State Policy Options for Promoting Affordable Housing

There are a number of different ways in which states can help expand the supply of affordable homes. These include:

1. Create enforceable "rights" to support the development of affordable homes in areas where they are needed
2. Require localities to develop affordable housing plans
3. Offer incentives to developers to encourage the development of affordable homes
4. Offer incentives to municipalities to promote the development of affordable homes
5. Enact enabling legislation to authorize and encourage needed local action
6. Expand the financial resources available for affordable housing
7. Strengthen policies for allocating existing resources
8. Serve as educators and conveners to encourage necessary local action

A brief summary of each role, along with supporting examples, may be found below:

1. Create enforceable "rights" to support the development of affordable homes in areas where they are needed. States can facilitate the construction of new affordable homes by creating "rights" to develop these homes in areas where they are needed. Typically, these rights are given "teeth" by the identification of an enforcement agency or state court that hears expedited appeals from developers whose proposals to build affordable homes have been denied. The enforcement agency has the authority to override local regulations in municipalities that fail to comply with state requirements. When the enforcement process is initiated by developers seeking to build affordable homes, it is sometimes referred to as the "builder's remedy." Individuals in need of affordable housing or advocacy groups that represent such individuals also could be granted standing to enforce these rights, but this is less common. In general, the burden of proof in these appeals is shifted to the municipality, which must justify the decision to deny approval.

- **New Jersey Fair Housing Act—** In the mid-1970s and late '80s a series of New Jersey Supreme Court cases called the Mount Laurel decisions established the requirement that all municipalities "provide a realistic opportunity" for development of their share of low- and moderate-income housing, as determined by the Council on Affordable Housing (COAH), the agency created to administer the new fair-share program. Municipalities that fail to submit and obtain COAH-certification for a plan to achieve their fair-share goal are susceptible to "builder's remedy" lawsuits filed by developers who are denied approval for the construction of affordable homes.[1]

See also:

[1] http://www.planning.org/affordablereader/znzp/znoct03c.htm

- **Massachusetts Comprehensive Permit Law (40B)**, which grants developers of affordable homes access to an expedited appeals process if their applications are rejected by communities that have failed to meet minimum affordable housing goals set by the State.[2]
- **Rhode Island Low- and Moderate-Income Housing Act**[3]
- **Connecticut Affordable Housing Appeals Procedure**[4]
- **Illinois Affordable Housing Planning and Appeal Act**[5]

2. Require localities to develop affordable housing plans. Some states require municipalities to undertake planning processes intended to help identify opportunities for the development of affordable homes and improve local effectiveness in the delivery of those homes. The resulting "housing element" or plan may be incorporated into a regularly-updated comprehensive plan that provides a framework for future development and guides local land use decisions.

- **California "Housing Element"**— California state law requires all municipalities to prepare and submit a "housing element" for review by the Department of Housing and Community Development (HCD), as part of a long-term comprehensive planning process that is not otherwise subject to substantial state review. The housing element must include a housing needs analysis and site inventory, identification of government constraints to development of new homes and an action plan for achieving the local housing goals set by regional councils of governments. HCD certifies local plans as compliant and, in theory, may challenge a non-complying municipality in court to prevent the issuance of building permits until adoption of a legally valid housing element.[6]

See also:

- **Florida Growth Management and Land Development Regulation Act**, which requires municipalities to include in their comprehensive plans a housing element that details goals, objectives and programs for meeting current and projected housing needs.[7]
- **Washington Growth Management Act**[8]

3. Offer incentives to developers to encourage the development of affordable homes. While incentive programs are more common at the local level, states may also establish programs to provide financial incentives to developers who build affordable homes. In some cases, state funding acts as a direct incentive offered to developers to encourage new construction. (See, for example, the Connecticut example below). In other cases, the state incentive program is delivered indirectly through requirements that municipalities make specified benefits available to eligible affordable housing developments. (See, for example, the California example below.)

