

HOUSE No. 2854

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 addressing international real estate speculation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/19/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/24/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/26/2021</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>3/13/2021</i>

HOUSE No. 2854

By Mr. Connolly of Cambridge, a petition (accompanied by bill, House, No. 2854) of Mike Connolly and others relative to the imposition of a fee on the purchase price upon the transfer of real property interest to alien purchasers in certain real property transactions. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2425 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act addressing international real estate speculation.

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. For purposes of this act, the following words and phrases shall have the
2 following meanings:-

3 "Nonresident", any person not a citizen or national of the United States.

4 "Nonresident purchaser", the transferee, grantee or recipient of any real property interest
5 who is a nonresident.

6 "Purchase price", all consideration paid or transferred by or on behalf of a nonresident
7 purchaser to a seller or his or her nominee, or for his or her benefit, for the transfer of any real
8 property interest, and shall include, but not be limited to, all cash or its equivalent so paid or
9 transferred; all cash or other property paid or transferred by or on behalf of the nonresident

10 purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or
11 their equivalent, or other deferred payments, given or promised to be given by or on behalf of the
12 nonresident purchaser to the seller or his nominee; the outstanding balance of all obligations of
13 the seller which are assumed by the nonresident purchaser or to which the real property interest
14 transferred remains subject after the transfer, determined at the time of transfer, but excluding
15 real estate taxes and other municipal liens or assessments which are not overdue at the time of
16 transfer; the fair market value, at the time of transfer, of any other consideration or thing of value
17 paid or transferred by or on behalf of the nonresident purchaser, including, but not limited to, any
18 property, goods or services paid, transferred or rendered in exchange for such real property
19 interest.

20 "Real property interest", any present or future legal or equitable interest in or to real
21 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
22 which holds any legal or equitable interest in real property, the interest of a partner or member in
23 a partnership or limited liability company, the interest of a stockholder in a corporation, the
24 interest of a holder of an option to purchase real property, the interest of a buyer or seller under a
25 contract for purchase and sale of real property, and the transferable development rights created
26 under chapter 183A of the General Laws; but shall not include any interest which is limited to
27 any of the following: the dominant estate in any easement or right of way; the right to enforce
28 any restriction; any estate at will or at sufferance; any estate for years having a term of less than
29 30 years; any reversionary right, condition, or right of entry for condition broken; and the interest
30 of a mortgagee or other secured party in any mortgage or security agreement.

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

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

36 SECTION 2. (a) There is hereby imposed a fee equal to 15 per cent of the purchase price
37 upon the transfer of any real property interest to a nonresident purchaser in any real property
38 situated in a city or town that accepts the provisions of this act. Said fee shall be the liability of
39 the nonresident purchaser of such real property interest, and any agreement between the
40 nonresident purchaser and the seller or any other person with reference to the allocation of the
41 responsibility for bearing said fee shall not affect such liability of the nonresident purchaser. The
42 fee shall be paid to the city or town, or its designee, and shall be accompanied by a copy of the
43 deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or
44 under the pains and penalties of perjury by the nonresident purchaser or his or her legal
45 representative and the seller or his or her legal representative, attesting to the true and complete
46 purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or
47 in part from the fee imposed hereby. The city or town, or its designee, shall promptly thereafter
48 execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer
49 is exempt from the fee. The register of deeds for the land in which the property is located, shall
50 not record or register, or receive or accept for recording or registration, any deed, except a
51 mortgage deed, to which has not been affixed such a certificate executed by the city or town or
52 its designee. Failure to comply with this requirement shall not affect the validity of any
53 instrument.

54 (b) The city or town shall deposit all fees received hereunder with the city or town
55 treasurer. The treasurer shall deposit such fees into an affordable housing trust fund of the city or
56 town, established pursuant to section 55C of chapter 44 of the General Laws or any special act
57 creating such affordable housing trust fund. The fee imposed hereunder shall be due
58 simultaneously with the time of transfer of the transfer upon which it is imposed.
59 Notwithstanding the foregoing, whenever there is a conveyance of real property interests and a
60 conveyance of personalty related thereto at or about the same time, the allocations of payments
61 between real estate and personalty agreed to by the nonresident purchaser and seller shall not
62 determine the amount of the fee due pursuant to this section; instead, the city or town may
63 require payment of the fee referred to in real property interests so conveyed as determined by the
64 city or town.

65 SECTION 3. At any time within 7 days following the issuance of the certificate of
66 payment of the fee imposed by this act, the nonresident purchaser or his or her legal
67 representative may return said certificate to the city or town, or its designee for cancellation,
68 together with an affidavit signed under oath or under the pains and penalties of perjury that the
69 transfer, with respect to which such certificate was issued, has not been consummated, and
70 thereupon the fee paid with respect to such transfer shall be forthwith returned to the nonresident
71 purchaser or his or her legal representative.

72 SECTION 4. (a) A transfer of real property interests shall be exempt from the fee
73 established by this act if the real property is used as the principal place of residence by the
74 nonresident purchaser.

75 (b) Except as otherwise provided, the nonresident purchaser shall have the burden of
76 proof that any transfer is exempt under this section and any otherwise exempt transfer shall not
77 be exempt in the event that such transfer, by itself or as part of a series of transfers, was made for
78 the primary purpose of evading the fee imposed by this act.

79 SECTION 5. (a) A nonresident purchaser who fails to pay all or any portion of the fee
80 established by this act on or before the time when the same is due shall be liable for the
81 following additional payments in addition to said fee: (a) the nonresident purchaser shall pay
82 interest on the unpaid amount of the fee to be calculated from the time of transfer at a rate equal
83 to 14 per cent per annum; and (b) any person who, without fraud or willful intent to defeat or
84 evade a fee imposed by this act, fails to pay all or a portion of the fee within 30 days after the
85 time of transfer, shall pay a penalty equal to 5 per cent of the outstanding fee as determined by
86 the city or town for each month or portion thereof thereafter that the fee is not paid in full;
87 provided, however, that in no event shall the amount of any penalty imposed hereunder exceed
88 25 per cent of the unpaid fee due at the time of transfer. Whenever the city or town determines
89 that all or a portion of a fee due under this act was unpaid due to fraud with intent to defeat or
90 evade the fee imposed by this act, a penalty equal to the amount of said fee as determined by the
91 city or town shall be paid by the nonresident purchaser in addition to said fee.

92 (b) All fees, penalties and interest required to be paid pursuant to this act shall constitute
93 a personal debt of the nonresident purchaser and may be recovered in an action of contract or in
94 any other appropriate action, suit or proceeding brought by the city or town; said action, suit or
95 proceeding shall be subject to the provisions of chapter 260 of the General Laws.

96 (c) If any nonresident purchaser liable to pay the fee established by this act neglects or
97 refuses to pay the same, the amount, including any interest and penalty thereon, shall be a lien in
98 favor of the city or town upon all property and rights to property, whether real or personal,
99 belonging to such nonresident purchaser.

100 (d) In any case where there has been a refusal or neglect to pay any fee, interest or
101 penalties imposed by this act, whether or not levy has been made, the city or town, in addition to
102 other modes of relief, may direct a civil action to be filed in a district or superior court of the
103 commonwealth to enforce the lien of the city or town under this act with respect to such liability
104 or to subject any property of whatever nature, of the delinquent, or in which he or she has any
105 right, title or interest, to the payment of such liability.

106 SECTION 6. Any city or town that has accepted section 55C of chapter 44 of the General
107 Laws or has provided for an affordable housing trust fund through a special law may accept the
108 provisions of this act pursuant to the procedure set forth in section 4 of chapter 4 of the General
109 Laws.