

**HOUSE . . . . . No. 4998**

By Mr. Pedone of Worcester, for the committee on Bills in the Third Reading, to whom was referred the Bill relative to the Nantucket Island Land Bank (House, No. 4106), reported recommending that the same be amended by substitution of the accompanying bill (House, No. 4998 ); and that when so amended the same will be correctly drawn. August 23, 2010.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Ten**

An Act to further clarify the Nantucket Islands Land Bank Act regarding real property interests subject to the land bank act's transfer fee.

*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. Section 1 of chapter 669 of the acts of 1983 is hereby amended by striking  
2 out the definition of "Real property interest" and inserting in place thereof the following  
3 definition:-

4 "Real property interest", any present or future legal or equitable interest in or to real  
5 property, and any beneficial interest therein, including the interest of any beneficiary in a trust  
6 which holds any legal or equitable interest in real property; the interest of a partner or member in  
7 a partnership or limited liability company, the interest of a stockholder in a corporation, the  
8 interest of a holder of an option to purchase real property, the interest of a buyer or seller under  
9 a contract for purchase and sale of real property, and the transferable development rights created  
10 under chapter 183A of the General Laws; but shall not include any interest which is limited to  
11 any of the following: the dominant estate in any easement or right of way; the right to enforce  
12 any restriction; any estate at will or at sufferance; any estate for years having a term of less than

13 30 years; any reversionary right, condition, or right of entry for condition broken; and the interest  
14 of a mortgagee or other secured party in any mortgage or security agreement.

15 SECTION 2. Section 10A of said chapter 669 is hereby repealed.

16 SECTION 3. The first paragraph of section 12 of said chapter 669 is hereby amended by  
17 adding the following sentence:-- Any otherwise exempt transfer shall not be exempt in the event  
18 that such transfer, by itself or as part of a series of transfers, was made for the primary purpose of  
19 evading the fee imposed by section 10.

20 SECTION 4. Paragraph ( i ) of said section 12 of said chapter 669 is hereby amended by  
21 striking out, in lines 5 to 10, inclusive, as appearing in section 3 of chapter 392 of the acts of  
22 1991, the words "the transferor retains a controlling interest in such corporation after such  
23 formation or (ii) with respect to a partnership, the transferor retains after such formation rights to  
24 capital interests in excess of fifty percent of the capital interests within such partnership or  
25 retains rights to profit interests within such partnership in excess of fifty percent of the total  
26 profit interests within such partnership" and inserting in place thereof the following words:-- the  
27 transferor retains an interest in the newly formed corporation which is equivalent to the interest  
28 the transferor held prior to the transfer, or ( ii ) with respect to a partnership or limited liability  
29 company, the transferor retains after such formation rights in capital interests and profit interests  
30 within such partnership or limited liability company which are equivalent to the interest the  
31 transferor held prior to the transfer.

32 SECTION 5. Said section 12 of said chapter 669 is hereby further amended by striking  
33 out paragraph ( j ), as most recently amended by section 5 of chapter 370 of the acts of 2002, and  
34 inserting in place thereof the following paragraph:--

35 (j) Transfers made to a stockholder of a corporation in liquidation or partial liquidation  
36 of the corporation, and transfers made to a partner of a partnership or to a member of a limited  
37 liability company in dissolution or partial dissolution of the partnership or limited liability  
38 company; but the transfer shall be exempt only if (i) with respect to a corporation, the transferee  
39 receives property, including real property interests and other property received, which is the  
40 same fraction of the total property of the transferor corporation as the fraction of the  
41 corporation's stock owned by the transferee prior to the transfer, or (ii) with respect to a  
42 partnership or limited liability company, the transferee receives property, including real property  
43 interests and other property received, which is the same fraction of the property of the  
44 partnership or limited liability company as the fraction of the capital and profit interests in the  
45 transferor formerly owned by the transferee.

46 SECTION 6. Said section 12 of said chapter 669 is hereby further amended by adding the  
47 following paragraph:--

48 (n) Transfers of minority interests in corporations, trusts, partnerships or limited liability  
49 companies which are publicly traded, which trades are not part of a series of transfers which  
50 together constitute a transfer of control of a corporation, trust, partnership or limited liability  
51 company.

52 SECTION 7. Section 14 of said chapter 669 is hereby amended by adding the following  
53 paragraph:--

54 (d) If the commission has determined that a fee is due by asserting the application of the  
55 evasion of fee doctrine described in section 12, then the transferee shall have the burden of  
56 demonstrating by clear and convincing evidence as determined by the commission that the

57 transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose other than  
58 avoidance of the fee set forth in section 10 and (ii) economic substance apart from the asserted  
59 fee avoidance benefit. In all such cases, the transferee shall also have the burden of  
60 demonstrating by clear and convincing evidence as determined by the commission that the  
61 asserted non-fee-avoidance business purpose is commensurate with the amount of the fee  
62 pursuant to section 10 to be thereby avoided.”