price for that county. County median sales price for a single
148 family home which shall be determined annually by April 1st of each calendar year by the
149 department of housing and community development shall be exempt in their entirety; provided,
150 however, that the amount of this threshold for imposing a transfer fee may be increased by the
151 bylaw or ordinance establishing a transfer fee pursuant to this Section or, with respect to the
152 member cities and towns of a regional affordable housing commission, a regulation adopted by
153 the regional affordable housing commission;

154 (ii) Transfers made as gifts with consideration less than \$100; provided, however, that in
155 any proceedings to determine the amount of any fee due hereunder, it shall be presumed that any
156 transfer for consideration of less than fair market value of the real property interest transferred
157 was made as a gift without consideration to the extent of the difference between the fair market
158 value of the real property interest transferred and the amount of consideration claimed by the
159 purchaser to have been paid or transferred, if the seller shall have been at the time of transfer the
160 spouse, the lineal descendant, or the lineal ancestor of the purchaser, by blood or adoption, and
161 otherwise it shall be presumed that consideration was paid in an amount equal to the fair market
162 value of the real property interest transferred, at the time of transfer;

163 (iii) Transfers to the government of the United States, the Commonwealth and any of
164 their instrumentalities, agencies or subdivisions, including but not limited to transfers to the city,

165 town, or regional housing commission, to the extent that the city, town or regional affordable
166 housing commission has designated that the transfer fee shall be borne by the purchaser;

167 (iv) Transfers from the government of the United States, the Commonwealth and any of
168 their instrumentalities, agencies, or subdivisions, including but not limited to transfers from the
169 city, town or regional affordable housing commission, to the extent that the city, town or regional
170 affordable housing commission has designated that the transfer fee shall be borne by the seller;

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

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

174 (vii) Transfers between family members as defined by bylaw or ordinance or regulations
175 adopted by a regional affordable housing commission;

176 (viii) Transfers to first-time homebuyers as defined by bylaw, ordinance or regulations
177 adopted by a municipality or regional affordable housing commission; provided that, said first-
178 time homebuyer must be a natural person; and provided further, that for real property sold for a
179 value that exceeds the median single family home price in the county where the transaction
180 occurs, the exemption shall only apply to the value equal to the median single family home price
181 in said county; provided that any municipality or region may elect to increase said exemption.

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

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

187 (xi) Transfers made in partition of land and improvements thereto, under chapter 241;

188 (xii) Transfers to any charitable organization, as defined in clause Third of section 5 of
189 chapter 59, or any religious organization; provided, however, that the real property interest so
190 transferred will be held by the charitable or religious organization solely for affordable housing-
191 related uses that are consistent with the uses allowed by the regional affordable housing
192 commission fund, if one exists, or the municipality's affordable housing trust fund; and provided,
193 further, that such uses must be available to the general public;

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

197 (xiv) Transfers consisting of the division of marital assets under the provisions of section
198 34 of chapter 208 or other provisions of law; and

199 (xv) Transfers of a real property interest that include one or more residential units
200 governed by affordable housing restrictions; provided, however, that the fee imposed under the
201 provisions of this Section shall be proportionately reduced based on the assessed value of
202 residential units subject to affordable housing restrictions as compared to the total assessed value
203 of the property, or the percentage of residential units subject to affordable housing restrictions, as
204 compared to the total number of units located on that property, or such other method as may be
205 required by the bylaw, ordinance, warrant article or other local law establishing a transfer fee

206 pursuant to this section or, with respect to member cities and towns of a regional affordable
207 housing omission, a regulation adopted by the regional affordable housing commission.

208 (d) Accounting: The city or town's treasurer shall keep a full and accurate account
209 stating when, from or to whom, and on what account money has been paid or received relative to
210 the activities of the municipal affordable housing trust fund. With respect to a regional
211 affordable housing commission, the regional affordable housing commission's treasurer or such
212 other person as may be designated in the law establishing the regional affordable housing
213 commission, shall keep a full and accurate account stating when, from or to whom, and on what
214 account money has been paid or received relating to the regional affordable housing commission
215 fund.

216 (e) Implementation and Enforcement: (i) The adoption of any non-mandatory exemptions
217 shall be determined by a majority vote by the city or town's legislative body or, with respect to a
218 regional affordable housing commission, by the terms of or in accordance with the procedures
219 established by the general or special law creating such commission.

220 (ii) A city or town that establishes a transfer fee pursuant to this Section, or a regional
221 affordable housing commission that receives funds hereunder may provide for the collection and
222 lien of any outstanding transfer fee. Such city, town or regional affordable housing
223 commission shall have the same remedies to collect said amount as provided by law with respect
224 to the collection of real property taxes.

225 (iii) A city or town enacting a real estate transfer fee pursuant to this Section, or a
226 regional affordable housing commission that receives funds hereunder, is authorized to issue
227 rules, policies, and procedures to effectuate its terms.

228 (iv) A city or town that adopts this Section, or a regional affordable housing commission
229 that receives funds hereunder shall provide to the Regional Planning Office publicly available
230 reports on the total fees collected and disbursed in accordance with this Section.