YIMBY LAW

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Housing Targets Review

Comparing other Housing Target Programs with the Virginia Housing Targets Bill

By Angela Tiangco, Research Attorney, YIMBY Law

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I. Introduction

Housing target programs establish goals for housing production in a given area. Typically, these programs require localities to develop and submit a housing plan that outlines the policies and strategies they will use to meet production targets, often including consequences for noncompliance. A locality's plan also identifies which agencies will administer the program and a timeline for implementation. Overall, these plans are designed to coordinate local government authorities and provide transparency in the housing development process.

However, despite their seemingly direct purpose, housing target programs are complex and inherently political. Like many of their zoning reform counterparts, target programs can fail wholly or partially during implementation. The complexity of housing target legislation depends on the coordination of various components (e.g., targets, remedies, enforcement mechanisms), each of which must function both independently and as a system.

To illustrate, consider the difference between a sundial and a watch. A sundial, like a single-issue policy such as by-right accessory dwelling units (AUDs), relies on one simple mechanism: a stationary gnomon casting a shadow that indicates the time. A watch, by contrast, utilizes a series of interconnected springs and gears to keep precise time. In a housing target program, these "springs and gears" would be the remedies, administrative processes, and enforcement mechanisms that must work in harmony to achieve production goals.

Despite this complexity, one of the key benefits of housing target programs is their reliance upon objective, data-driven measures to assess a region's housing needs based on projected growth. Local opponents to housing often base their opposition on vaguely defined fears about traffic, parking, infrastructure, and more. While there is no perfect method to measure how much housing a community needs, grounding local housing supply decisions in data rather than fearmongering ensures that communities plan for enough housing to accommodate both current and future residents.

Exclusionary zoning is multifaceted and dismantling it requires addressing a set of interconnected issues that bolster one another rather than tackling each issue in isolation. In this report, estimates of total housing production under a housing target program assume that all features of the program (e.g., remedies, administration, enforcement mechanism, etc.) are correctly implemented and coordinated, unless otherwise noted.

Moreover, the design of each program should be tailored to fit the governance structures and political realities of individual states.

To that end, in this report, YIMBY Law analyzes how Virginia's proposed Statewide Housing Targets Bill (HB 2641) compares to housing target programs in other states, evaluates its potential effectiveness, and provides policy recommendations to improve its design and enforcement. We examine the common features of housing target programs–how states set housing growth goals, assign responsibilities to local governments, and enforce compliance. We then compare the VA Housing Targets bill to established programs in California, Massachusetts, New Jersey, Illinois, and Montana as well as a proposed system in Maryland. Our aim is to identify best practices and common pitfalls from other states' experiences and to recommend strategies to strengthen the VA Housing Targets bill, making it more effective in producing housing and closing Virginia's housing supply gap.

II. Analyzing and Comparing Housing Target Programs

A. Key Features of Housing Target Programs

To assess the success and effectiveness of housing targets programs across the county, this analysis focuses on four common features:

1. **Baseline Legal Requirement(s):** *Which localities are affected, and what must they do to comply?*

Typically, affected localities must work toward a defined housing goal, such as a specific number of new housing units or a percentage of affordable units. Some states limit application of these laws to certain jurisdictions based on identified factors such as population, affordable housing thresholds, or other measurable criteria.

2. **Calculation Methodology:** *What goal must a locality meet, and how is progress measured?*

Housing goals can be based on a combination of:

   a. Percentage growth targets

   b. Demographic or economic projections

c. Regional shares of housing needs

d. Locally determined benchmarks.

Usually state law–or state agencies who administer the law–defines the methodology for setting these targets.

3. **Administration and Compliance:** *What does compliance look like, and who oversees it?*

For most programs discussed in this report, localities that are required to follow their state housing targets law must submit some sort of housing plan outlining growth strategies and identifying available sites for new housing. A locality may have to rezone sites or pass an ordinance that demonstrates implementation of a strategy, such as rezoning land for higher-density housing near transit stations or eliminating parking minimums that may reduce a project's economic feasibility.

In most states, administration and oversight of the housing targets program falls under the purview of the Department of Housing and Community Development, Housing Development Authority, or a similar state agency. That state agency is responsible for issuing program guidelines, establishing compliance standards, and evaluating local performance.

A notable exception to this pattern is New Jersey, where advocacy organizations like the Fair Share Housing Center ensure that municipalities comply with their obligations. This structure exists because New Jersey's housing targets program was established by case law, not statute, and was the result of a state board failing to enforce the *Mount Laurel Doctrine*, which led to enforcement being returned to the court system.

4. **Enforcement Pathway:** *What are the consequences for noncompliance?*

    a. *Is there an* ***APPEALS BOARD?***

In some states, a developer whose project is denied can have the decision (and the proposal) reviewed by an Appeals Board. These boards can serve several purposes, such as: (1) providing an objective review of the proposal and the local authority's decision outside of the local political pressures faced by City Councils and other local bodies; (2) limiting the scope of project review to the relevant housing law(s) rather than every concern brought by NIMBY residents; and (3) offering a faster and less expensive enforcement route than lawsuits, which could take years in court.

b. *Are there any **SAFE HARBORS?***

Safe harbors are meant to incentivize a locality's compliance. Localities meeting certain thresholds (or demonstrating movement towards those thresholds) are either immune to appeals or have a greatly reduced likelihood of an appeals board overturning their land use decision.

c. *Who has **STANDING** to bring suit to enforce the law?*

In most cases, developers are the only parties with standing to sue a locality for violating housing laws, but this restriction can be problematic: if they decide to litigate, developers risk straining relationships with local governments they may need to rely upon in the future. Expanding standing to bring lawsuits improves enforcement by ensuring localities are held accountable without placing all of the responsibility on developers.

5. **What makes an effective housing target policy?**

While certain policy components of these policies generally bolster the strength of a law (i.e., an appeals board to ensure proper unbiased decision making), their design must align with each state's governance structure, legal framework, and political environment. In short, there is no "one size fits all" model for an effective housing target policy.

B. Key Features of the VA Housing Targets Bill (HB 2641)

1. **Baseline Legal Requirements**

The bill, as of October 2025, requires all Virginia localities to increase their total housing stock by an average of 1.5% growth per year for five consecutive years, achieving a total growth target of 7.5%. To meet this target, each locality must develop a housing growth plan that includes at least three growth strategies from a state-defined menu of options. These strategies include eliminating minimum lot size requirements and eliminating aesthetic requirements for multifamily developments, among others.

2. **Calculation Methodology**

This bill does not establish a specific methodology or formula that allocates housing needs to regions. Instead, it applies a uniform requirement that all jurisdictions must achieve a 7.5% growth target–equivalent to 1.5% annually for five years–to be considered in compliance.

3. **Administration and Compliance**

The Department of Housing and Community Development will establish a three-member Housing Approval Board (HAB) with the authority to overturn certain local land use decisions and to automatically approve certain local land use applications if a locality has not made a good faith effort to meet its required housing targets.

The Director of DHCD must develop criteria to guide the Board's decision-making process and promulgate all necessary regulations. These regulations are meant to ensure that localities meet their required growth targets. In addition, they will provide extra weight for a good faith determination to localities who increase affordable housing and/or rehabilitate current, underutilized housing stock.

4. **Enforcement Pathway(s):**

    a. ***Housing Approval Board (HAB)***

At the end of the bill's five-year period, the following parties may appeal a locality's denial of a residential development to the HAB:

- Developers whose applications are rejected
- Potential residents of the proposed residential development
- An organization whose mission is to advocate for such residential developments (such as YIMBY Law)

The HAB will have three members, consisting of the Director of the DHCD as chairman, the executive director of the Virginia Housing Development Authority, and a member selected by the Director with knowledge of the local land use approval process. The Board will convene as needed to review appeals and has the authority to both overturn local land use decisions and automatically approve certain local land use applications if a locality has not made a good faith effort to meet its required housing targets.

    b. ***Safe Harbors***

While the bill does not include explicit safe harbor provisions, it authorizes the Director of the DHCD to release criteria that grants extra weight–as much as a 20% adjustment–toward a locality's calculation of its growth target for: (1) increases in affordable housing, and (2) the rehabilitation of current, underutilized housing stock.

