

HOUSE No. 2457

The Commonwealth of Massachusetts

PRESENTED BY:

Dylan A. Fernandes

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 empowering cities and towns to impose a fee on home sales over one million dollars to support affordable housing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Chynah Tyler</i>	<i>7th Suffolk</i>

HOUSE No. 2457

By Mr. Fernandes of Falmouth, a petition (accompanied by bill, House, No. 2457) of Dylan A. Fernandes and others for legislation to authorize cities and towns to impose a fee up to 2 per cent of the purchase price upon the transfer of certain real property. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act empowering cities and towns to impose a fee on home sales over one million dollars to support 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 Chapter 44 of the General laws is hereby amended by inserting after section 55C the
2 following section: –

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

5 “Affordable Housing Restriction”, a recorded instrument held by a qualified holder which
6 encumbers or restricts a real property interest so that the real property interest is perpetually or
7 for a term of at least 30 years limited to use as a residence occupied by a low or moderate income
8 household which earns less than a specified income level, the upper limit of which may not
9 exceed 175 per cent of the city or town’s median income. A “qualified holder” is a governmental
10 body or charitable corporation or trust which qualifies under the terms of chapter 184 to hold an
11 affordable housing restriction.

12 "Eligible Applicants", non-profit and for-profit corporations and organizations,
13 individuals and public entities.

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

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

28 "Real property interest", any present or future legal or equitable interest in or to real
29 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
30 which holds any legal or equitable interest in real property, the interest of a partner or member in
31 a partnership or limited liability company, the interest of a stockholder in a corporation, the
32 interest of a holder of an option to purchase real property, the interest of a buyer or seller under a
33 contract for purchase and sale of real property, and the transferable development rights created

34 under chapter 183A; but shall not include any interest which is limited to any of the following:
35 the dominant estate in any easement or right of way; the right to enforce any restriction; any
36 estate at will or at sufferance; any estate for years having a term of less than 30 years; any
37 reversionary right, condition, or right of entry for condition broken; and the interest of a
38 mortgagee or other secured party in any mortgage or security agreement.

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

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

45 (b) A city or town may impose a fee up to 2 per cent of the purchase price upon the
46 transfer of any real property interest in any real property situated in the city or town. Said fee
47 shall be the liability of the purchaser of such real property interest, and any agreement between
48 the purchaser and the seller or any other person with reference to the allocation of the
49 responsibility for bearing said fee shall not affect such liability of the purchaser. The fee shall be
50 paid to the city or town, or its designee, and shall be accompanied by a copy of the deed or other
51 instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains
52 and penalties of perjury by the purchaser or the purchaser's legal representative and the seller or
53 the seller's legal representative, attesting to the true and complete purchase price and the basis, if
54 any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed
55 hereby. The city or town, or its designee, shall promptly thereafter execute and issue a certificate

56 indicating that the appropriate fee has been paid or that the transfer is exempt from the fee,
57 stating the basis for the exemption. The register of deeds for the county in which the city or town
58 is located, and the assistant recorder for the registry district of the county in which the city or
59 town is located, shall not record or register, or receive or accept for recording or registration, any
60 deed, except a mortgage deed, to which has not been affixed such a certificate executed by the
61 city or town or its designee. Failure to comply with this requirement shall not affect the validity
62 of any instrument. The city or town shall deposit all fees received hereunder with the city or
63 town's treasurer. The treasurer shall deposit such fees in the city or town's Municipal Affordable
64 Housing Trust Fund established pursuant to section 55C or any other affordable housing trust
65 fund established by a law of the commonwealth providing for the creation and preservation of
66 affordable housing in municipalities for the benefit of low and moderate income households or
67 for the funding of community housing, as defined in and in accordance with chapter 44B. If no
68 such fund exists in a city or town, the treasurer shall pay such funds to the treasurer and receiver
69 general of the commonwealth who shall deposit such funds in the Affordable Housing Trust
70 Fund established by chapter 121D.

