

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

O'Leary, Robert (SEN)

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.

PETITION OF:

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

In the Year Two Thousand and Nine

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:

- 1 SECTION 1. For the purposes of this act, the words and phrases set forth in this section shall
2 have the following meanings:
- 3 "Community Housing", rental and home ownership housing units for use by those residents of
4 Martha's Vineyard earning 150% or less of the median household income for Dukes county as
5 calculated and adjusted for household size annually by the federal Department of Housing and
6 Urban Development (HUD); this percentage of median income, should economic conditions
7 warrant a change, can be adjusted by a majority vote of both the housing bank commission and
8 four or more of the six town advisory boards.
- 9 "Eligible Applicants", non-profit and for-profit corporations and organizations, individuals, and
10 public entities.
- 11 "Fund", shall refer to the Martha's Vineyard Housing Bank Fund established under section 7.
- 12 "Housing Bank", the Martha's Vineyard housing bank, established by section 2.

13 "Housing bank commission", the Martha's Vineyard housing bank commission, established by
14 section 3.

15 "Legal representative", with respect to any person, shall mean any other person acting under a
16 written power-of-attorney executed by that person, but any affidavit attesting to the true and
17 complete purchase price of real property, submitted to the housing bank commission pursuant to
18 section 9, may also be signed on behalf of that person by an attorney admitted to practice in the
19 commonwealth.

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

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

34 "Real property interest", any present or future legal or equitable interest in or to real property,
35 and any beneficial interest in real property, including the interest of any beneficiary in a trust

36 which holds any legal or equitable interest in real property, but shall not include any interest
37 which is limited to any or all of the following: the dominant estate in any easement or right of
38 way; the right to enforce any restriction; any estate at will or at sufferance, and any estate for
39 years having a term of less than thirty years; the reversionary right, condition, or right of entry
40 for condition broken; the interest of a mortgagee or other secured party in any mortgage or
41 security agreement; and the interest of a stockholder in a corporation, or a partner in a
42 partnership, unless any real property interest has been transferred to the corporation or
43 partnership for the purpose of evading the fee imposed by section 9.

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

45 "Time of transfer", of any real property interest shall mean, the time that such transfer is legally
46 effective as between the parties to the transfer, and, in any event, with respect to a transfer
47 evidenced by an instrument recorded with the appropriate registry of deeds or filed with the
48 assistant recorder of the appropriate registry district, not later than the time of the recording or
49 filing.

50 "Town advisory board" (TAB), a town board created in each of the towns of Aquinnah,
51 Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury to assist the housing bank
52 commission in administering this act, such advisory board to consist of 7 members; 1
53 representative duly appointed, either from its membership or a designee, by each of the following
54 town boards: board of selectmen, conservation commission, planning board and board of health;
55 2 members appointed by the housing committee with preference given to the town representative
56 to the regional housing authority; and one member from either the Highway Department,
57 Department of Public Works, or Water Department, or a designee from one of said departments.
58 Should a position become vacant, a member appointed by the respective board to complete the

59 unexpired term shall fill said vacancy. Members shall hold 3- year staggered, renewable terms,
60 with the length of the initial terms to be designated by the board of selectmen.

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

67 SECTION 3. The housing bank shall be administered by a housing bank commission consisting
68 of 7 voting persons.

69 3.1 Membership: There shall be one member who is a legal resident of each of the towns of
70 Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury, each person to be
71 elected to a 3-year term, in the same manner as other elected town officials, and one member
72 who will be appointed by the director of the Massachusetts Department of Housing and
73 Community Development (DHCD). The six town boards of selectmen shall appoint the initial 6
74 members to serve from the effective date of this act until the first elections of the regular
75 members at each town's regular or special town election after the effective date of this act. The
76 initial terms, which will be drawn by lot by the initial six appointed members, shall be staggered
77 so that two members are elected each year, following the initial election.

78 3.2 Vacancies: Should a vacancy occur during the term of any elected town member, the town
79 housing committee and the board of selectmen shall jointly appoint an interim member to serve
80 until the next scheduled town election.