Additionally, if the Board finds that a locality failed to meet a required growth target, it shall not overturn the local decision if the locality has: (1) implemented at least three housing

strategies from the menu **AND** (2) approved 75% or more of local housing development applications over the past five years. the Housing Approval Board.

III. Recommendations for Virginia's Housing Targets Bill (HB 2641)

The complexity of implementing pro-housing policies at the local level varies based on the policy design. Successful policies should balance low-effort and high-effort implementation elements to (a) avoid overwhelming local governments and (b) speed up actual new housing production.

A. Lessons from Other States

- State agencies should readily offer technical guidance to ensure localities comply with the law.
- Expand third-party standing to improve accountability and ability to enforce housing targets.
- Impose data-based growth targets for credibility and buy-in.

1. Provide Proactive State Guidance and a Flexible Menu of Housing Growth Strategies

Local housing plans are a locality's publicly released housing strategy, meant to be read and understood by residents, elected officials who direct resources, and local authorities responsible for managing the programs and policies outlined in the plan. Local advocates, housing developers, and implementation partners can also use these plans to better understand a locality's housing needs, as well as the actions local authorities are taking to meet those needs.

The VA Statewide Housing Targets bill (HB 2641) aims to accomplish these goals using two seemingly simple requirements:

1. Impose a 'one-size fits all' housing growth target of 1.5% every year for five years,
2. Develop a housing growth plan that includes at least three options from a menu of housing growth strategies.

By providing flexibility around local implementation, the bill is more politically palatable and simpler than other comparable programs (i.e., California – regional allocation, New

Jersey – fair share). However, these qualities do not necessarily make it a modest policy choice. Housing plans–and housing targets programs, in general–notoriously require greater local effort and often take longer to implement. Even without the need to calculate a specific locality's housing needs, allowing localities the freedom to choose where and how to rezone requires years of effort and resources that may exceed a local government's capacity.

There is also concern that allowing localities to pick and choose strategies for their housing plans could hinder state efforts to pass broader zoning reforms. However, a well-designed menu focused on proven, implementable measures like upzoning, eliminating parking minimums, or reducing lot-size requirements ensures all localities take meaningful action. This approach also prevents localities from choosing strategies that are, at best, unmeasurable and, at worst, completely ineffective.

The complexity of a housing program has a significant impact on the ease of its implementation. It is important to have strategies that are actionable (i.e., rezoning land, eliminating requirements) rather than inquisitive (i.e., assessing housing needs). But strategies that rely too much upon local government involvement, like rezonings, require extensive planning. In order to avoid overly taxing local resources, the state must provide clear and proactive guidance to communities. Model codes and offers of technical assistance can streamline implementation and reduce the need for punitive measures later. State leadership of this scope and magnitude will help local governments meet targets without excessive burden and strengthen the Attorney General's ability to defend the law in court.

2. Expand Third-Party Standing to Ease Burdens on Developer

Standing is critical for enforcement, especially when there is a pathway for appeal. Land-use cases fall under the domain of state law and are thus brought in state court, unless they involve the U.S.Constitution and the Federal Fair Housing Act. The standard state zoning enabling act has been adopted at one point or another by all 50 states, providing that "[a]ny person or persons… aggrieved" by a land-use decision may appeal that decision to "a [state] court of record." State statutes rarely define what constitutes an "aggrieved person," and defining what "aggrieved person" can appeal a zoning board's decision has largely been left to the courts.

In most state courts, "third-party standing" is the exception, not the rule. This limitation by state doctrines can and does hinder enforcement actions because it limits the ability to compel a locality to follow state law to the landowner or project applicant, most of whom

are hesitant to bring suit. Meanwhile, standing rules tend to allow neighboring landowners to bring suit to prevent a housing development, essentially tipping the scales in their favor.

Expansion of standing to third-party organizations allows for another pathway of enforcement, one that does not strain or ruin business relationships between developers and local governments. This change aligns with the California model, where YIMBY Law has been enforcing state housing laws since 2019. In 2016, a change to California's Housing Accountability Act (HAA) granted housing organizations "third-party standing," giving them the right to compel the government to follow the law–usually through project approval–even if the organization itself does not receive the 'injury'.

This will not reduce all burden on the developer, as appeals–no matter who initiates one–will take time and stall construction of the project. Thus, it becomes important to balance the opportunity to appeal a local decision with the increased financial costs that will result from further delays.

3. Adopt Realistic, Data-Driven Growth Targets

While there is no single correct formula for setting housing targets, state lawmakers who want their housing targets/"fair-share" programs to increase the housing supply in high-demand, supply-constrained markets should employ a formula that does not perpetuate the shortage or diminish market-rate production. Achieving this goal requires a delicate balance of developing targets that allow for a substantial increase in production but are not politically infeasible.

The effectiveness of housing target laws depends heavily on how targets are calculated. There are currently two kinds of housing targets in use today:

1. Housing-stock growth models (California, Oregon, New Jersey) which calculate housing needs based on projected demographic and economic shift;
2. Minimum proportion models (Massachusetts, Rhode Island, Connecticut, and Illinois), which require a certain share of deed-restricted affordable housing (usually 10% of total housing stock).

Maryland's attempt to use a "jobs-housing" balance combined both models, in a way. The jobs-housing balance was calculated by comparing housing stock required to the total number of jobs in the region. The requirement of 1.5 jobs per housing unit serves the minimum proportion which shifts depending on job and economic growth in the area.

Each approach has disadvantages. Growth-based models can underestimate the real need for housing because overly restrictive land use and zoning drive down the growth rates.

Minimum proportion models can also be problematic because they could incentivize cities to hinder the development of market-rate housing. Fewer market rate homes results in needing fewer affordable homes to hit that 10% mark. This leads to a one-track approach to a housing shortage that does not allow for naturally occurring affordable housing and hinders the development of all types of housing.

A more effective formula would balance affordability goals with total housing production, factoring in "present need," such as low vacancy rates, limited new construction, high rate of cost-burdened households, etc.[1] States that use regional allocation formulas or data-driven forecasting–such as California's Regional Housing Needs Allocation or New Jersey's Fair Share system–achieve better alignment between policy goals and market realities.

Virginia's uniform 1.5% annual growth target risks being perceived as arbitrary. A formula better supported by data and/or determined by housing and economic policy experts would be more credible and politically sustainable.

B. Strengthening Enforcement and Closing Loopholes

- Extend enforcement authority beyond the Housing Approval Board (HAB) to DHCD and the Attorney General's Office to ensure noncompliance has consequences.
- Staff the Housing Approval Board and develop objective criteria for reviewing housing projects.

Even the best-designed policy will face obstacles that hinder its effectiveness. Localities will often–if not always–look to minimize the burden on themselves or their agencies. A strong policy anticipates this noncompliance and includes clear language and enforcement mechanisms in the legislation to combat it.

1. Clarify Enforcement Standards and Define 'Good Faith' Compliance

Under the VA Housing Targets bill, the Housing Approval Board (HAB) will not overturn the local decision if a locality has "in good faith" implemented at least three housing strategies from the state-provided menu and has an approval rate of at least 75%. However, the bill does not define what constitutes "good faith," leaving it to the Director of DHCD to

[1] Elmendorf, C. (2025, January). *Considerations for State "Fair Share" Housing Frameworks*. Mercatus Center. https://www.mercatus.org/research/research-papers/considerations-state-fair-share-housing-frameworks

determine which criteria demonstrate “good faith” implementation. Without establishing clear standards, “good faith” will be a subjective determination by the HAB.

The bill also lacks clarity on how, outside of the HAB, the legislation will be enforced if a locality refuses to comply. While the HAB could overturn a locality's land use decisions and automatically approve eligible projects, the HAB is not immune from mistakes or bad decision-making. To strengthen enforcement, DHCD should have the authority to declare a locality out of compliance and coordinate with the Attorney General’s office to enforce the law. This mechanism would provide a clear consequence for noncompliance and incentivize localities to work towards compliance.