71 The fee imposed hereunder shall be due simultaneously with the time of transfer of the
72 transfer upon which it is imposed. Notwithstanding the foregoing, whenever there is a
73 conveyance of real property interests and a conveyance of personalty related thereto at or about
74 the same time, the allocations of payments between real estate and personalty agreed to by the
75 purchaser and seller shall not determine the amount of the fee due pursuant to this section;
76 instead, the city or town may require payment of the fee referred to in real property interests so
77 conveyed as determined by the city or town.

78 (c) At any time within 7 days following the issuance of the certificate of payment of the
79 fee imposed by subsection 2, the purchaser or the purchaser's legal representative may return
80 said certificate to the city or town or its designee for cancellation, together with an affidavit
81 signed under oath or under the pains and penalties of perjury that the transfer, with respect to
82 which such certificate was issued, has not been consummated, and thereupon the fee paid with
83 respect to such transfer shall be forthwith returned to the purchaser or the purchaser's legal
84 representative.

85 (d) The following transfers of real property interests shall be exempt from the fee
86 established by subsection (i):

87 (i) Transfers to the government of the United States, the commonwealth and any of their
88 instrumentalities, agencies or subdivisions, including but not limited to transfers to the city or
89 town.

90 (ii) Transfers which, without additional consideration, confirm, correct, modify or
91 supplement a transfer previously made.

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

99 be presumed that consideration was paid in an amount equal to the fair market value of the real
100 property interest transferred, at the time of transfer.

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

104 (v) Transfers made in partition of land and improvements thereto, under chapter 241.

105 (vi) Transfers to any charitable organization as defined in clause Third of section 5 of
106 chapter 59, or any religious organization, provided that the real property interest so transferred
107 will be held by the charitable or religious organization solely for its public charitable or religious
108 purposes.

109 (vii) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee,
110 and transfers of the property subject to a mortgage to the mortgagee in consideration of the
111 forbearance of the mortgagee from foreclosing said mortgage.

112 (viii) Transfers made to a corporation or partnership or limited liability company at the
113 time of its formation, pursuant to which transfer no gain or loss is recognized under the
114 provisions of section 351 or 721 of the Internal Revenue Code of 1986, as amended; provided,
115 however, that such transfer shall be exempt only in the event that: (1) with respect to a
116 corporation, the transferor retains an interest in the newly formed corporation which is equivalent
117 to the interest the transferor held prior to the transfer, or (2) with respect to a partnership or
118 limited liability company, the transferor retains after such formation rights in capital interests and
119 profit interests within such partnership or limited liability company which are equivalent to the
120 interest the transferor held prior to the transfer.

121 (ix) Transfers made to a stockholder of a corporation in liquidation or partial liquidation
122 of the corporation, and transfers made to a partner of a partnership or to a member of a limited
123 liability company in dissolution or partial dissolution of the partnership or limited liability
124 company; but the transfer shall be exempt only if: (1) with respect to a corporation, the transferee
125 receives property, including real property interests and other property received, which is the
126 same fraction of the total property of the transferor corporation as the fraction of the
127 corporation's stock owned by the transferee prior to the transfer or (2) with respect to a
128 partnership or limited liability company, the transferee receives property, including real property
129 interests and other property received, which is the same fraction of the property of the
130 partnership or limited liability company as the fraction of the capital and profit interests in the
131 transferor formerly owned by the transferee.

132 (x) Transfers consisting of the division of marital assets under the provisions of section
133 34 of chapter 208 or other provisions of law.

134 (xi) The first \$1,000,000 of the sale price of any transfer or series of transfers of real
135 property interests in a single transaction. Said exemption may be adjusted to a sale price over
136 \$1,000,000 as determined by the affirmative vote of a majority of voters of the city or town's
137 legislative body.