81 3.3 Administration: Members shall serve without compensation. The initial appointed members
82 shall adopt temporary rules and regulations to the extent necessary to conduct business until the
83 regular members are elected. The housing bank commission shall elect a chairman and a vice
84 chairman from among its regular members and shall elect a secretary and a treasurer who may be
85 the same person, but who need not be members of the housing bank commission. The members
86 of the housing bank commission shall adopt, after holding a public hearing and after requesting
87 recommendations from the town advisory board of each of the six member towns that comprise
88 the commission, rules and regulations for conducting its internal affairs and procedural
89 guidelines for carrying out its responsibilities under this act.

90 3.4 Quorum: A quorum shall be 4 or more members. Decisions of the housing bank commission
91 shall be by majority vote at a meeting where a quorum is present. The housing bank commission
92 shall make rules regarding attendance. The housing bank commission shall keep accurate records
93 of its meetings and actions and shall file an annual report that shall be distributed with the annual
94 report of each member town.

95 SECTION 4A. The housing bank commission shall, subject to this act, have the power authority,
96 and responsibility to (a) provide funding in the form of grants, loans, loan guarantees, lines of
97 credit, interest subsidies, rental assistance or any other means determined to further the goals of
98 the housing bank for eligible community housing activities as cited in section 5 of this act,
99 provided that any such funding shall require the approval of the town advisory board of any town
100 or towns in which the eligible activities shall be located; (b) accept gifts of funds to further the
101 purposes of the housing bank; (c) prepare an annual budget, which shall be subject to approval
102 by the town advisory boards of the majority of the member towns of the housing bank
103 commission; (d) hire such staff and obtain such professional services as are necessary in order to

104 perform its duties; (e) adopt such regulations and procedures it deems necessary or appropriate,
105 subject to this act, regarding the use and investment of its funds and the keeping of records and
106 accounts; (f) adopt such procedures it deems necessary or appropriate to provide funding for the
107 implementation of any and all programs cited in section 5 of this act; and (g) enter into and
108 enforce such contracts it deems necessary to achieve the goals of this legislation.

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

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

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

116 SECTION 5. The Martha's Vineyard housing bank is a funding agency only. Upon receiving
117 applications from eligible applicants in a competitive process which will include public notice of
118 funding availability, and in a form prescribed by the commission, the housing bank will provide
119 funding for eligible community housing activities as defined below, while respecting special
120 Vineyard habitats and rural character. The Housing Bank shall, wherever possible, give
121 preference to a) the reuse of existing buildings, and b) construction of new buildings on
122 previously developed sites.

123 Eligible community housing activities for receipt of funding shall include, but not be limited to,
124 the following:

- 125 (a) Purchase and rehabilitation of existing structures for rental or home ownership;
- 126 (b) Construction of rental or home ownership housing and necessary on-site or off site
- 127 infrastructure, including mixed use development;
- 128 (c) Purchase of land, and any and all improvements including easements;
- 129 (d) Down payment assistance, grants and soft second loans;
- 130 (e) Rental assistance programs;
- 131 (f) Modernization and capital improvements of existing rental and ownership housing;
- 132 (g) Creation of apartments and other ancillary housing;
- 133 (h) Housing counseling, predevelopment costs and technical assistance associated with creating
- 134 community housing projects and programs; and
- 135 (i) Mixed -use development projects.

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

141 SECTION 7A. The housing bank commission shall meet its financial obligations by drawing
142 upon a fund to be set up as a revolving or sinking account of the housing bank commission.
143 Deposits into the fund shall include (a) funds appropriated, borrowed or transferred to be
144 deposited into the fund by vote of the county commissioners of the county of Duquesne county or of
145 town meetings of the towns represented in the housing bank commission; (b) voluntary
146 contributions of money and other liquid assets to the fund; and (c) revenues from fees imposed

147 upon the transfer of real property interests under section 9 occurring after the effective date of
148 this act as set forth in section 15. Grants or gifts of money or other assets to the housing bank
149 shall be subject to any restrictions or limitations imposed by the grantor or donor.