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2 http://www.chapa.org/40b_fact.html
3 http://www.ri.gov/GOVERNOR/view.php?id=103
4 http://ct-housing.org/ahap.html
5 http://www.bpichicago.org/rah/spt.html
6 http://www.hcd.ca.gov/hpd/hrc/plan/he/
7 http://www.1000friendsofflorida.org/housing/Smart_Growth_Afford_Housing.asp
8 http://www.mrsc.org/subjects/planning/compplan.aspx

- **California Density Bonuses —** California's density bonus law (SB 1818) requires cities and counties to relax applicable zoning standards (including parking requirements) and grant density bonuses of up to 35 percent for developers who include a modest share of affordable housing in market-rate projects. Cities and counties are also required to adopt an ordinance stating how they intend to comply with the legislation.[9]

See also:

- **Connecticut Incentive Housing Zones (IHZs)** — Developers can request a 30-year project-based subsidy from the state for a specified number of affordable rental units developed within an IHZ (see example in section 3b for more detail on IHZs). Nonprofit housing or development organizations are also eligible for state technical assistance grants that help build capacity to develop homes within the IHZ.[10]
- **Missouri - Providing Tax Credits for Housing in Established Neighborhoods -** In July 1999, Missouri adopted legislation to promote the purchase of homes in urban areas. The Neighborhood Preservation Act provides tax credits to encourage rehabilitation of older homes and construction of new ones in urban centers and established suburbs in moderate-income neighborhoods. Program eligibility is based on property location. "Level 1 neighborhoods" have household incomes between 70 percent and 90 percent of the metropolitan area median; "level 2 neighborhoods" have household incomes below 70 percent of this median. The act provides for a 25-percent tax credit for rehabilitation and a 15-percent tax credit for construction of new housing at both levels, though the maximum credits awarded vary by category. In addition, level 2 neighborhoods are eligible to receive a 35-percent tax credit for substantial property rehabilitation. Each category may receive $8 million in tax credits per year.[11]

4. Offer incentives to municipalities to promote the development of affordable homes. Rather than providing incentives to developers, states can offer incentives to municipalities that facilitate the development of affordable homes. Incentives may come in the form of direct financial awards, as well as priority consideration for allocation of state funds or access to otherwise unavailable resources.

- **Connecticut Incentive Housing Zones (IHZs)** — Municipalities may designate IHZs near transit nodes and commercial centers, within which 20 percent of units are set aside for affordable homes and land is zoned at higher densities than would otherwise be allowed. Pending state approval of the IHZ and verification of completed activities, municipalities may receive a one-time payment for each unit that may be built in the IHZ, ongoing payments for each building permit actually issued, reimbursement for eligible child education costs and low-interest loans for development of IHZ-related infrastructure. The state also offers planning grants for municipalities to identify and draft regulations for IHZs.[12]

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[9] http://www.cacities.org/resource_files/24444.Analysis%20of%20Density%20Bonus%20Law.pdf
[10] http://www.cga.ct.gov/2007/BA/2007SB-01057-R000720-BA.htm
[11] http://www.nga.org/portal/site/nga/menuitem.9123e83a1f6786440ddcbeeb501010a0/?vgnextoid=35cc5aa265b32010VgnVCM1000001a01010aRCRD#MO1
[12] http://www.cga.ct.gov/2007/BA/2007SB-01057-R000720-BA.htm

See also:

- **Massachusetts Chapters 40R and 40S** — Through Chapter 40R, Massachusetts offers financial incentives to municipalities that identify "smart growth zoning districts" (SGZDs), within which a) residential development may occur at higher densities than would otherwise be allowed, and b) 20 percent of homes are affordable to low- and moderate-income families. In exchange, municipalities receive a one-time cash "incentive payment" when the district is approved, additional "density bonus payments" for each housing unit issued a building permit and priority consideration for disbursement of state discretionary funds. Chapter 40S provides additional resources to reimburse the cost of educating children who live in SGZDs.[13]
- **New Jersey Transit Villages Program** – New Jersey's transit villages are compact, mixed-use neighborhoods (**including affordable housing – although the NJ program does not mention specific requirements; just that it should be included**) that use public-sector transit stations and investments to spark revitalization projects. The state provides low-interest loans for these projects, and it has supported five different communities along new commuter rail and bus lines. Transit villages are given priority consideration for funding from the department of transportation's Local Aid for Centers program, the Transportation Enhancements program, and state bicycle and pedestrian initiatives. The initiative's multi-agency partnership includes the departments of transportation, transit, and environmental protection, the economic development authority, the redevelopment authority, the state council on the arts, and the commerce and economic commissioner.[14]
- **California Transit Village Development Planning Act** – California provides incentives to cities and counties for planning transit village development districts that link mixed-use developments to transit systems. These development districts are located within a one-quarter-mile radius of transit stations, and they may be eligible for 25-percent development density bonuses. Priority funding for transportation improvements is given to local communities for mixed-use development, pedestrian and bicycle improvements, and traffic-calming mechanisms around transit stops. Individual development projects consistent with a transit village plan receive expedited administrative review.[15] In 2007 amendments extending the definition out to a half-mile from transit stations, and to ensure that 20% of housing be affordable to low and moderate income residents have been proposed.[16]