138 (xii) Transfers of minority interests in corporations, trusts, partnerships or limited liability
139 companies which are publicly traded, which trades are not part of a series of transfers which
140 together constitute a transfer of control of a corporation, trust, partnership or limited liability
141 company.

142 Except as otherwise provided, the purchaser shall have the burden of proof that any
143 transfer is exempt under this section and any otherwise exempt transfer shall not be exempt in
144 the event that such transfer, by itself or as part of a series of transfers, was made for the primary
145 purpose of evading the fee imposed by subsection (i).

146 (e) The city or town's treasurer shall keep a full and accurate account stating when, from
147 or to whom, and on what account money has been paid or received relative to the activities of the
148 Affordable Housing Trust Fund.

149 Schedules of beneficiaries of trusts, list of stockholders of corporations and lists of
150 partnerships filed with the Trust Fund for the purpose of determining or fixing the amount of the
151 fee imposed under section ten or for the purpose of determining the existence of any exemption
152 under section twelve shall not be public records for the purposes of section ten of chapter sixty-
153 six of the General Laws.

154 (f) A purchaser who fails to pay all or any portion of the fee established by subsection (b)
155 on or before the time when the same is due shall be liable for the following additional payments
156 in addition to said fee:

157 (i) Interest: The purchaser shall pay interest on the unpaid amount of the fee to be
158 calculated from the time of transfer at a rate equal to 14 per cent per annum.

159 (ii) Penalties: Any person who, without fraud or willful intent to defeat or evade a fee
160 imposed by this section, fails to pay all or a portion of the fee within 30 days after the time of
161 transfer, shall pay a penalty equal to 5 per cent of the outstanding fee as determined by the city or
162 town for each month or portion thereof thereafter that the fee is not paid in full; provided,
163 however, that in no event shall the amount of any penalty imposed hereunder exceed 25 per cent

164 of the unpaid fee due at the time of transfer. Whenever the city or town determines that all or a
165 portion of a fee due under this section was unpaid due to fraud with intent to defeat or evade the
166 fee imposed by this section, a penalty equal to the amount of said fee as determined by the city or
167 town shall be paid by the purchaser in addition to said fee.

168 (g) The city or town shall notify the purchaser and the seller by registered or certified
169 mail of any failure to discharge in full the amount of the fee due under this section and any
170 penalty or interest assessed. The city or town shall grant a hearing on the matter of the imposition
171 of said fee, or of any penalty or interest assessed, if a petition requesting such hearing is received
172 by the city or town within 30 days after the mailing of said notice. The city or town shall notify
173 the purchaser and the seller in writing by registered or certified mail of its determination
174 concerning the deficiency, penalty or interest within fifteen days after said hearing. Any party
175 aggrieved by a determination of the city or town concerning a deficiency, penalty or interest
176 may, after payment of said deficiency, appeal to the district or superior court within 3 months
177 after the mailing of notification of the determination of the city or town. Upon the failure to
178 timely petition for a hearing, or appeal to said courts, within the time limits hereby established,
179 the purchaser and seller shall be bound by the terms of the notification, assessment or
180 determination, as the case may be, and shall be barred from contesting the fee, and any interest
181 and penalty, as determined by the city or town. All decisions of said courts shall be appealable.
182 Every notice to be given under this section by the city or town shall be effective if mailed by
183 certified or registered mail to the purchaser or the seller at the address stated in a recorded or
184 registered instrument by virtue of which the purchaser holds any interest in land, the transfer of
185 which gives rise to the fee which is the subject of such notice; and if no such address is stated or
186 if such transfer is not evidenced by an instrument recorded or registered in the public records in

187 the city or town, such notice shall be effective when so mailed to the purchaser or seller in care
188 of any person appearing of record to have a fee interest in such land, at the address of such
189 person as set forth in an instrument recorded or registered in the city or town.