2. Empower and Staff the Housing Approval Board

A board operating independently from the public and political pressures faced by City Councils and other local government authorities is one of the best tools to ensure approval of new and necessary housing. Local authorities often exercise broad discretion when approving or denying housing projects, meaning they can be heavily influenced by voters. A specialized board with expertise in land use can focus on whether projects meet legal, health, and safety requirements rather than vague concerns about “traffic” and “infrastructure capacity.”

The HAB’s “outcomes-oriented” approach also matters. If the HAB determines that a locality has not met a required growth target, but has “in good faith implemented” three housing growth strategies **and** “has not rejected more than 25%” of new housing proposals (as in has a 75% housing project approval rate), the HAB must not overturn the local decision. This structure allows the focus to remain on compliance with strategies and approvals instead of strictly achieving numerical targets.

C. Projected Impact and Implementation Considerations

- Housing targets programs can take years to show definitive results, making proper implementation that much more important.
- Proper implementation should include periodic assessments of localities’ compliance to reduce pressure on the Housing Approval Board (HAB).

Even after implementing a housing targets program, noticeable changes in housing supply and markets may take several years. This delayed impact presents political risks. Legislators will be hesitant to continue passing statewide pro-housing legislation if the effects are unclear or if results are expected at a later date. It is therefore critical to

communicate both the expected short- and long-term effects of policy changes. A program that, if implemented correctly, can bear fruit in the following five years, still holds value.

According to the Virginia DHCD's Statewide Housing Study from 2022, the state's annual housing production has significantly decreased since its peak in 2004.[2] Housing supply growth (8.7% since 2008) has also not kept pace with population growth (10.2% since 2008). Many low-income renters remain cost-burdened, with 80% of renters earning below 50% AMI. To eliminate this cost burden, the state would need to build over 300,000 affordable apartments.[3] By 2040, Virginia is predicted to reach a population of 10 million, requiring at least 25,000 new homes annually to meet that projected growth. While growth will be concentrated in the urban crescent–Northern Virginia, Richmond, and Hampton Roads–other localities must also increase housing production to meet growing housing needs.

Passing state legislation is typically the first in a long list of steps. Localities often take years to fully incorporate new rules that increase housing development. In California, localities have an eight-year cycle to identify development sites and enact policies and programs. In Illinois, the new amendments to AHPAA gave Non-Exempt Local Governments (NELGs) around two and a half years (early 2023 to June 2025) to submit housing plans in compliance with the law, with appeals to the State Housing Appeals Board (SHAB) starting six months later on January 1, 2026.

Under the VA Housing Targets bill, project applicants cannot appeal a decision to the Housing Approval Board (HAB) until after a five-year period, when localities are expected to meet their required housing growth targets. Therefore, the bill will only be as strong as the HAB's ability to assess compliance. Without annual enforcement checkpoints annually, there is considerably more pressure on the HAB to make the correct findings at the end of the five-year period and less pressure on the localities to actually work towards their housing goals.

[2] Annual housing production: 63,215 building permits in 2004 versus 33,813 in 2020. *U.S. Census Bureau, Annual Building Permit Survey.*

[3] A person is considered cost burdened if they spend more than 30% of their gross income on housing costs.

IV. Comparing Housing Targets Programs Nationwide

Features of Housing Target Laws	VA Housing Targets Bill	CA Housing Elements (HE) and RHNA	MA Comprehensive Permit Act, Chapter 40B	NJ *Mount Laurel* Doctrine	IL Affordable Housing Planning and Appeals Act (AHPAA)	MT Land Use Planning Act (SB 382)	MD Housing for Jobs Act (HB 503)
Baseline Legal Requirement(s)	Every jurisdiction must develop and adopt a housing plan that includes a number of local policies from a menu of housing growth strategies One-time general growth target of 7.5% (1.5% growth per year) for 5 years	Every jurisdiction must develop and adopt a housing plan (Housing Element) that outlines specific strategies it will use to meet its assigned housing needs allocation Occurs on an 8-year cycle basis	Allows "qualified developers" (i.e., project applicants, non-profit organizations, and local housing authorities) to apply to a local Zoning Board of Appeals (ZBA) for a Comprehensive Permit to build low and moderate income housing	Every jurisdiction must provide their fair share of affordable housing and submit housing plans showing how they will produce affordable homes Homes must be deed restricted to remain affordable for at least 30 years.	All jurisdictions greater than 1000 residents must have at least 10% of their housing stock designated affordable Every five years, the Illinois Housing Development Authority (IHDA) compiles a list of non-exempt local governments (NELGs), which do not meet that threshold Every NELG must create and submit affordable housing plans that include the total number of units needed to meet the 10% threshold	Narrowly applies to cities with populations over 5,000 located in counties with greater than 70,000 residents; other jurisdictions may opt in Cities must complete a Land Use plan and Future Land Use Map–reviewed every 5 years–that analyze current conditions and 20-year projections for: housing, local services & facilities, economic development, natural resources, environment, hazards, and land use	Only affects jurisdictions with a housing infrastructure gap, meaning there are more than 1.5 jobs per housing unit Affected jurisdictions will be obligated to approve new housing units unless there's a specific adverse impact that outweighs the community's need for housing
Calculation Methodology	Does not employ a specific methodology that allocates housing needs to specific regions All jurisdictions must meet a 7.5% growth target	Three steps: (1) HCD issues a Regional Determination of housing need (total # of homes needed during the HE cycle) (2) Total housing need is split into four income categories	Regional need for low and moderate income housing is not clearly defined in the statute, but jurisdictions must have at least 10% of their housing stock set aside for low and moderate-income households	Fair share housing obligation is recalculated every ten years ("rounds") by the Department of Community Affairs (DCA) DCA projects how many additional low and moderate income households will be added to the	Does not employ a specific methodology that allocates housing needs to specific regions All jurisdictions must meet a 10% threshold of affordable housing stock	Does not require a specific housing goal; instead, local governments that know they may not meet their housing needs can determine how many housing units may be "rehabilitated, improved, or developed" within the jurisdiction over the 20-year planning period	Determines regional housing infrastructure gap by comparing housing stock to the total number of jobs in the region Local housing infrastructure gaps divvy up the regional housing infrastructure gaps

		(3) Regional governments (COGs) allocate housing needs to local jurisdictions		state population, then allocates that projection to give every jurisdiction a specific requirement DCA's methodology focuses on creating affordable homes in historically exclusionary communities, along transportation corridors, and near employment opportunities			to local jurisdictions by their percentage share of regional jobs
Administration and Compliance	No system for reviewing submitted plans outside of when a local decision is appealed by a developer The Housing Approval Board determines compliance during the appeals process	HCD reviews and certifies each jurisdiction's HE and provides technical assistance HCD can also deem a jurisdiction noncompliant if its housing element has not been properly submitted/adopted or does not follow state law	Zoning Board of Appeals (ZBA) oversees the comprehensive permit process, with the Housing Appeals Committee (HAC) stepping in for appeals ZBA cannot impose requirements that are: (1) Stricter than what is generally applied to other types of residential development (2) Addressing a pre-existing condition affecting the locality (3) Disproportionate to the impact of the project on the jurisdiction	Jurisdictions must file resolutions to adopt their affordable housing obligations and submit housing plans.	IHDA notifies NELGs they are subject to the AHPAA and must create and adopt an Affordable Housing Plan within 18 months of notification and submit the plan to IHDA within 60 days of adoption. IHDA evaluates these plans for compliance. Statutorily, these plans must include various items, including (1) identification of land and buildings within the community that can be used to create affordable housing for both owners and renters and (2) incentives that can be used to attract affordable housing developers	The land-use plan must include analysis of existing and projected housing needs, available sites that can be used for such housing, analysis of constraints on housing development, and progress towards needed housing Zoning regulations allowed by a local government must include a minimum of five strategies from a menu of strategies that encourage the development of housing No apparent statewide system for reviewing these plans	Reductions in gaps occur through: ● Standard reductions – 1 housing unit reduces local housing gap on one-to-one basis; and ● Enhanced reductions – 1.5 units achieved per unit developed if ○ One (1) affordable housing unit built (deed-restricted to be affordable to a household earning 60% or less of the

