SENATE DOCKET, NO. FILED ON: 1/8/2009

**SENATE . . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**O'Leary, Robert (SEN)**

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*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 passage of the accompanying bill:

An Act establishing the Martha’s Vineyard housing bank.

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PETITION OF:

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| --- | --- |
| Name: | District/Address: |
| O'Leary, Robert (SEN) | Cape and Islands |
| Timothy Madden | Barnstable, Dukes and Nantucket |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01776 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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An Act establishing the Martha’s Vineyard housing bank.

 *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. For the purposes of this act, the words and phrases set forth in this section shall have the following meanings:
"Community Housing", rental and home ownership housing units for use by those residents of Martha's Vineyard earning 150°/o or less of the median household income for Dukes county as calculated and adjusted for household size annually by the federal Department of Housing and Urban Development (HUD); this percentage of median income, should economic conditions warrant a change, can be adjusted by a majority vote of both the housing bank commission and four or more of the six town advisory boards.
"Eligible Applicants", non-profit and for-profit corporations and organizations, individuals, and public entities.
"Fund", shall refer to the Martha's Vineyard Housing Bank Fund established under section 7.
"Housing Bank", the Martha's Vineyard housing bank, established by section 2.
"Housing bank commission", the Martha's Vineyard housing bank commission, established by section 3.
"Legal representative", with respect to any person, shall mean any other person acting under a written power-of-attorney executed by that person, but any affidavit attesting to the true and complete purchase price of real property, submitted to the housing bank commission pursuant to section 9, may also be signed on behalf of that person by an attorney admitted to practice in the commonwealth.

"Purchaser", the transferee, grantee or recipient of any real property interests.
"Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a seller or a 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, all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; 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; 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 or other municipal liens or assessments which are not overdue at the time of the transfer; and 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 in real property, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property, but shall not include any interest which is limited to any or all 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, and any estate for years having a term of less than thirty years; the reversionary right, condition, or right of entry for condition broken; the interest of a mortgagee or other secured party in any mortgage or security agreement; and the interest of a stockholder in a corporation, or a partner in a partnership, unless any real property interest has been transferred to the corporation or partnership for the purpose of evading the fee imposed by section 9.
"Seller", the transferor, grantor or immediate former owner of any real property interests.
"Time of transfer", of any real property interest shall mean, the time that such transfer is legally effective as between the parties to the transfer, 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 the recording or filing.
"Town advisory board" (TAB), a town board created in each of the towns of Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury to assist the housing bank commission in administering this act, such advisory board to consist of 7 members; 1 representative duly appointed, either from its membership or a designee, by each of the following town boards: board of selectmen, conservation commission, planning board and board of health; 2 members appointed by the housing committee with preference given to the town representative to the regional housing authority; and one member from either the Highway Department, Department of Public Works, or Water Department, or a designee from one of said departments. Should a position become vacant, a member appointed by the respective board to complete the unexpired term shall fill said vacancy. Members shall hold 3- year staggered, renewable terms, with the length of the initial terms to be designated by the board of selectmen.

SECTION 2. There is hereby established a Martha's Vineyard housing bank, to be administered by a housing bank commission established by section 3; for the purpose of providing funding for community housing as set forth in section 5. The housing bank is hereby constituted a body politic and corporate and a public instrumentality and the exercise of the powers herein conferred upon the housing bank shall be deemed to be the performance of an essential governmental function.

SECTION 3. The housing bank shall be administered by a housing bank commission consisting of 7 voting persons.
3.1 Membership: There shall be one member who is a legal resident of each of the towns of Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury, each person to be elected to a 3-year term, in the same manner as other elected town officials, and one member who will be appointed by the director of the Massachusetts Department of Housing and Community Development (DHCD). The six town boards of selectmen shall appoint the initial 6 members to serve from the effective date of this act until the first elections of the regular members at each town's regular or special town election after the effective date of this act. The initial terms, which will be drawn by lot by the initial six appointed members, shall be staggered so that two members are elected each year, following the initial election.
3.2 Vacancies: Should a vacancy occur during the term of any elected town member, the town housing committee and the board of selectmen shall jointly appoint an interim member to serve until the next scheduled town election.
3.3 Administration: Members shall serve without compensation. The initial appointed members shall adopt temporary rules and regulations to the extent necessary to conduct business until the regular members are elected. The housing bank commission shall elect a chairman and a vice chairman from among its regular members and shall elect a secretary and a treasurer who may be the same person, but who need not be members of the housing bank commission. The members of the housing bank commission shall adopt, after holding a public hearing and after requesting recommendations from the town advisory board of each of the six member towns that comprise the commission, rules and regulations for conducting its internal affairs and procedural guidelines for carrying out its responsibilities under this act.
3.4 Quorum: A quorum shall be 4 or more members. Decisions of the housing bank commission shall be by majority vote at a meeting where a quorum is present. The housing bank commission shall make rules regarding attendance. The housing bank commission shall keep accurate records of its meetings and actions and shall file an annual report that shall be distributed with the annual report of each member town.