150 All expenses lawfully incurred by the housing bank commission in carrying out this act shall be
151 evidenced by proper vouchers and shall be paid by the treasurer of the housing bank commission
152 only upon submission of warrants duly approved by the housing bank commission. The housing
153 bank commission treasurer shall prudently invest available assets of the fund in accordance with
154 the regulations and procedures adopted by the housing bank commission under Section 4A (f)
155 and all income from its investments shall accrue to the fund.

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

167 SECTION 8. The housing bank commission shall keep a full and accurate account of its actions
168 including a record as to when, from or to whom, and on what account money has been paid or

169 received under this act. These records or accounts shall be subject to examination by the director
170 of accounts or the director's agent pursuant to section 45 or chapter 35 of the General Laws, and
171 there shall be an annual audit conducted by a duly recognized accounting firm and a copy of said
172 audit distributed to all member towns.

173 SECTION 9. There is hereby imposed a fee equal to 1 per cent of the purchase price upon the
174 transfer of any real property interest in any real property situated in a member town or towns.
175 The fee shall be the liability of the seller of the real property interest, and any agreement between
176 the purchaser and the seller or any other person with reference to the allocation of the
177 responsibility for bearing this fee shall not affect the liability of the seller. This fee shall be paid
178 to the housing bank commission or its designee, and shall be accompanied by a copy of the deed
179 or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under
180 the pains and penalties of perjury by the seller or the seller's legal representative, attesting to the
181 true and complete purchase price and the basis, if any, upon which the transfer is claimed to be
182 exempt in whole or in part from the fee imposed. The housing bank commission, or its designee,
183 shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has
184 been paid or that the transfer is exempt from the fee, stating the basis for the exemption. The
185 register of deeds for the county of Dukes county, and the assistant recorder for the registry
186 district of the county of Dukes county, shall not record or register, or receive or accept for
187 recording or registration, any deed, except a mortgage deed, relative to any real property interest
188 situated in any town that is a member of the housing bank commission to which has not been
189 affixed such a certificate, executed by the housing bank commission or its designee. Failure to
190 comply with this requirement shall not affect the validity of any instrument. The housing bank
191 commission shall deposit all fees received under this section with its treasurer as part of the fund

192 established by section 7. The fee imposed under this section shall be due at the time of transfer of
193 the real property interest.

194 SECTION 10. At any time within 7 days following the issuance of the certificate of payment of
195 the fee imposed by section 9, the seller or the seller's legal representative may return said
196 certificate to the housing bank commission or its designee for cancellation, together with an
197 affidavit signed under oath or under the pains and penalties of perjury that the transfer, with
198 respect to which such certificate was issued, has not been consummated, and thereupon the fee
199 paid with respect to such transfer shall be forthwith returned to the seller or the seller's legal
200 representative.

201 SECTION 11. The following transfers of real property interests shall be exempt from the fee
202 established by section 9. Except as otherwise provided, the seller shall have the burden of proof
203 that any transfer is exempt under this section:

204 a) transfers made by a charitable organization as defined in clause three of section 5 of chapter
205 59 of the General Laws, or by any nonprofit organization which is exempt from income tax
206 under section 501(c)(3) of the Internal Revenue Code, Title 26 of the United States Code;

207 b) transfers which, without additional consideration, confirm, correct, modify or supplement a
208 transfer previously made;

209 c) transfers made as gifts without consideration; in any proceedings to determine the amount of
210 any fee due under this clause, it shall be presumed that any transfer for consideration of less than
211 fair market value of the real property interests transferred was made as a gift without
212 consideration to the extent of the difference between the fair market value of the real property
213 interests transferred and the amount of consideration claimed by the purchaser to have been paid