			HAC hearing process has an **expedited timeline**. Constructive approval of a project can be granted when either: • A public hearing is not held within 30 days of receiving a comprehensive permit application • A ZBA decision is not filed with the city or town clerk 40 days following the close of the public hearing		Jurisdictions that have been NELGs in previous cycles must also include a summary of actions taken to implement the previous plan and a summary of progress made toward achieving the plan's goals		area median income for a period of at least 40 years.) ○ One unit built within 0.75 miles of a passenger rail station Denying a housing development requires a specific, written reason for denial and must comply with allowable denials
Enforcement Pathway(s)	Noncompliance = *possible* appeal to Housing Approval Board • However, jurisdiction less likely to win an appeal if it has not met the annual growth target and approves less than 75% of new housing	Noncompliance = **Builder's Remedy** Jurisdiction cannot use zoning or general plan standards to deny a housing project that meets the affordability requirements (*at least 20% of units are affordable to low-income households*)	A jurisdiction with less than 10% of its housing stock set aside for low and moderate income households = open to appeals through the HAC	Builder's remedy lawsuits are common, which allow for court-ordered rezoning and development approvals of the proposed project	NELG designation = open to appeals through the State Housing Appeals Board If a qualifying housing proposal (i.e., at least 20% affordable housing) is denied or approved with conditions that render it infeasible by the locality, the project sponsor is entitled to appeal to the State Housing Board within 45 days of the decision	Any final administrative land use decision can be appealed by the applicant or "any aggrieved person" to the planning commission When every part of the administrative appeal process has been exhausted, the decision can be appealed at the district court level	If denial of a housing proposal is not allowable, an applicant may appeal to a Circuit Court judge to enforce the law

Appeals Board	Creates a Housing Approval Board (HAB) that will have the authority to overturn a jurisdiction's decision and approve a project	No statewide appeals board; local decisions can be appealed to state court	HAC can make determinations on appeals from comprehensive permit denials or conditional approvals by the ZBA; can only overturn local decisions in jurisdictions that do not meet the safe harbor provisions as described below	There is no appeals board. Appeals of local decisions normally made in court	Establishes a State Housing Appeals Board (SHAB), consisting of seven members appointed by the governor, that can order a jurisdiction to issue all approvals and permits necessary for a development to move forward	There is no designated appeals board; rather, the planning commission will hear initial appeals of land use decisions	There is no appeals board; appeals are heard in Circuit Court
Safe Harbors	There are considerations for a jurisdiction that (1) has applied housing growth strategies in "good faith" and (2) has a 75% approval rate of new housing	A compliant Housing Element protects jurisdiction from the Builder's Remedy	There are conditions under which a ZBA's decision to deny a comprehensive permit will qualify as "consistent with local needs" (a.k.a. Safe harbors) ● Ex. Number of low or moderate income housing units in the city or town is more than 10% of the total number of housing units Jurisdictions that meet the above safe harbors can submit an approved Housing Production Plan (HPP), have it certified by the Department of HCD, and be immune to appeal for up to 2 years In addition, jurisdictions are also eligible for a	Jurisdictions with approved housing plans that comply with those housing plans typically receive immunity against developer lawsuits	Meeting the 10% affordable housing threshold is the best way to prevent the overturn of a local decision	There do not appear to be any safe harbors that protect the affected cities from administrative appeals or lawsuits	Denials must be related to specific adverse impact - examples include: ● Insufficient school capacity (excess of 100% capacity at school in attendance area or adjacent schools); ● Inadequate water or sewer facilities; and ● Necessary for compliance with state or federal law

			safe harbor from the HAC appeals process if they show that they ● increased the supply of affordable housing units by at least 1% over the past 24 months; or ● demonstrate a 0.5% increase in units over the previous 12 months				
Standing for appeals and lawsuits (outside of housing project applicant)	<u>Can appeal to HAB</u>: (1) "A potential resident of such residential development" (2) "An organization whose mission is to advocate for such residential developments" (presumably YIMBY Law is included)	<u>Can bring a lawsuit</u>: (1) Eligible residents of a housing proposal (2) Third-party nonprofit organizations (e.g., YIMBY Law)	No third-party standing to bring appeals to the HAC	No third-party standing to bring lawsuits, but the Fair Share Housing Center–an independent non-profit organization involved in enforcing the *Mount Laurel* doctrine–has standing to be involved in *Mount Laurel* proceedings, either through its own suits or monitoring and supporting developer lawsuits	Starting Jan. 2026, the class of persons who can bring appeals will be expanded to (1) a person who would be eligible to apply for residency in the proposed affordable housing development; and (2) a housing organization whose geographic focus area includes the municipality, or county if in an unincorporated area, where the proposed affordable housing development is located (such as YIMBY Law)	Only project applicants, planning administrators, and any "aggrieved person" can appeal final land use decisions "Aggrieved person" limited to someone who suffers a tangible injury or harm as a result of the decision	Only builders/project applicants can appeal to Circuit Court and the decision is limited to whether the denial was legal, meaning whether the law was applied as advertised

V. Housing Targets Programs in Other States

A. California: Housing Element Law and Regional Housing Needs Allocation (1969)

Passed in 1969, California's Regional Housing Needs Allocation (RHNA) and Housing Element law works to ensure cities and counties plan for enough housing to accommodate all economic segments of the community.[4] Jurisdictions are issued a regional determination of housing need by the Department of Housing and Community Development (HCD). The regional determination is the total number of homes needed during the respective jurisdiction's Housing Element cycle. Jurisdictions must then create a housing plan that illustrates what strategies they will use to meet their housing goals.

1. Key Components of the Housing Elements Law and RHNA

a. Baseline Legal Requirements

Every jurisdiction in the state of California must develop and adopt a housing plan (a.k.a., a Housing Element) to meet their assigned housing needs allocation. The Housing Element is part of the state-required General Plan–similar to comprehensive plans in Virginia but more policy-focused–and it must demonstrate what actions the jurisdiction will take to meet their assigned Regional Housing Needs Allocation (RHNA), including potential rezoning programs. Housing Element updates must be submitted to HCD every 8 years.

b. Calculation Methodology

There are two key steps to determining and allocating a jurisdiction's RHNA.[5] First, California's Department of Housing and Community Development (HCD) issues a regional determination of housing need, which is the total number of homes needed during the 8-year Housing Element cycle. The total housing need is split into four income categories.[6]

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[4] California Department of Housing & Community Development. (2025). *Housing Elements*. https://www.hcd.ca.gov/housing-element

[5] California Department of Housing & Community Development. (2025). *Current Housing Planning Process*. https://www.hcd.ca.gov/rhna/process

[6] The four income categories are "Very Low" (0-50% AMI), "Low" (51-80% AMI), "Moderate" (81-120% AMI), and "Above Moderate" (> 120% AMI). California Department of Housing & Community Development. (2025). *Projected Housing Needs - Regional Housing Needs Allocation.* https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/projected-housing-needs-regional-housing-needs-allocation

Regional determination considers both measures of existing housing needs and forecast population growth. Then regional governments, known as Council of Governments (COGs), develop a methodology to allocate that housing need to local jurisdictions. Beginning in the 6th cycle, HCD was given the authority to review the draft allocation methodology developed by each COG to determine whether it furthers the five statutory objectives of RHNA.

c. Administration and Compliance

California HCD reviews each jurisdiction's housing element and certifies a jurisdiction's compliance with state law. HCD also provides technical assistance whenever possible to help localities remain in compliance. Should HCD find that a jurisdiction's housing element has not been properly submitted or adopted, that jurisdiction will be formally deemed "out of compliance." Additionally, a jurisdiction can also be found to be out of compliance if their housing element does not follow state law, which is a legal determination that may be made by HCD or a court.[7]

Furthermore, concerned parties can submit requests through the online Housing Accountability Unit portal asking HCD to review potential violations . HCD will evaluate issues on a case-by-case basis and may consult with any local government, agency, group, or person for context or clarification. If HCD finds a need for additional action, it will then either issue a letter of inquiry, a letter of technical assistance, or a letter requesting corrective action. Typically, localities must respond in 30 days.

