SENATE No. 789

| The Commonwealth of Alassachusetts | | |
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| 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 attainable housing in seasonal communities. | | |
| PETITION OF: | | |

| NAME: | DISTRICT/ADDRESS: |
|------------|-------------------|
| Julian Cyr | Cape and Islands |

SENATE No. 789

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 789) of Julian Cyr for legislation relative to attainable housing in seasonal communities. Housing.

The Commonwealth of Alassachusetts

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

An Act relative to attainable housing in seasonal communities.

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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. Notwithstanding any general or special law to the contrary, the department of housing and economic development shall give special consideration to the following relative counting otherwise non-qualified projects as part of a municipalities overall percentage for the purposes of the subsidized housing inventory: (1) 1 bedroom housing units in municipalities that can demonstrate their low income housing needs are not limited to 2, 3 and 4 bedroom units; (2) projects in municipalities within the commonwealth with an average home price that is 100 per cent greater than the statewide median home price; (3) covenant housing within Nantucket; and (4) developments in low-income units a bordering municipalities or a district region where the municipality has invested community preservation act funds or funds from a municipal housing trust.

SECTION 2. Section 6 of chapter 44B is hereby amended by inserting after the word "purpose", in line X, the following words:- "; provided, however, that funds that have not been

expended for no less than three consecutive years may be used for open space, historic resources, or community housing by a majority vote of the legislative body"

SECTION 3. Section 1A of chapter 40, as appearing in the 2016 Official Edition, is hereby amended by adding the following definition:-

"Tiny house", a detached structure containing a dwelling unit with no more than 600 square feet, excluding the area of any floor level located above the main floor, intended for year round occupancy that meets the requirements of chapter 143, and may include single-room structures, and which is built on either a permanent foundation or on a chassis that is suitable for registration for transport on public highways of the state.

SECTION 4. Section 3 of chapter 40A, as appearing in the 2016 Official Edition, is hereby amended by adding the following paragraph:-

"A municipality that permits accessory dwelling units pursuant to this section shall permit a tiny house as a detached accessory dwelling unit; provided, however, that such land or structures may be subject to reasonable regulations concerning dimensional setbacks, screening and the bulk and height of structures; provided, however, that a tiny house used for habitation shall be connected to a public water system or a private well, and to a public sewer system or a subsurface wastewater disposal system that has been approved by the Massachusetts department of environmental protection. A zoning ordinance or by-law may require that the principal dwelling or the accessory dwelling unit be continuously owner-occupied and may limit the total number of accessory dwelling units in the municipality to not less than 5 per cent of the total non-seasonal single-family housing units in the municipality."

SECTION 5. Chapter 40, as appearing in the 2016 Official Edition, is hereby amended by inserting, after section 60B, the following section:-

60C. A city or town, by vote of its town meeting, town council or city council, with the approval of the mayor where required by law, on its own behalf or in conjunction with one or more cities or towns, may exempt from property taxation, under chapter 59, a dwelling unit that is rented on a yearly basis, and occupied year-round, for an amount not to exceed 150 per cent the fair market rent established by the United States Department of Housing and Urban Development for the metropolitan statistical area. The owner of a dwelling qualifying for exemption under this section shall submit to the municipality or its agent documentation, including but not limited to a signed lease, necessary to confirm the eligibility of the rental.

The amount of the exemption shall be determined by the municipality, but shall not exceed an amount equal to the tax otherwise owed on the property based on the assessed value of the property, including accessory dwelling units, multiplied by the square feet of the living space of all dwelling units on the property that qualify under this section, divided by the total square feet of structures on the property.

SECTION 6. Section 3 of chapter 40A of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by adding the following paragraph:-

No zoning ordinance or by-law shall prohibit or require a special permit for the use of land or structures for an accessory dwelling unit located internally within a single-family dwelling or the rental thereof on a lot not less than 5,000 square feet or on a lot of sufficient area to meet the requirements of title 5 of the state environmental code established by section 13 of chapter 21A, if applicable; provided, however, that such land or structures may be subject to

reasonable regulations concerning dimensional setbacks, screening and the bulk and height of structures. The zoning ordinance or by-law may require that the principal dwelling or the accessory dwelling unit be continuously owner-occupied and may limit the total number of accessory dwelling units in the municipality to not less than 5 per cent of the total non-seasonal single-family housing units in the municipality. Not more than 1 additional parking space shall be required for an accessory dwelling unit; provided, however, that, if parking is required for the principal dwelling, that parking shall be retained or replaced. Exterior alterations of the principal dwelling to allow separate primary or emergency access to the accessory dwelling unit shall be allowed without a special permit if such alterations are within applicable dimensional setback requirements. Nothing in this paragraph shall authorize an accessory dwelling unit to violate or avoid compliance with the building, fire, health or sanitary codes, historic or wetlands laws, ordinances or by-laws or title 5 of the state environmental code established by said section 13 of said chapter 21A, if applicable. This section shall not limit a city or town's authority to prohibit or restrict use of an accessory dwelling unit as a short-term rental.