SECTION 4A. The housing bank commission shall, subject to this act, have the power authority, and responsibility to (a) provide funding in the form of grants, loans, loan guarantees, lines of credit, interest subsidies, rental assistance or any other means determined to further the goals of the housing bank for eligible community housing activities as cited in section 5 of this act, provided that any such funding shall require the approval of the town advisory board of any town or towns in which the eligible activities shall be located; (b) accept gifts of funds to further the purposes of the housing bank; (c) prepare an annual budget, which shall be subject to approval by the town advisory boards of the majority of the member towns of the housing bank commission; (d) hire such staff and obtain such professional services as are necessary in order to perform its duties; (e) adopt such regulations and procedures it deems necessary or appropriate, subject to this act, regarding the use and investment of its funds and the keeping of records and accounts; (f) adopt such procedures it deems necessary or appropriate to provide funding for the implementation of any and all programs cited in section 5 of this act; and (g) enter into and enforce such contracts it deems necessary to achieve the goals of this legislation.

SECTION 4B. Each member town is hereby authorized to appropriate money to be deposited the fund as provided in section 7A.

SECTION 4C. The housing bank is authorized to issue bonds and notes to further the purpose of the housing bank but only if the issuance of these bonds or notes has been approved by all of the member towns by a majority vote at a town meeting.

SECTION 4D. The housing bank revenues and income will be used solely for the furtherance of its public purposes and shall be exempt from taxation.

SECTION 5. The Martha's Vineyard housing bank is a funding agency only. Upon receiving applications from eligible applicants in a competitive process which will include public notice of funding availability, and in a form prescribed by the commission, the housing bank will provide funding for eligible community housing activities as defined below, while respecting special Vineyard habitats and rural character. The Housing Bank shall, wherever possible, give preference to a) the reuse of existing buildings, and b) construction of new buildings on previously developed sites.
Eligible community housing activities for receipt of funding shall include, but not be limited to, the following:
(a) Purchase and rehabilitation of existing structures for rental or home ownership;
(b) Construction of rental or home ownership housing and necessary on-site or off site infrastructure, including mixed use development;
(c) Purchase of land, and any and all improvements including easements;
(d) Down payment assistance, grants and soft second loans;
(e) Rental assistance programs;
(f) Modernization and capital improvements of existing rental and ownership housing;
(g) Creation of apartments and other ancillary housing;
(h) Housing counseling, predevelopment costs and technical assistance associated with creating community housing projects and programs; and
(i) Mixed -use development projects.

SECTION 6. All housing units created by means of funding from the housing bank under this act shall be deed restricted in perpetuity for use as community housing as defined in section 1 of this act, except in cases when the housing bank commission determines that such deed restriction is not feasible, and except in cases when the housing bank commission determines that it is beneficial to support rental housing that does not have permanent restrictions.

SECTION 7A. The housing bank commission shall meet its financial obligations by drawing upon a fund to be set up as a revolving or sinking account of the housing bank commission. Deposits into the fund shall include (a) funds appropriated, borrowed or transferred to be deposited into the fund by vote of the county commissioners of the county of Dukes county or of town meetings of the towns represented in the housing bank commission; (b) voluntary contributions of money and other liquid assets to the fund; and (c) revenues from fees imposed upon the transfer of real property interests under section 9 occurring after the effective date of this act as set forth in section 15. Grants or gifts of money or other assets to the housing bank shall be subject to any restrictions or limitations imposed by the grantor or donor.
All expenses lawfully incurred by the housing bank commission in carrying out this act shall be evidenced by proper vouchers and shall be paid by the treasurer of the housing bank commission only upon submission of warrants duly approved by the housing bank commission. The housing bank commission treasurer shall prudently invest available assets of the fund in accordance with the regulations and procedures adopted by the housing bank commission under Section 4A (f) and all income from its investments shall accrue to the fund.