Based on the response, HCD could either issue a letter stating that the locality has responded and/or has taken corrective action. If the locality fails to comply, HCD may then decertify the jurisdiction's housing element, and if necessary, HCD will take enforcement action in conjunction with the Attorney General's Office by filing lawsuits, securing stipulated judgments and settlement agreements, or filing amicus briefs.

d. Enforcement Pathway(s)

When deemed "out of compliance," a jurisdiction cannot use its zoning or general plan standards to deny a housing project that meets the affordability requirement (at least 20% of units are affordable to low-income households). This is known as the Builder's Remedy.[8]

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[7] Assembly Bill No. 1886 (Alvarez, 2024), adding Gov. Code, §§ 65585.03 and 65589.55.

[8] *Consistent interpretation of the Builder's Remedy in* Cal. Housing Defense Fund, et al. v. City of La Ca ada Flintridge *(Super. Ct. L.A. County, Mar. 4, 2024, No. 23STCP02614) and* Shelby Family Partnership, L.P. v. City of Goleta, et al. *(Super. Ct. S.B. County, Feb. 26, 2025, No. 24CV000548)*. (2025, June 5). Retrieved from https://oag.ca.gov/system/files/media/legal-alert-oag-2025-03.pdf

In addition, the state of California permits eligible residents of a housing proposal as well as third-party nonprofit organizations to bring lawsuits against localities that violate state housing laws.[9] This means parties outside of the project applicant can sue to enforce housing laws like the Housing Accountability Act (HAA) and Housing Element law that obligate localities to approve a housing project.

2. Impact of Housing Element Law and RHNA

The Housing Element Law also requires each jurisdiction to prepare a Housing Elements Annual Progress Report (APR) on the jurisdiction's status, which describes in detail the locality's progress toward implementing its housing element. The report includes data on all housing development applications, entitlements, building permits, and completions; and the summation of these reports is hosted and publicized on the HCD website.

Statewide, jurisdictions exceeded their 5th cycle (2015-2023) RHNA production goals for above moderate-income households (131.2%) but fell far short for very low, low, and moderate-income households. As a result, almost 300,000 homes were still needed to meet the state's 5th cycle RHNA goals as a whole, and in order to meet the income affordability goals, around 450,000 additional homes would have been needed.

Statewide 5th Cycle RHNA Progress by Income Group (HCD Dashboard)[10]

Income Group	5th Cycle Housing Production Goal	Permits issued through 5th Cycle RHNA (Apr. 2013 - Mar. 2024)	% of Production Goal Met
Very Low-Income (<50% AMI)	277,891	49,341	17.8%
Low-Income (50-80% AMI)	185,129	49,936	27.0%
Moderate-Income (80-120% AMI)	204,481	115,647	56.6%
Above Moderate-Income (>120% AMI)	486,926	638,896	131.2%

[9] Cal. Gov't Code § 65589.5(k) (giving standing to applicants, eligible residents, and housing organizations that file public comment on a specific project).
[10] California Department of Housing & Community Development. (2025). *Housing Element Implementation and APR Dashboard*. https://www.hcd.ca.gov/planning-and-community-development/housing-element-implementation-and-apr-dashboard

For the 6th Cycle, 2,500,570 homes are needed to meet the state's housing production goals, 58% of which must be very low, low, or moderate-income housing (around 1,450,000 homes).[11]

3. Comparing RHNA and VA Housing Targets Bill

The two policies differ most in what happens after the adoption of housing plans. Rather than employing the Builder's Remedy, the VA Housing Targets bill establishes a Housing Appeals Board. This appeals board has the authority to overturn a locality's decision–presumably a denial–and approve a project; however, there are considerations for a locality that has applied housing growth strategies in "good faith" and has approved a certain percentage of new housing proposals in the past five years.

This difference in approach makes Virginia's version much weaker, with the Builder's Remedy providing a "by-right" approval process for projects meeting an affordability requirement while the Housing Approval Board simply allows for the *possibility* of overturning the local decision. The California Builder's Remedy is meant to speed up entitlements and remove additional reviews, unlike the Virginia HAB appeal process. The Builder's Remedy skips over these often discretionary hurdles by requiring project approval so long as a project meets the affordability requirement.

Both the CA Housing Elements law and the VA housing targets bill allow for greater opportunity to hold jurisdictions accountable to the law by authorizing third-party nonprofit advocacy groups to appeal local decisions. Both reduce the need for developer compromise, allowing housing projects to be built as proposed (i.e., not having to reduce the number of units). Whether the expansion of standing in Virginia's version will be enough to offset the additional review required under an appeals board remains to be seen.

[11] California Department of Housing & Community Development. (2025). *Housing Element Implementation and APR Dashboard - Regional Housing Needs Allocation (RHNA): Overview*. https://www.hcd.ca.gov/planning-and-community-development/housing-element-implementation-and-apr-dashboard

B. Massachusetts: Comprehensive Permit Act, Chapter 40B (1969)

Preceding California's efforts, Massachusetts passed its own housing targets law, known as the Comprehensive Permit Act (or Chapter 40B)[12] in 1969. This law is intended to improve construction of low and moderate income housing, particularly in suburban localities, by establishing a consolidated local review and approval process for projects where at least 20-25% of the units have long-term affordability restrictions. The process allows the local Zoning Board of Appeals (ZBA) in each city and town to make binding decisions that encompass all local ordinances or bylaws and regulations. In certain circumstances, the ZBA's decision on a comprehensive permit may be appealed to the state Housing Appeals Committee (HAC), which can affirm, modify, or overturn local decisions. While the law does not explicitly contain a housing targets requirement, it does codify an appeals process for projects in municipalities that have not met their fair housing goals (*i.e.,* less than 10% of their housing stock is allocated for low and moderate income households).

1. Key Features of Chapter 40B

a. Baseline Legal Requirement

In Massachusetts, Chapter 40B allows for streamlined permitting, appeals to a state housing committee (the Housing Appeals Committee), and exemptions to state housing committee appeals. There is technically no baseline legal requirement; however, a locality's land use decisions could be protected from appeal if the number of low or moderate income housing units in its jurisdiction is more than 10% of the total number of housing units reported in the most recent federal (decennial) census.

b. Calculation Methodology

In the regulations issued by the Department of Housing and Community Development (DHCD) to administer Chapter 40B, "housing need" is defined as "the regional need for *Low and Moderate Income Housing* considered with the number of Low Income Persons in a municipality affected."[13] "Regional affordable housing need" is not clearly defined in

[12] MassHousing. (2025). Planning & Programs - Chapter 40B & MassHousing. *About Chapter 40B.* https://www.masshousing.com/en/programs-outreach/planning-programs/40b; Barrett, J. (2017, March). *Chapter 40B Handbook for Zoning Boards of Appeal.* Massachusetts Housing Partnership. Retrieved from https://www.mhp.net/assets/resources/documents/Ch.-40B-Handbook-for-Zoning-Boards-of-Appeal.pdf

[13] 760 Code Mass. Regs. § 56.02 (2012) (emphasis added).

Chapter 40B[14], but jurisdictions must have at least 10% of their housing stock set aside for low and moderate-income households. Chapter 40B defines "low or moderate income housing" as "any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization."[15]

c. Administration and Compliance

There are five stages to a Chapter 40B project, four of which are under the purview of a subsidizing agency: MassHousing, MassDevelopment, the Executive Office of Housing and Livable Cities (EOHLC), and the U.S. Department of Housing and Urban Development. The four stages overseen by subsidizing agencies are project eligibility (site approval), final approval, construction and occupancy, and post-occupancy oversight. Comprehensive permitting–which follows the project eligibility stage–is the only stage under the purview of the local Zoning Board of Appeals[16], and if a decision is appealed, purview shifts to the Housing Appeals Committee.