- SECTION 7. Chapter 23B is hereby amended by adding the following section:-
- 71 Section 31. (a) For purposes of this section:

- "Affordable rental housing" means housing that serves persons with a household income of less than 120 per cent of median income for a municipality; and
- "Qualified developer" means a developer that has partnered with a school district or municipality to create affordable rental housing for school district or municipal employees.

(b)The department, or any division within the department, may enter into long-term financing agreements with school districts, municipalities and qualified developers for the creation of affordable rental housing for municipal employees.

- (c) Payment on a finance agreement under this section shall be deferred until the affordable rental housing that is financed is put into service and the school district or municipality begins collecting rent from the occupants of that affordable rental housing.
- SECTION 8. Chapter 60 of the General Laws is hereby amended by inserting, after section 37B, the following section:-
- Section 37C. A property subject to sale under section 37 of this chapter that contains three (3) or less units, the department of housing and community development, shall have a right of first refusal to acquire the tax lien at tax sale, and may assist the owner to discharge the lien or take title and acquire the property in its own name pursuant to regulations to be developed by the corporation, consistent with its purposes. The corporation shall notify the collector of its intention to exercise this right no later than 10 days before the date of sale or any adjournment of the sale. Failure of the corporation to notify the collector as provided herein shall extinguish the right of first refusal under this section.
- SECTION 9. Chapter 59 of the General Laws is hereby amended by inserting after section 5N the following 2 sections:-
- Section 5O. In any city or town that accepts this section, the board of selectmen of a town, or in a municipality having a town council form of government, the town council or the mayor, with the approval of the city council in a city, may establish a bifurcated or progressive tax rate on real property.

Section 5P. In any city or town which accepts this section, the board of selectmen of a town, or in a municipality having a town council form of government, the town council or the mayor, with the approval of the city council in a city, may establish a property tax exemption for low- or moderate-income households.

For purposes of this section: (a) a low-income shall mean a household income of less than 80 per cent of the median household income in the municipality, as established by the published income guidelines for the United States Department of Housing and Urban Development for the metropolitan statistical area; (b) a moderate-income shall mean an income between 80 per cent and 120 per cent of the median household income, as established by the published income guidelines United States Department of Housing and Urban Development for the metropolitan statistical area.

A municipality shall have the power to create local rules and procedures for implementing this section in a way that is consistent with the intent of this section.

SECTION 10. Notwithstanding any general or special law to the contrary, a special commission is hereby established for the purposes of making an investigation and study relative to the impact of the state building code, fire code, health code, and sanitary code on the availability of affordable housing in the Commonwealth and to whether or not the building code, fire code, health code, or sanitary code may be amended to promote the development of housing that is affordable for a majority of residents. The commission shall consist of: 2 members of the senate to be appointed by the president of the senate; 2 members of the house to be appointed by the speaker of the house; and 6 persons appointed by the governor, 1 of whom shall be a representative of the Home Builders and Remodeler's Association of Massachusetts, 1 of whom

shall be a representative of the Massachusetts Association of Realtors, 1 of whom shall be a representative of MassHousing, 1 of whom shall be a representative of the department of housing and community development, 1 of who shall be a representative of the Building Code Coordinating Council, 1 of whom shall be Massachusetts Association of Community Development Corporations.

All appointments shall be made not later than 30 days after the effective date of this act. Members shall not receive compensation for their services but may receive reimbursement for the reasonable expenses incurred in carrying out their responsibilities as members of the commission.

Not later than July 1, 2019, the commission shall report to the general court the result of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect by filing the same with the clerk of the house of representatives who shall forward the same to the joint committee on housing and the joint committee on community development and small businesses.