214 or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal
215 descendant or the lineal ancestor of the seller, by blood or adoption; otherwise it shall be
216 presumed that consideration was paid in an amount equal to the fair market value of the real
217 property interests transferred, at the time of transfer;

218 d) transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in
219 such trust; distribution by the trustees of a trust to the beneficiaries of such trust; schedules of
220 beneficiaries shall be submitted to the housing bank collection agent, at the discretion of such
221 agent, without becoming part of the public record;

222 e) transfers by operation of law without actual consideration, including but not limited to
223 transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest;

224 f) transfers made in partition of land and improvements to it, under chapter 241 of the General
225 Laws, but any portion of a partition for which consideration has been paid is not exempt;

226 g) transfers without consideration to any charitable organization as defined in clause third of
227 section 5 of chapter 59 of the General Laws, or to any nonprofit organization which is exempt
228 from income tax under section 501(c)(3) of the Internal Revenue Code, Title 26 of the United
229 States Code, provided that the real property interests transferred shall be held by the organization
230 solely for its public, charitable or religious purposes, and provided that any portion of the
231 transaction for which any consideration may have been paid is not exempt;

232 h) transfers to a mortgagee in foreclosure of the mortgage held by the mortgagee, and transfers of
233 the property subject to a mortgage to the mortgagee in consideration of the forbearance of the
234 mortgagee from foreclosing the mortgage, including sheriffs sales;

235 i) transfers made to a corporation or partnership at the time of its formation, in which no gain or
236 loss is recognized under section 351 of the Internal Revenue Code, Title 26 of the United States

237 Code;

238 j) transfers made to a stockholder of a corporation in liquidation of the corporation, and transfers
239 made to a partner of a partnership in dissolution of the partnership;

240 k) transfers consisting of the division of marital assets under the provisions of section thirty-four
241 of chapter two hundred and eight of the Mass General Laws or other provisions of law of any
242 state in the U.S.;

243 l) transfers of property consisting in part of real property interests situated within a town that is a
244 member of the housing bank commission and in part of other property interests, to the extent that
245 the property transferred consists of property other than real property situated within a town that
246 is a member of the housing bank commission, but the seller shall furnish the housing bank
247 commission with such information as it shall require or request in support of the claim of
248 exemption and manner of allocation of the consideration for the transfers;

249 m) the first \$750,000 of the sale price of all transfers of real estate, or a higher exemption to be
250 adjusted for inflation as determined tri-annually by vote of the majority of the housing bank
251 commission and the majority of the six town advisory boards.

252 SECTION 12. A seller who fails to pay all or any portion of the fee established by section 9 on
253 or before the time when the fee is due shall be liable for the following additional payments in
254 addition to said fee:

255 a) Interest. The seller shall pay interest on the unpaid amount of the fee to be calculated from the
256 time of transfer at a rate equal to prime rate plus 1 per cent per annum.

257 b) Penalties. Any person who, without fraud or willful intent to defeat or evade a fee imposed by
258 section 9, fails to pay all or a portion of the fee within 30 days after the time of transfer, shall pay
259 a penalty equal to 5 per cent of the outstanding fee as determined by the housing bank

260 commission for each month or portion of a month that the fee is not paid in full, but in no event
261 shall the amount of any penalty imposed hereunder exceed 25 per cent of the unpaid fee due at
262 the time of transfer. Whenever the housing bank commission determines that all or a portion of a
263 fee due under section 9 was unpaid due to fraud with intent to defeat or evade the fee, a penalty
264 equal to the amount of the fee as determined by the housing bank commission shall be paid by
265 the seller in addition to the fee.

266 SECTION 13. (a) The housing bank commission shall notify a seller by registered or certified
267 mail of any failure to discharge in full the amount of the fee due under section 9 and any penalty
268 or interest assessed. The housing bank commission shall grant a hearing on the matter of the
269 imposition of the fee, or of any interest or penalty assessed, if a petition requesting a hearing is
270 received by the housing bank commission within 30 days after the mailing of the notice. The
271 housing bank commission shall notify the seller in writing by registered or certified mail of its
272 determination concerning the deficiency, penalty or interest within 15 days after the hearing.