The law allows "qualified developers"–meaning project applicants, non-profit organizations, and local housing authorities–to apply to a local Zoning Board of Appeals (ZBA) for a Comprehensive Permit to build low and moderate income housing. The ZBA has the authority to grant all approvals that may trigger separate applications under local ordinances, as well as the authority to grant waivers of local requirements requested by the developer if needed to streamline permitting for the proposed project.

Any local ZBA that has received a comprehensive permit application is eligible to request help from the Massachusetts Housing Partnership's Chapter 40B Technical Assistance Program. In addition, there are several sources of Chapter 40B training availability to ZBAs, such as a statewide Chapter 40B conference held every year by the DHCD.

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[14] Twardowski, T. (2013, March). *Chapter 40B cases address the regional need for affordable housing standard*. Retrieved from https://massbar.org/publications/section-review/section-review-article/section-review-2013-march/section-review-chapter-40b-cases-address-the-regional-need-for-affordable-housing-standard

[15] G.L. c. 40B, § 20.

[16] Developers cannot apply for a comprehensive permit unless they have received a written Project Eligibility determination from one of the four subsidizing agencies.

When reviewing an application for a comprehensive permit, the local ZBA can only impose requirements that are clearly under its jurisdiction.[17] The local ZBA cannot impose requirements that are: (1) stricter than what is generally applied to other types of residential development, (2) addressing a pre-existing condition affecting the locality, or (3) disproportionate to the impact of the project on the locality. In effect, the local ZBA cannot single out low or moderate-income housing.

The hearing process involves procedures similar to those for special permits but with significant timeline differences. For example, constructive approval of a project can be granted (meaning approval of the application as submitted by the HAC) when either a public hearing is not held within 30 days of receiving a comprehensive permit application or when a ZBA decision is not filed with the city or town clerk 40 days following the close of the public hearing.

The HAC appeals process is limited to projects in localities that have failed to meet their fair housing goals, defined as having less than 10% of the housing stock set aside for low and moderate-income households.

d. Enforcement Pathway

1. Appeals Board – Housing Appeals Committee (HAC)

Chapter 40B also gives the Massachusetts Housing Appeals Committee (HAC) authority to make determinations on appeals from comprehensive permit denials or conditional approvals by the ZBA. The HAC can only overturn local decisions in localities that do not meet the safe harbor provisions as described below.

If a locality does not meet one of the statutory requirements, it may only make a denial "consistent with local needs." That consistency means balancing affordable housing needs against local health, safety, open space, and site and building design concerns. The HAC has established high standards for a ZBA to demonstrate consistency with local needs, which are very difficult to meet. If the HAC overturns a denial by the ZBA, the ZBA must then issue a permit to the project applicant, which substantially reduces its leverage to negotiate a better development for the locality.

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[17] In 2010, the Supreme Judicial Court issued a key decision in the *Zoning Board of Appeals of Amesbury vs. Housing Appeals Committee*, further clarifying the ZBA's role and limiting the conditions a ZBA can impose in a comprehensive permit to the types of conditions that city or town boards typically impose on special permits and other local approvals, e.g., building construction and design, siting, planning and zoning, public health, public safety, and environmental protection.

However, an appeal of a ZBA's conditional approval of a permit involves a different standard of review by the HAC. Here, the developer must show that the ZBA's total conditions for submission and approval make the project economically infeasible. If the developer can prove that, the locality then must show that the conditions are consistent with local needs.

2. Safe Harbors

'Safe Harbors' are the conditions under which a ZBA's decision to deny a comprehensive permit will qualify as "consistent with local needs," meaning the denial cannot be overturned by the HAC. These conditions are defined as:

1. The number of low or moderate income housing units in the city or town equaling more than 10% of the total number of housing units reported in the most recent federal (decennial) census
2. Low or moderate-income housing existing on sites comprising 1.5% or more of the locality's total land area zoned for residential, commercial, or industrial use (DHCD has guidance on whether communities meet this threshold)
3. The comprehensive permit being considered by the ZBA would lead to construction of low or moderate income housing on sites comprising more than 0.3 of 1% of the locality's total land area zoned for residential, commercial, or industrial use, or 10 acres, whichever is larger, in one calendar year.

Despite these clear requirements, cities and towns that fail 'safe harbor' standards can still submit an approved Housing Production Plan (HPP) and have it certified by the Department of Housing and Community Development, which would allow them to be immune to an appeal for 1-2 years. If a jurisdiction shows that they increased the supply of affordable housing units by at least one percent over the previous 24 months, or if they have an approved HPP and demonstrate a half percent increase in units over the previous 12 months, they are eligible for a safe harbor from the appeals process.

2. Impact of 40B on Housing Production

Chapter 40B has significantly increased the total housing supply in the state, not just affordable housing. In 1972, shortly after Chapter 40B was enacted, only **four** of Massachusetts's 351 cities and towns had 10% or more of their housing stock identified as affordable to low and moderate-income households; by 2012, that number had grown

10x.[18] Some municipalities of note that have reached the 10% goal are Concord, Lincoln, and Lexington–three Boston suburbs that rank among the 15 most affluent municipalities in the state. Based on 2024 data, around 70,000 total units have been produced under the law–35,000 of which are restricted to households making less than 80% AMI–and this averages out to almost 1500 units every year.[19]

3. Comparing MA's Chapter 40B v. VA Housing Targets

The VA Housing Targets bill functions similarly to Chapter 40B–though not limited to affordable housing–by having a municipality develop a housing growth plan (an HPP in 40B's case) and allowing denied project applicants to appeal to a Housing Approval Board (HAB). However, when deciding whether to overturn a local decision, the VA bill is less explicit regarding what the HAB considers to be a locality acting in "good faith," while the appeals process in 40B examines specific data, such as whether a locality shows it increased the supply of affordable housing units by at least 1% over the last two years or whether a locality has an approved HPP and demonstrate a 0.5% increase in units over the last year. Leaving a "good faith" determination too vague and not establishing any clear benchmarks to measure localities against could result in greater opportunity for VA localities to shirk their obligations. Localities could simply claim "good faith" for approving enough housing to hit 0.5% of the 1.5% annual growth target and therefore, the HAB should not overturn a project denial. **Theoretically, *any* action, no matter how minor or possibly ineffective, could be enough for a local government to show "good faith" implementation of one of the housing growth strategies.**

C. New Jersey: The *Mount Laurel* Doctrine (1975)

Since the *Mount Laurel IV* decision in 2015–along with a landmark new affordable housing law passed in 2024–the *Mount Laurel* system is working much better than ever before. But it took decades to reach this point. In 1975, the New Jersey Supreme Court ruled that all New Jersey municipalities are obligated to provide their "fair share" of affordable housing, which came to be known as the *Mount Laurel* Doctrine. This entails both creating new

[18] Reid, C. K., Galante, C., & Weinstein-Carnes, A. F. (2016). (rep.). *Borrowing Innovation, Achieving Affordability: What We Can Learn From Massachusetts Chapter 40B*. Terner Center For Housing Innovation. Retrieved from https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/California_40B_Working_Paper.pdf

[19] Sportiche, N., Blanco, H., Daepp, M. I. G., Graves, E., & Cutler, D. (2024). *Can Fair Share Policies Expand Neighborhood Choice? Evidence From Bypassing Exclusionary Zoning Under Massachusetts Chapter 40B*. Housing Policy Debate, 35(2), 210–242. Retrieved from https://doi.org/10.1080/10511482.2024.2320131

affordable housing and rehabilitating existing affordable homes for lower-income households.[20]

However, it wasn't until 1985, with the passage of the NJ Fair Housing Act, that municipalities' obligations were codified under the *Mount Laurel* Doctrine. Decades of pushback and obstruction followed, but every locality in the state is now required to meet a "fair share" obligation, recalculated every 10 years by the New Jersey Department of Community Affairs (DCA).[21] These obligations predict the increase in low and moderate-income households within three to four county regions and, similar to California, allocate a specific requirement for affordable housing to every municipality.