190 All fees, penalties and interest required to be paid pursuant to this section shall constitute
191 a personal debt of the purchaser and may be recovered in an action of contract or in any other
192 appropriate action, suit or proceeding brought by the city or town; said action, suit or proceeding
193 shall be subject to the provisions of chapter 260.

194 If any purchaser liable to pay the fee established by this section neglects or refuses to pay
195 the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the
196 city or town upon all property and rights to property, whether real or personal, belonging to
197 either such purchaser or such seller. Said lien shall arise at the time of transfer and shall continue
198 until the liability for such amount is satisfied. Said lien shall in any event terminate not later than
199 6 years following the time of transfer. Said lien shall not be valid as against any mortgagee,
200 pledgee, purchaser or judgment creditor unless notice thereof has been filed by the city or town
201 (i) with respect to real property or fixtures, in the registry of deeds for the county in which the
202 city or town resides or (ii) with respect to personal property, in the office in which a security or
203 financing statement or notice with respect to the property would be filed in order to perfect a
204 nonpossessory security interest belonging to the person named in the relevant notice, subject to
205 the same limitations as set forth in section 50 of chapter 62C.

206 Purchasers applying for an exemption under subsection (d) shall be required at the time
207 of application for exemption to execute an agreement legally binding on purchasers and
208 separately legally binding upon any legal representative of the purchasers: (i) assuming complete

209 liability for any fee, plus interest and penalties if any, waived on account of an allowed
210 exemption subsequently determined to have been invalid, and (ii) submitting to the jurisdiction
211 of the trial court of the commonwealth sitting in the county where the city or town is located.
212 Fees, plus interest and penalties if any, shall be calculated as of the date of the initial property
213 transfer. Execution of the above-described agreement shall not be required of any mortgagee,
214 pledge, purchaser or judgment creditor unless notice of the agreement has been recorded or filed
215 by the city or town.

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

222 The city or town may issue a waiver or release of any lien imposed by this section. Such
223 waiver or release shall be conclusive evidence that the lien upon the property covered by the
224 waiver or release is extinguished.

225 (h) The fee described by subsection (b) shall be of 5-year duration from the date this
226 section takes effect. The imposition of the fee and the fee amount shall be determined by a
227 majority vote by the city or town's legislative body. This fee may continue for 5-year periods by
228 a majority vote of the city or town's legislative body. The fee described by subsection (b) may
229 be: (i) decreased, or (ii) eliminated by a two-thirds vote of the city or town's legislative body.
230 The threshold exemption described in clause (xiii) of subsection (d) may similarly be raised by

231 an affirmative majority vote of the city or town's legislative body. In the event that the
232 legislative body does not renew the fee at the 10-year anniversary, or any subsequent 5-year
233 anniversary, or the legislative body votes to eliminate the fee, the balance of any fees previously
234 collected shall be transferred to the city or town and held by the treasurer in a separate account,
235 and shall first be used to satisfy any outstanding liabilities or obligations incurred by the city or
236 town or the Municipal Affordable Housing Trust as a result of imposition of the fee, and the
237 remainder may be expended without further appropriation by the legislative body for affordable
238 housing purposes. In the event that the liabilities and obligations of the city or town or the
239 Municipal Affordable Housing Trust exceed the amounts transferred to the city or town, the fee
240 shall remain in full force and effect until such liabilities and obligations have been satisfied.

241 (i) If the city or town has determined that a fee is due by asserting the application of the
242 evasion of fee doctrine described in subsection (b), then the purchaser shall have the burden of
243 demonstrating by clear and convincing evidence as determined by the city or town that the
244 transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose other than
245 avoidance of the fee set forth in subsection (b) and (ii) economic substance apart from the
246 asserted fee avoidance benefit. In all such cases, the transferee shall also have the burden of
247 demonstrating by clear and convincing evidence as determined by the city or town that the
248 asserted non-fee-avoidance business purpose is commensurate with the amount of the fee
249 pursuant to subsection (b) to be thereby avoided.