273 Any party aggrieved by a determination of the housing bank commission concerning a
274 deficiency, penalty or interest may, after payment of the deficiency, appeal to the district or
275 superior court within 3 months after the mailing of notification by the housing bank commission.

276 Upon the failure to timely petition for a hearing, or appeal to the court, within the time limits
277 hereby established, the seller shall be bound by the terms of the notification, assessment or
278 determination, and shall be barred from contesting the fee or any interest and penalty, as
279 determined by the housing bank commission. All decisions of these courts shall be subject to
280 appeal. Every notice to be given under this section by the housing bank commission shall be
281 effective if mailed by certified or registered mail to the seller at any available legal address of the
282 seller, or at the address stated in a recorded or registered instrument by virtue of which the seller

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

289 (b) All fees, penalties and interest required to be paid under this act shall constitute a personal
290 debt of the seller and may be recovered in an action of contract or in any other appropriate
291 action, suit or proceeding brought by the housing bank commission subject to chapter 260 of the
292 General Laws.

293 (c) Sellers applying for an exemption pursuant to
294 Section 11(a-1) above shall be required at the time of application for exemption to execute a
295 legally binding agreement 1) assuming complete liability for any fee, plus interest and penalties
296 if any, waived on account of an allowed exemption subsequently determined to have been
297 invalid, and 2) submitting to the jurisdiction of the Massachusetts Department of the Trial Court
298 sitting in the County of Dukes County. Fees, plus interest and penalties if any, shall be calculated
299 as of the date of the initial property transfer. Execution of the above-described agreement shall
300 not be required of any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof
301 has been filed by the housing bank commission.

302 The housing bank commission, without waiving any of its rights, may direct a civil action to be
303 filed in the Massachusetts Department of the Trial Court District or Superior Court Division
304 sitting in the County of Dukes County to enforce the agreement of the housing bank commission
305 under this section with respect to this liability or to subject any property of whatever nature of

306 the delinquent, or in which the delinquent has any right, title or interest, to the payment of this
307 liability.

308 The housing bank commission may issue a waiver or release of any agreement imposed by this
309 section with the approval of the town advisory board of the town or towns in which the property
310 subject to the agreement is located. Such waiver or release shall be conclusive evidence that the
311 agreement is extinguished.

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

314 SECTION 14. Any time after 5 years from the effective date of this act, any town that is a
315 member of the housing bank may withdraw from it by the affirmative vote of a majority of the
316 voters at any regular or special town election. A town that has withdrawn may renew its
317 membership by the affirmative vote of a majority of the voters at any regular or special town
318 election at which the question of acceptance has been placed on the ballot. Upon the withdrawal
319 of a town from the housing bank, all funds then held in the account established for such town
320 pursuant to section 7B, after payment or provision of payment has been made in full on all
321 funding commitments made by the housing bank prior to receipt by the housing bank
322 commission of written notice that an election has been called by the town to vote upon the
323 question of withdrawal, shall be transferred to the fund established by section 7A.

324 If the housing bank is reduced to fewer than 3 member towns, the housing bank shall be
325 dissolved, but the fee imposed by section 9 shall continue to be imposed in each member town
326 until all funding commitments, including repayment of any bonds or notes, have been paid in
327 full, and the housing bank shall continue in existence during this time for the sole purpose of

328 collecting and administering these fees. Upon dissolution of the housing bank, title to all funds
329 and other properties held by the housing bank shall vest in the towns of Dukes county as herein
330 provided after provision is made for payment of all bonds, notes and other obligations of the
331 housing bank. Funds shall be transferred to each town in proportion to the fees generated by
332 lands situated within that town over the life of the housing bank under this act. The housing bank
333 commission shall not submit an amendment of this act to the general court unless the amendment
334 has been approved by two-thirds of the member towns by the affirmative vote of a majority of
335 the voters at a town meeting.

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