5. Enact enabling legislation to authorize and encourage needed local action.
State control over municipal activity falls along a spectrum: at one end, states that actively enforce the "Dillon Rule" allow municipalities only the powers that are explicitly granted to them by the state legislature (in addition to those that are considered essential for the

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[13] http://www.bos.frb.org/economic/neppc/briefs/2006/briefs061.pdf

[14] http://www.nga.org/portal/site/nga/menuitem.9123e83a1f6786440ddcbeeb501010a0/?vgnextoid=4adc5aa265b32010VgnVCM1000001a01010aRCRD#NJ5

[15] http://www.nga.org/portal/site/nga/menuitem.9123e83a1f6786440ddcbeeb501010a0/?vgnextoid=4adc5aa265b32010VgnVCM1000001a01010aRCRD#CA1

[16] http://www.livablecity.org/campaigns/californialegislation.html; http://info.sen.ca.gov/pub/bill/asm/ab_1201-1250/ab_1221_bill_20070620_amended_sen_v97.html

municipality to function). At the other end of the spectrum, Home Rule states give municipalities the authority to govern their own internal affairs (subject only to the restrictions and limitations specified in the state constitution or any state statute). In practice, most states adopt some hybrid of these two approaches,[17] making it essential that states provide appropriate enabling legislation to authorize needed local action to expand opportunities for the development of affordable homes. Well-designed enabling legislation: (a) ensures that state law does not pose a barrier to the enactment of important local tools for promoting affordable housing, such as tax abatements, tax increment financing, and inclusionary zoning; (b) reduces the likelihood that the policies that localities adopt will be vulnerable to court challenge; and (c) helps to reduce the learning curve for municipalities by specifying one or more sound program variants for their consideration.

- **New Hampshire Community Revitalization Tax Relief Incentive** — State legislation gives municipalities the authority to grant temporary tax abatements to property owners who substantially rehabilitate buildings located in a village center or downtown district.[18]

See also:

- **Tennessee Tax Increment Financing (TIF) Enabling Legislation** authorizes local housing authorities to acquire properties in blighted areas and establish TIF districts to promote redevelopment. The state also has a sales tax revenue TIF program that can be used to finance tourism-related public facilities such as stadiums and convention centers.[19]
- **Virginia Inclusionary Zoning (IZ) Enabling Legislation** — Fairfax County, VA adopted one of the country's earliest inclusionary zoning policies, but it was struck down by state courts in part because the state had not explicitly granted local authority to adopt an IZ ordinance. In 1989 the Virginia code was amended to address this objection, specifically allowing local jurisdictions to pass IZ ordinances.[20]
- **Pennsylvania Act 137** — This enabling legislation authorizes counties to increase document recording fees to raise additional funds for affordable housing.[21]
- **California Infill Opportunity Zone Law** – Working within an existing congestion management program this allows for an infill opportunity zone to be designated by a city or county zoned for new compact residential or mixed use development, except as specified, within 1/3 mile of specified transportation sites in counties with a population of over 400,000. It would exempt streets and highways in an infill opportunity zone from the level of service standards specified in the above-described provisions and instead require alternate level of service standards to be applied. It would provide that a city or county may not designate an infill opportunity zone after December 31, 2009.[22]

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[17] See http://www.celdf.org/portals/0/pdf/Home%20Rule%20State%20or%20Dillons%20Rule%20State.pdf for more details on state activity.
[18] http://www.nh.gov/oep/programs/MRPA/conferences/documents/FrostSpring07-1.pdf
[19] http://www.tennessee.gov/tacir/PDF_FILES/Taxes/Tax%20Increment%20Financing.pdf
[20] http://www.policylink.org/pdfs/EDTK/IZ/InZon-Fairfax.pdf
[21] http://www.phfa.org/hsgresources/act137.aspx
[22] http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1601-1650/sb_1636_bill_20020912_chaptered.html

6. Expand the financial resources available for affordable housing. Lack of money is often one of the largest obstacles to development of new affordable homes. States can help address this shortfall by generating new resources, which may be structured in a variety of different ways—through a housing trust fund, bond issue, tax credits or other programs. Funds may be distributed directly to developers by the appropriate state agency, or indirectly through allocations to municipalities.