SECTION 7B. An individual account shall be established by the housing bank commission for each member town of the housing bank. The treasurer of the housing bank commission shall administer all transactions for the individual town accounts. Of the revenues collected under this act, 50 per cent shall remain in the fund, to be directly administered by the housing bank commission under this act. The remaining 50 per cent of the revenues collected shall be transferred to the individual town accounts in proportion to the amount of collected housing bank revenues derived from transfer of any real property interest in any real property within each respective town. Money in the individual town account of each member town may be expended by the housing bank commission, subject to the approval of a majority of the members of the town advisory board of such town, for purposes permitted by this act, within or outside the borders of such town.

SECTION 8. The housing bank commission shall keep a full and accurate account of its actions including a record as to when, from or to whom, and on what account money has been paid or received under this act. These records or accounts shall be subject to examination by the director of accounts or the director's agent pursuant to section 45 or chapter 35 of the General Laws, and there shall be an annual audit conducted by a duly recognized accounting firm and a copy of said audit distributed to all member towns.

SECTION 9. There is hereby imposed a fee equal to 1 per cent of the purchase price upon the transfer of any real property interest in any real property situated in a member town or towns. The fee shall be the liability of the seller of the 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 this fee shall not affect the liability of the seller. This fee shall be paid to the housing bank commission 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 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. The housing bank commission, 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 of Dukes county, and the assistant recorder for the registry district of the county of Dukes county, shall not record or register, or receive or accept for recording or registration, any deed, except a mortgage deed, relative to any real property interest situated in any town that is a member of the housing bank commission to which has not been affixed such a certificate, executed by the housing bank commission or its designee. Failure to comply with this requirement shall not affect the validity of any instrument. The housing bank commission shall deposit all fees received under this section with its treasurer as part of the fund established by section 7. The fee imposed under this section shall be due at the time of transfer of the real property interest.

SECTION 10. At any time within 7 days following the issuance of the certificate of payment of the fee imposed by section 9, the seller or the seller's legal representative may return said certificate to the housing bank commission 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 seller or the seller's legal representative.

SECTION 11. The following transfers of real property interests shall be exempt from the fee established by section 9. Except as otherwise provided, the seller shall have the burden of proof that any transfer is exempt under this section:
a) transfers made by a charitable organization as defined in clause three of section 5 of chapter 59 of the General Laws, or by any nonprofit organization which is exempt from income tax under section 50l(c)(3) of the Internal Revenue Code, Title 26 of the United States Code;
b) transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made;
c) transfers made as gifts without consideration; in any proceedings to determine the amount of any fee due under this clause, it shall be presumed that any transfer for consideration of less than fair market value of the real property interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred and the amount of consideration claimed by the purchaser to have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant or the lineal ancestor of the seller, by blood or adoption; otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred, at the time of transfer;
d) transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distribution by the trustees of a trust to the beneficiaries of such trust; schedules of beneficiaries shall be submitted to the housing bank collection agent, at the discretion of such agent, without becoming part of the public record;
e) 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;
f) transfers made in partition of land and improvements to it, under chapter 241 of the General Laws, but any portion of a partition for which consideration has been paid is not exempt;
g) transfers without consideration to any charitable organization as defined in clause third of section 5 of chapter 59 of the General Laws, or to any nonprofit organization which is exempt from income tax under section 501(c)(3) of the Internal Revenue Code, Title 26 of the United States Code, provided that the real property interests transferred shall be held by the organization solely for its public, charitable or religious purposes, and provided that any portion of the transaction for which any consideration may have been paid is not exempt;
h) transfers to a mortgagee in foreclosure of the mortgage held by the mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing the mortgage, including sheriffs sales;
i) transfers made to a corporation or partnership at the time of its formation, in which no gain or loss is recognized under section 351 of the Internal Revenue Code, Title 26 of the United States Code;
j) transfers made to a stockholder of a corporation in liquidation of the corporation, and transfers made to a partner of a partnership in dissolution of the partnership;
k) transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the Mass General Laws or other provisions of law of any state in the U.S.;
1) transfers of property consisting in part of real property interests situated within a town that is a member of the housing bank commission and in part of other property interests, to the extent that the property transferred consists of property other than real property situated within a town that is a member of the housing bank commission, but the seller shall furnish the housing bank commission with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for the transfers;
m) the first $750,000 of the sale price of all transfers of real estate, or a higher exemption to be adjusted for inflation as determined tri-annually by vote of the majority of the housing bank commission and the majority of the six town advisory boards.

