Legislative Roundup: Examining State Responses to the Affordable Housing Crisis

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There is an unprecedented housing shortage in the United States. The Harvard Joint Center for Housing Studies cites multiple recent studies that estimate a nationwide shortfall in the range of 1.5 million to 5.5 million housing units. Estimates vary based on methodology, but the general consensus is that a material housing shortage exists, and the shortage is a major driver of unaffordable home prices and rents. State legislatures across the country are enacting or considering laws intended to increase the rate of housing development by cutting through local regulations. Common policy solutions include allowing certain housing types by right in different zoning classifications, modifying development restrictions such as density caps, and streamlining various levels of review.

Florida is one state leading the way with their recently enacted Live Local Act, which was initially passed in 2023 and amended earlier this year. This legislation seeks to promote the development of "workforce housing" by creating rent-restricted units that are affordable to individuals making incomes at or below 120% of the local Area Median Income. If developers agree to rent-restrict at least 40% of the units in a new development for a period of 30 years, they can take advantage of a slew of incentives, including, but not limited to, preemption of zoning in commercial and industrial zones. This would theoretically allow developers to build qualifying housing developments by right in non-residential zones and avoid the expensive and lengthy rezoning process. Certain developments may potentially also qualify for modified parking, density, and building height requirements.

Municipal and county governments, however, have criticized Florida's Live Local Act as an attempt to impose top-down regulations and supersede the local community's control over land development. The lobbying efforts of these municipal and county governments led to the Florida legislature amending the Live Local Act less than a year after its enactment.

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Similar debates are playing out in many state legislatures as each state grapples with the housing shortage. Below is an overview of a few selected state legislative efforts either passed or considered in the last few years.

California

- California has long led the way in housing legislation, including the well-known density bonus law, first enacted in 1979, which provides increased density allowances to incentivize developers to incorporate affordable units in their projects. A 2023 law facilitates affordable housing production along California's coast by streamlining local review processes, further detailed in our prior Multifamily Matters blog post.
- California also recently passed Assembly Bill 1633, which seeks to prevent bad faith environmental review challenges to urban housing developments. This law requires local planning boards to make express written findings on whether a project under review is exempt from California's Environmental Quality Act. Previously, meritless environmental reviews could cause projects to suffer lengthy delays. The new law creates more certainty for housing developers that have conducted proper environmental due diligence.

Kentucky

- In its 2024 legislative session, Kentucky is considering House Bill 102, which would allow development of more secondary dwelling units, duplexes, triplexes, and fourplexes in areas zoned for single-family homes. The bill also prohibits local jurisdictions from imposing minimum square footage requirements. This legislation seeks to reform the "middle housing" market, referring to housing types that fall between single-family homes and large apartment complexes. The movement for middle housing reform has found success in states such as Oregon, Massachusetts, and California. While the Kentucky bill has not moved forward this session, it has created a conversation on promoting diverse housing options

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to address the state's housing shortage.

Pennsylvania

- In 2022, Pennsylvania passed a law to incentivize the development of vacant or abandoned properties through local public or nonprofit agencies known as "land banks." The new law provided that any transfers of land to or from a land bank would be exempt from state and local real estate transfer taxes. The legislation also empowered land banks to enter joint ventures with private developers, among other entities, with the specific goal of promoting projects to house Pennsylvania's homeless population.

Tennessee

- In 2020, Tennessee expanded the powers of its state housing authority to expressly provide that it may assist in the development of housing projects that include units serving persons of low and moderate income. These mixed-income housing developments sometimes face unique financing challenges and significant pushback from local communities, so the support of the state housing authority may be crucial to the success of a project.

Texas

- In 2023, Texas enacted House Bills 3697 and 3699, which streamlined the approval process for subdivisions, plats, and site plans at the county and municipal level. Now within 30 days of submission, municipalities must review plans for plats, and counties must review plans for subdivisions, plats and sites. Establishing these express time limits provides increased certainty for housing developers. House Bill 14, also passed in 2023, further expedites the approval process by increasing the certified planning agency staff available to conduct the necessary third-party reviews.

Frost Brown Todd counsels investors, developers and other key stakeholders on affordable housing transactions in states across

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