- **Florida William E. Sadowski Affordable Housing Act —** With this Act, the Florida Legislature increased the state's real estate transfer tax and dedicated a portion of the revenue to a new housing trust fund. The fund is administered by the state's housing finance agency, which distributes 69 percent of the revenue to municipalities according to population-based formula and retains the balance to address statewide housing issues.[23]

See also:

- **California Proposition 46 —** California voters approved this proposition to issue more than $2 billion in general obligation bonds in order to fund numerous affordable housing programs. The bulk of the proceeds are allocated to multifamily housing programs, in particular through low-interest loans used to finance construction of new rental homes.[24]
- **Illinois Affordable Housing Tax Credit Program —** For every dollar that corporations and individuals contribute to approved affordable housing developments or invest in employer-assisted housing programs, they receive a 50-cent tax credit on state income tax liability.[25]
- **4 Percent Tax Credits.** In addition to creating or expanding state funding streams for affordable housing, states may wish to consider policies to increase the amount of federal funding they receive for affordable homes. One of the most underutilized federal sources of funding is the 4 percent low-income housing tax credit, which is available for any qualified rental housing development funded with tax-exempt bonds. While 4 percent credits generally need to be supplemented with other resources to complete the financing package for affordable homes – one of the principal reasons they are underutilized – states that do not take maximum advantage of 4 percent credits leave millions in federal dollars on the table. State strategies for expanding utilization of 4 percent tax credits include: (a) specifically reserve a portion of private activity bond cap for multifamily housing, as they do in Arkansas, Kentucky, Maine and New Hampshire;[26] (b) increase the amount of private activity bond cap allocated to rental housing (this is the only allocation that allows states to claim the 4 percent tax credits); (c) help package smaller projects together in a single bond issue, as they do in Ohio, to spread out high origination costs among more properties; and (d) actively solicit applications for tax-exempt financing that qualifies for the 4 percent credits.

7. Strengthen policies for allocating existing resources. One of the major roles that states play in the nation's affordable housing system is to administer Low-Income Housing Tax Credits,

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[23] http://www.1000fof.org/PUBS/NIMBYHANDBOOK/Appendix%203.PDF
[24] http://ca.lwv.org/lwvc/edfund/elections/2002nov/id/prop46.html
[25] http://www.metroplanning.org/resource.asp?objectID=1039
[26] http://www.housingfinance.com/ahf/articles/2003/August/TEB_Overview.html

HUD block grants (HOME and CDBG), and other federal resources (such as Section 8 vouchers). The state agencies that administer federal housing programs have considerable discretion in determining how to prioritize allocation of program benefits. Low-income housing tax credits, for example, are made available through the IRS but administered at the state level, with projects selected on the basis of whether they meet objectives specified in the state's Qualified Allocation Plan. Similarly, states can distribute their allocation of HOME and CDBG funds among a variety of approved activities as detailed in their HUD-approved Consolidated Plans. By reviewing their policies for allocating funds within each program – and across all the programs to ensure they are well-coordinated – states can maximize the utility of these resources and ensure special consideration for activities that address identified housing challenges and shortfalls.

In most states, significant numbers of federally assisted housing developments are reaching the end of their required affordability periods, placing these valuable affordable housing opportunities in jeopardy. To address this issue, 46 states prioritize the preservation of existing affordable homes in their Qualified Allocation Plans for Low-Income Housing Tax Credits (LIHTCs), either by setting aside a segment of 9 percent LIHTCs for preservation or by awarding additional points for preservation-related projects.[27] A smaller number of states have made a major push to use 4 percent LIHTCs for preservation by reserving multifamily bond cap (under the state's allocation of private activity bond cap) for preservation.

- **Connecticut QAP Green Building Incentives –** The 2007 QAP awards 11 points to projects that meet certain energy conservation or green/healthy building requirements identified by the Authority. In addition, meeting criteria to ensure energy efficient operation and maintenance is identified as part of the threshold requirements for new and substantially rehabilitated projects. Green Design and Construction Standards require low-impact sites, green building materials, and specify energy efficient designs. The plan also awards 5 points for developments that meet requirements identified by the Authority for the asthma-safe homes. The plan encourages development in developed downtown neighborhoods with project points.[28]

8. Serve as educators and conveners to encourage necessary local action. In addition to their more traditional roles as funders, regulators and legislators, states can also play a valuable role in educating local governments about the steps needed to promote housing affordability and convening all of the different players needed to develop a comprehensive housing strategy for the state and for regions within the state. An initial but important step is to convene the different state agencies that focus on affordable housing to ensure their policies are coordinated and supportive. A good next step is to assemble a working group at the state level to develop a comprehensive state housing strategy. States also may wish to hold listening and educational sessions at the regional and local levels to present ideas, obtain feedback, and discuss coordination across municipalities within a region.

[27] http://www.nhtinc.org/Tax_Credits_2006.asp
[28] http://www.nhtinc.org/documents/Green_Preservation_Resources_NHT_July2007.pdf