SECTION 12. A seller who fails to pay all or any portion of the fee established by section 9 on or before the time when the fee is due shall be liable for the following additional payments in addition to said fee:
a) Interest. The seller shall pay interest on the unpaid amount of the fee to be calculated from the time of transfer at a rate equal to prime rate plus 1 per cent per annum.
b) Penalties. Any person who, without fraud or willful intent to defeat or evade a fee imposed by section 9, 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 housing bank commission for each month or portion of a month that the fee is not paid in full, but 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 housing bank commission determines that all or a portion of a fee due under section 9 was unpaid due to fraud with intent to defeat or evade the fee, a penalty equal to the amount of the fee as determined by the housing bank commission shall be paid by the seller in addition to the fee.

SECTION 13. (a) The housing bank commission shall notify a seller by registered or certified mail of any failure to discharge in full the amount of the fee due under section 9 and any penalty or interest assessed. The housing bank commission shall grant a hearing on the matter of the imposition of the fee, or of any interest or penalty assessed, if a petition requesting a hearing is received by the housing bank commission within 30 days after the mailing of the notice. The housing bank commission shall notify the seller in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within 15 days after the hearing. Any party aggrieved by a determination of the housing bank commission concerning a deficiency, penalty or interest may, after payment of the deficiency, appeal to the district or superior court within 3 months after the mailing of notification by the housing bank commission.
Upon the failure to timely petition for a hearing, or appeal to the court, within the time limits hereby established, the seller shall be bound by the terms of the notification, assessment or determination, and shall be barred from contesting the fee or any interest and penalty, as determined by the housing bank commission. All decisions of these courts shall be subject to appeal. Every notice to be given under this section by the housing bank commission shall be effective if mailed by certified or registered mail to the seller at any available legal address of the seller, or at the address stated in a recorded or registered instrument by virtue of which the seller 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 county of Dukes County, such notice shall be effective when so mailed to the 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 county of Dukes County.
(b) All fees, penalties and interest required to be paid under this act shall constitute a personal debt of the seller and may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the housing bank commission subject to chapter 260 of the General Laws.
(c) Sellers applying for an exemption pursuant to
Section 11(a-1) above shall be required at the time of application for exemption to execute a legally binding agreement 1) 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 2) submitting to the jurisdiction of the Massachusetts Department of the Trial Court sitting in the County of Dukes County. 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, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the housing bank commission.
The housing bank commission, without waiving any of its rights, may direct a civil action to be filed in the Massachusetts Department of the Trial Court District or Superior Court Division sitting in the County of Dukes County to enforce the agreement of the housing bank commission under this section with respect to this liability or to subject any property of whatever nature of the delinquent, or in which the delinquent has any right, title or interest, to the payment of this liability.
The housing bank commission may issue a waiver or release of any agreement imposed by this section with the approval of the town advisory board of the town or towns in which the property subject to the agreement is located. Such waiver or release shall be conclusive evidence that the agreement is extinguished.

SECTION 13A. This act, being necessary for the welfare of the member towns and the county of Dukes County and their inhabitants, shall be liberally construed to effect its purposes.

SECTION 14. Any time after 5 years from the effective date of this act, any town that is a member of the housing bank may withdraw from it by the affirmative vote of a majority of the voters at any regular or special town election. A town that has withdrawn may renew its membership by the affirmative vote of a majority of the voters at any regular or special town election at which the question of acceptance has been placed on the ballot. Upon the withdrawal of a town from the housing bank, all funds then held in the account established for such town pursuant to section 7B, after payment or provision of payment has been made in full on all funding commitments made by the housing bank prior to receipt by the housing bank commission of written notice that an election has been called by the town to vote upon the question of withdrawal, shall be transferred to the fund established by section 7A.
If the housing bank is reduced to fewer than 3 member towns, the housing bank shall be dissolved, but the fee imposed by section 9 shall continue to be imposed in each member town until all funding commitments, including repayment of any bonds or notes, have been paid in full, and the housing bank shall continue in existence during this time for the sole purpose of collecting and administering these fees. Upon dissolution of the housing bank, title to all funds and other properties held by the housing bank shall vest in the towns of Dukes county as herein provided after provision is made for payment of all bonds, notes and other obligations of the housing bank. Funds shall be transferred to each town in proportion to the fees generated by lands situated within that town over the life of the housing bank under this act. The housing bank commission shall not submit an amendment of this act to the general court unless the amendment has been approved by two-thirds of the member towns by the affirmative vote of a majority of the voters at a town meeting.

SECTION 15. Acceptance of this act, by each of the towns of Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury shall be by the affirmative vote of a majority of the voters at any regular or special town election at which the question of acceptance has been placed on the ballot. This act shall become effective on the date on which acceptance by all of these towns has been effected.