1. *Key Features of* Mount Laurel[22]

a. Baseline Legal Requirement

In New Jersey, every municipality must provide their fair share of affordable housing. In its previous iteration, the law required that affordable homes have deed restrictions maintaining affordability for at least 30 years for the people and families most likely to be excluded, paired with flexible production mechanisms that also increase overall housing supply. Under the state's new affordable housing law, deed restrictions now must last at least 40 years for new affordable rental homes and 30 years for new affordable for-sale homes.

b. Calculation Methodology

The obligation to create affordable homes is recalculated every ten years in affordable housing production cycles known as 'rounds'. Each round creates a new *fair share* obligation that municipalities must meet. To calculate a town's obligation, the state's Department of Community Affairs (DCA) starts with a projection of how many additional low and moderate-income households will be added to the population of three to four-county regions of the state; it then allocates that projection to produce a specific requirement for affordable housing in every municipality.

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[20] *So. Burl. Cty. NAACP v. Tp. of Mt. Laurel, 67 N.J. 151* (1975).
[21] Fair Share Housing Center, *NJ Dept. of Community Affairs Releases Calculations For How Many Affordable Homes Each Municipality Must Allow By 2035*. https://www.fairsharehousing.org/press-release/nj-dept-of-community-affairs-releases-calculations-for-how-many-affordable-homes-each-municipality-must-allow-by-2035/
[22] Kaira, V., Manicastri, M., & Bansal, T. (2023, April). *Dismantling Exclusionary Zoning: New Jersey's Blueprint for Overcoming Segregation*. Fair Share Housing Center. Retrieved from https://www.fairsharehousing.org/wp-content/uploads/2025/06/Dismantling-Exclusionary-Zoning_New-Jerseys-Blueprint-for-Overcoming-Segregation.pdf

DCA's methodology to calculate housing obligations prioritizes affordable home construction in historically exclusionary communities, along transportation corridors, and near employment opportunities. It does this by assigning relatively higher or lower requirements for affordable housing to municipalities based on three main factors:

i. Recent growth in jobs (measured by increase in the nonresidential tax base in the municipality)

ii. Existing affordability (measured by existing income levels in the town)

iii. Vacant, developable land in areas targeted by the state for growth under New Jersey's State Plan

This methodology avoids obligations solely based on a percentage of the current size of the town's housing stock, which would result in an imbalance between towns that have produced more housing in the past vs. towns who had been successful in deterring development.

c. Administration and Compliance:

Municipalities must file resolutions to adopt their affordable housing obligations and submit housing plans that show they will produce affordable homes. They must also follow a set of minimum guidelines when proposing mechanisms to meet their obligation:

i. At least half of all affordable units must be affordable to low-income residents (below 50% of AMI based on data from the U.S. Department of Housing and Urban Development), including at least 13% set aside for very low-income residents (below 30% AMI).

ii. Additionally, at least 25% of all units must be rental units and at least half of that number must be rental units available to families.

iii. Finally, no more than 25% of the units constructed can be age-restricted units.

These criteria address the unfortunate reality that exclusionary towns will do what they can to skew their housing plans towards higher income brackets.

d. Enforcement Pathway:

The main method of enforcement has been through builder's remedy lawsuits, which are court-ordered rezoning and development approvals of a proposed inclusionary project.

While the state does not permit *broad* third-party standing, the Fair Share Housing Center, an independent non-profit organization involved in enforcement of the *Mount Laurel* doctrine, has standing to be involved in all *Mount Laurel* proceedings by either bringing its own enforcement actions or monitoring and supporting those brought by developers.

1. Safe Harbors

Towns with approved plans receive immunity to developer lawsuits and have temporary immunity while finalizing a plan for submission. Those that do not file compliant plans or refuse to comply with the plans they did file lose that immunity, leaving them open to builder's remedy lawsuits from developers. Protection from these lawsuits is a particularly powerful incentive for municipalities to comply with the process by actively working toward meeting their affordable housing requirements.

2. Challenges against Mount Laurel and recent unprecedented success

As mentioned above, the *Mount Laurel* doctrine has historically faced numerous challenges and setbacks from localities, the legislature, and even the governor. Close to the passing of the Fair Housing Act, the New Jersey's State Legislature and Governor introduced a loophole known as Regional Contribution Agreements (RCAs), which allowed localities to avoid some of their fair share obligation by paying other towns to take on as much as half of their affordable housing requirements. Notably, these payments were never sufficient to actually create affordable housing, meaning the practice further reinforced the very segregation the doctrine was intended to counteract.

Then, in 2008, the state legislature finally outlawed RCAs and strengthened the Fair Housing Act; however, this was followed by Governor Chris Christie bringing fair housing enforcement to a standstill for six years by first attempting to suspend the Council on Affordable Housing's (COAH) operations, then refusing to convene any Council meetings.

In 2015, these wrongs were righted after the Fair Share Housing Center (FSHC) challenged the Council's failure to function, resulting in the New Jersey Supreme Court's unanimous ruling to move the enforcement of the *Mount Laurel* doctrine back to the judicial system and require towns to work with FSHC to meet their affordable housing obligations. Following this 2015 victory, FSHC entered into settlement agreements with more than 340 towns, by far surpassing the amount of zoning changes implemented in the old COAH system, which at its peak only approved 121 plans in six years.

Historically, the *Mount Laurel* doctrine was upheld primarily through judicial intervention. New Jersey's landmark 2024 affordable housing law,[23] driven by Gov. Phil Murphy and legislative leadership, signaled a significant shift[24] in the political landscape of affordable housing. The new law adds teeth to the *Mount Laurel* framework by setting clear enforcement mechanisms for towns' affordable housing obligations over the next decade, thus making it harder for affluent towns to block new developments. By codifying the methodology used to determine how much new affordable housing each municipality must allow, the framework streamlines development processes for everyone involved. Thanks to the new law, the vast majority of municipalities in New Jersey are now creating far more affordable homes than any time in the 50-year history of the Mount Laurel framework.

While it can be difficult to predict the path a new law will take, the *Mount Laurel* Doctrine does provide a case study of how localities and other branches of the state government can push back against a state law. One could posit that the outright defiance from the New Jersey Legislature and Governor against *Mount Laurel* was a result of the doctrine coming from the judiciary.

3. *Impact of* Mount Laurel

Since its inception in 1975, the *Mount Laurel* doctrine has led to the creation of more than 75,000 affordable homes.[25] This impact includes over 25,000 new affordable homes and over 130,000 middle-class homes since 2015. The vast majority of this affordable housing stock has been in the form of multi-family housing. Today, more than 400,000 New Jerseyans live in homes that are a result of the *Mount Laurel* doctrine.

4. Mount Laurel *v. VA Housing Targets*

Where the VA Housing Targets bill could face the most pushback is the one-growth-target-fits-all approach. The Department of Community Affairs in New Jersey assigns relatively higher or lower requirements to municipalities based on things like job growth, existing affordability, and the amount of vacant, developable land available. At one

[23] Fair Share Housing Center. (2024, July). *NJ's New Affordable Housing Law* - Assembly Bill 4/Senate Bill 50. Retrieved from https://www.fairsharehousing.org/wp-content/uploads/2024/08/NJs-New-Affordable-Housing-Law_Fact-Sheet_Fair-Share-Housing-Center_July-2024.pdf

[24] Murphy, P. (2024, August 30). *Governor: Here's how states can make housing affordable: Opinion*. Newsweek. https://www.newsweek.com/governor-heres-how-states-can-make-housing-accessible-opinion-1945576

[25] Fair Share Housing Center. *Record 423 Municipalities Adopt Fair Housing Plans.* https://www.fairsharehousing.org/press-release/record-424-municipalities-adopt-fair-housing-plans/

point, New Jersey determined affordable housing needs based on a percentage of new development allowed instead of a fixed number. This calculation, unfortunately, was only effective in localities that were already producing substantial housing overall, falling short of the law's purpose to ensure *all* localities produced their fair share of affordable housing.