SECTION 11. Chapter 44 of the General laws is hereby amended by inserting after section 55C the following section: –

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

"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 which earns less than a specified income level, the upper limit of which may not

exceed 175 per cent of the city or town's median income. A "qualified holder" is a governmental body or charitable corporation or trust which qualifies under the terms of chapter 184 to hold an affordable housing restriction.

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

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

"Purchase 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.

"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 buyer 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.

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

"Time of transfer" of any real property interest shall mean the time at which such transfer 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.

(b) A city or town may impose a fee up to 2 per cent of the purchase price upon the transfer of any real property interest in any real property situated in the city or town. Said fee shall be the liability of the purchaser of such real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing said fee shall not affect such liability of the purchaser. The fee shall be paid to the city or town, or its designee, and shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the purchaser or the purchaser's legal representative and the seller or

the seller's legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The city or town, or its designee, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the fee, stating the basis for the exemption. The register of deeds for the county in which the city or town is located, and the assistant recorder for the registry district of the county in which the city or town is located, shall not record or register, or receive or accept for recording or registration, any deed, except a mortgage deed, to which has not been affixed such a certificate executed by the city or town or its designee. Failure to comply with this requirement shall not affect the validity of any instrument. The city or town shall deposit all fees received hereunder with the city or town's treasurer. The treasurer shall deposit such fees in the city or town's Municipal Affordable Housing Trust Fund established pursuant to section 55C or any other affordable housing trust fund established by a law of the commonwealth providing for the creation and preservation of affordable housing in municipalities 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. If no such fund exists in a city or town, the treasurer shall pay such funds to the treasurer and receiver general of the commonwealth who shall deposit such funds in the Affordable Housing Trust Fund established by chapter 121D.

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The fee imposed hereunder shall be due simultaneously with the time of transfer of the transfer upon which it is imposed. Notwithstanding the foregoing, whenever there is a conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to this section;

instead, the city or town may require payment of the fee referred to in real property interests so conveyed as determined by the city or town.

- (c) At any time within 7 days following the issuance of the certificate of payment of the fee imposed by subsection 2, the purchaser or the purchaser's legal representative may return said certificate to the city or town or its designee for cancellation, together with an affidavit signed under oath or under the pains and penalties of perjury that the transfer, with respect to which such certificate was issued, has not been consummated, and thereupon the fee paid with respect to such transfer shall be forthwith returned to the purchaser or the purchaser's legal representative.
- (d) The following transfers of real property interests shall be exempt from the fee established by subsection (i):
- (i) Transfers to the government of the United States, the commonwealth and any of their instrumentalities, agencies or subdivisions, including but not limited to transfers to the city or town.
- (ii) Transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.
- (iii) Transfers made as gifts without consideration. In any proceedings to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interest transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interest transferred and the amount of consideration claimed by the purchaser to have been paid or transferred, if the seller shall have been at the time of transfer the spouse, the lineal

descendant, or the lineal ancestor of the purchaser, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interest transferred, at the time of transfer.

- (iv) 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.
 - (v) Transfers made in partition of land and improvements thereto, under chapter 241.
- (vi) Transfers to any charitable organization as defined in clause Third of section 5 of chapter 59, or any religious organization, provided that the real property interest so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes.
- (vii) 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.
- (viii) Transfers made to a corporation or partnership or limited liability company at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section 351 or 721 of the Internal Revenue Code of 1986, as amended; provided, however, that such transfer shall be exempt only in the event that: (1) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (2) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and

profit interests within such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

- (ix) Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the corporation, and transfers made to a partner of a partnership or to a member of a limited liability company in dissolution or partial dissolution of the partnership or limited liability company; but the transfer shall be exempt only if: (1) with respect to a corporation, the transferee receives property, including real property interests and other property received, which is the same fraction of the total property of the transferor corporation as the fraction of the corporation's stock owned by the transferee prior to the transfer or (2) with respect to a partnership or limited liability company, the transferee receives property, including real property interests and other property received, which is the same fraction of the property of the partnership or limited liability company as the fraction of the capital and profit interests in the transferor formerly owned by the transferee.
- (x) Transfers consisting of the division of marital assets under the provisions of section 34 of chapter 208 or other provisions of law.
- (xi) The first \$2,000,000 of the sale price of any transfer or series of transfers of real property interests in a single transaction. Said exemption may be adjusted to a sale price over \$2,000,000 as determined by the affirmative vote of a majority of voters of the city or town's legislative body.
- (xii) Transfers of minority interests in corporations, trusts, partnerships or limited liability companies which are publicly traded, which trades are not part of a series of transfers which

together constitute a transfer of control of a corporation, trust, partnership or limited liability company.

Except as otherwise provided, the purchaser shall have the burden of proof that any transfer is exempt under this section and 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 imposed by subsection (i).

(e) The city or town's treasurer 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 Affordable Housing Trust Fund.

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

- (f) A purchaser who fails to pay all or any portion of the fee established by subsection (b) on or before the time when the same is due shall be liable for the following additional payments in addition to said fee:
- (i) Interest: The purchaser shall pay interest on the unpaid amount of the fee to be calculated from the time of transfer at a rate equal to 14 per cent per annum.
- (ii) Penalties: Any person who, without fraud or willful intent to defeat or evade a fee imposed by this section, fails to pay all or a portion of the fee within 30 days after the time of

transfer, shall pay a penalty equal to 5 per cent of the outstanding fee as determined by the city or town for each month or portion thereof thereafter that the fee is not paid in full; provided, however, that in no event shall the amount of any penalty imposed hereunder exceed 25 per cent of the unpaid fee due at the time of transfer. Whenever the city or town determines that all or a portion of a fee due under this section was unpaid due to fraud with intent to defeat or evade the fee imposed by this section, a penalty equal to the amount of said fee as determined by the city or town shall be paid by the purchaser in addition to said fee.

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(g) The city or town shall notify the purchaser and the seller by registered or certified mail of any failure to discharge in full the amount of the fee due under this section and any penalty or interest assessed. The city or town shall grant a hearing on the matter of the imposition of said fee, or of any penalty or interest assessed, if a petition requesting such hearing is received by the city or town within 30 days after the mailing of said notice. The city or town shall notify the purchaser and the seller in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within fifteen days after said hearing. Any party aggrieved by a determination of the city or town concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within 3 months after the mailing of notification of the determination of the city or town. Upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the purchaser and seller shall be bound by the terms of the notification, assessment or determination, as the case may be, and shall be barred from contesting the fee, and any interest and penalty, as determined by the city or town. All decisions of said courts shall be appealable. Every notice to be given under this section by the city or town shall be effective if mailed by certified or registered mail to the purchaser or the seller at the address stated in a recorded or

registered instrument by virtue of which the purchaser holds any interest in land, the transfer of which gives rise to the fee which is the subject of such notice; and if no such address is stated or if such transfer is not evidenced by an instrument recorded or registered in the public records in the city or town, such notice shall be effective when so mailed to the purchaser or seller in care of any person appearing of record to have a fee interest in such land, at the address of such person as set forth in an instrument recorded or registered in the city or town.

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

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

Purchasers applying for an exemption under subsection (d) shall be required at the time of application for exemption to execute an agreement legally binding on purchasers and separately legally binding upon any legal representative of the purchasers: (i) assuming complete liability for any fee, plus interest and penalties if any, waived on account of an allowed exemption subsequently determined to have been invalid, and (ii) submitting to the jurisdiction of the trial court of the commonwealth sitting in the county where the city or town is located. Fees, plus interest and penalties if any, shall be calculated as of the date of the initial property transfer. Execution of the above-described agreement shall not be required of any mortgagee, pledge, purchaser or judgment creditor unless notice of the agreement has been recorded or filed by the city or town.

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

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

(h) The fee described by subsection (b) shall be of 5-year duration from the date this section takes effect. The imposition of the fee and the fee amount shall be determined by a majority vote by the city or town's legislative body. This fee may continue for 5-year periods by

a majority vote of the city or town's legislative body. The fee described by subsection (b) may be: (i) decreased, or (ii) eliminated by a two-thirds vote of the city or town's legislative body. The threshold exemption described in clause (xiii) of subsection (d) may similarly be raised by an affirmative majority vote of the city or town's legislative body. In the event that the legislative body does not renew the fee at the 10-year anniversary, or any subsequent 5-year anniversary, or the legislative body votes to eliminate the fee, the balance of any fees previously collected shall be transferred to the city or town and held by the treasurer in a separate account, and shall first be used to satisfy any outstanding liabilities or obligations incurred by the city or town or the Municipal Affordable Housing Trust as a result of imposition of the fee, and the remainder may be expended without further appropriation by the legislative body for affordable housing purposes. In the event that the liabilities and obligations of the city or town or the Municipal Affordable Housing Trust exceed the amounts transferred to the city or town, the fee shall remain in full force and effect until such liabilities and obligations have been satisfied.

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