VA's Housing Targets bill also lacks a strong legal framework of enforcement. While the creation of a Housing Approval Board for appeals is better than the current system where only the bravest developers appeal project denials in court, it is still unlikely to produce housing without a specific avenue for legal recourse. It is common for a developer to choose peace (i.e., complying with a locality's requirements by changing their project) rather than bring a suit or file appeals because of the cost and politics of continued review. Not only do builders need to keep housing development costs low in order to maintain the feasibility of a project, they also need to maintain good relationships with local governing bodies to protect future business opportunities. Expanding standing to bring legal action and file appeals can alleviate this pressure and provide greater opportunity for local advocates to hold their elected decisionmakers accountable.

Under the VA bill, a locality would be exempt from appeals to the Housing Approval Board if they meet their required growth target or if they approve a certain percentage of housing projects. Even though receiving this exemption is not as easy as getting a housing plan approved (as what occurs under the *Mount Laurel* Doctrine), it is still not a "strong legal enforcement" arm and may not be an effective deterrent to localities shirking their housing target obligations.

Lastly, even if the VA Housing Targets bill passes, it is important to note that nothing is stopping a later legislature from introducing loopholes or reducing enforcement. Thus, focusing on proper implementation and enforcement from the outset becomes even more important. Holding localities accountable is more difficult if the process lacks clarity and localities become apathetic to an ineffective law.

D. Illinois: The Affordable Housing Planning and Appeals Act (2003)

Following the efforts to improve affordable housing production in Massachusetts and New Jersey, Illinois passed a state law in 2003, the Affordable Housing Planning and Appeals Act (AHPAA), which provides incentives for municipalities to increase their stock of affordable housing and consequences should they fail.[26] Similar to the Massachusetts Chapter 40B

[26] 310 Ill. Comp. Stat. Ann. 67/25.

law, the AHPAA is meant to ensure that 10% of every local government's housing stock is considered affordable housing (as defined in the Act)[27]. The law was recently amended in 2023 to allow for stronger requirements and penalties after years of insufficient housing production.

1. Key Features of AHPAA

a. Baseline Legal Requirement

Under AHPAA, every five years, the Illinois Housing Development Authority (IHDA) compiles a list of municipalities, known as Non-Exempt Local Governments (NELGs), where less than 10% of the local housing stock is considered affordable. There are currently 44 NELGs as of Dec. 15, 2023,[28] and similar to the VA Housing Targets bill, all NELGs must submit plans that include (1) the total number of units needed to satisfy the 10% threshold and (2) identification of land and buildings within the community that can be used to create affordable housing. Plans must also include one of three goals to increase affordable housing: (1) a minimum of 15% affordable units in all new local developments, (2) an increase of at least 5% in the overall percentage of affordable housing in the community; or (3) a minimum of 10% affordable housing overall in the community.

b. Calculation Methodology

At the beginning of each cycle, IHDA uses census-based income and housing cost data to estimate the amount of affordable housing in each of Illinois's 1,298 municipalities. AHPAA's definition of affordable housing includes both homes that are designed to be affordable and those that are naturally affordable. IHDA then produces a list of non-exempt local governments (NELGs), which are communities greater than >1000 residents with the lowest "share" or percentage of affordable housing (<10% of housing stock). These are the only communities that are subject to the law's planning and appeals provisions.

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[27] Rental homes are affordable if total housing costs (rent, utilities, etc.) are <30% of the annual income for a household earning 60% AMI. Owner-occupied homes are affordable if total housing costs are <30% of the annual income for a household earning 80% AMI.

[28] Cozzola, M. & Hertz, D. Kay. (2025, February). *Building an Affordable Illinois: Achieving the Vision of the Affordable Housing Planning and Appeal Act.* Impact for Equity. Retrieved from https://impactforequity.org/report/building-an-affordable-illinois-achieving-the-vision-of-the-affordable-housing-planning-and-appeal-act/

c. Administration and Compliance:

After IHDA notifies NELGs that they are subject to the AHPAA, NELGs must create and adopt an Affordable Housing Plan within 18 months of notification and submit the plan to IHDA within 60 days of adoption.[29] These plans must include:

i. A statement on the total number of units needed to surpass the 10% threshold and make the community exempt

ii. Identification of land and buildings within the community available to become affordable housing for both owners and renters

iii. Incentives to attract affordable housing developers

iv. A description of any housing market conditions, infrastructure limitations, local government ordinances (including zoning and land use ordinances), local government policies or practices that do not affirmatively further fair housing as defined in the federal Fair Housing Act, and other factors that may constrain the local government's ability to create and preserve affordable housing

v. A plan or potential strategies to eliminate or mitigate the constraints identified above

vi. One of three goals to increase affordable housing:

1. A minimum of 15% affordable units in all new local developments
2. An increase of at least 5% in the overall percentage of affordable housing in the community; or,
3. A minimum of 10% affordable housing overall in the community

vii. Proposed timelines to commence within the first 24 months after the date upon which the affordable housing plan was

[29] 310 Ill. Comp. Stat. Ann. 67/25 (c).

adopted, including actions to implement the components of the affordable housing plan

Localities previously determined non-exempt under AHPAA must also include a summary of actions taken to implement the previously submitted plan, as well as a summary of progress made toward achieving the goals of the plan.

Not only does IHDA publish the list of NELGs, it also evaluates NELG housing plans for compliance, though the IHDA's standards of review are currently unclear. If the NELG does not approve and submit a plan or does not submit a "substantially compliant" plan by the deadline, IHDA has the option of coordinating with the state Attorney General to ensure that the law is enforced.

d. Enforcement Pathway – *Appeals Board and Builder's Remedy*

If a qualifying housing proposal (i.e., a proposal that includes at least 20% affordable housing) is denied or approved with conditions that render it infeasible by the locality, the project sponsor is entitled to appeal to the State Housing Board within 45 days of the locality's decision. Starting January 1, 2026, the class of persons who can bring appeals will be expanded. Those who will be able to bring appeals are:

i. The affordable housing developer of the proposed affordable housing development;

ii. A person who would be eligible to apply for residency in the proposed affordable housing development;

iii. A housing organization whose geographic focus area includes the municipality, or county if in an unincorporated area, where the proposed affordable housing development is located (such as YIMBY Law)

These appeals will be reviewed by the State Housing Appeals Board (SHAB), an administrative body with seven members appointed by the Governor. The NELG has the opportunity to defend itself against the allegations and/or appeal its inclusion on the NELG list. If the SHAB agrees that an NELG denied/restricted development because of the project's affordable component, it will order the community to issue all approvals and permits necessary for the development to move forward. The SHAB's decision can be appealed to the NELG's Appellate Court district within 35 days.

2. Impact of AHPAA

While AHPAA has been in place for over 20 years, the last cycle (2018-2022) only resulted in 167 affordable units proposed across all 46 NELGs, and an even more disappointing total of only 183 units were ultimately built, including units proposed before 2018.[30] AHPAA's historical ineffectiveness was due to the lack of enforcement to ensure NELGs followed through with their housing plans (if they submitted one at all). In addition, the appeals board was rarely fully staffed and received no appeals to even review. However, AHPAA was revamped in 2023 to improve enforcement by requiring repeat NELGs to provide updates on whether they accomplished any of their past goals when submitting a new plan and by expanding the category of who can bring an appeal to the SHAB.

The effects of these changes are not yet clear as localities had until June 2025 to submit plans, and the appeals board has only recently been fully staffed.[31] But, if all 44 NELGs reach 10% affordability during this cycle, as many as 7,818 affordable units would be approved solely in the NELGs. According to a March 2025 report, this number would barely move the needle on Illinois'ss overall affordable housing needs, as it would only tackle around 2% of the statewide affordable rental home shortage of 293,767[32], but it could be the first step to more impactful progress. YIMBY Law is currently working with Impact for Equity and other Illinois housing organizations to track and enforce NELG compliance.

3. AHPAA v. VA Housing Targets

Housing plans under the AHPAA and those under the VA Housing Targets bill differ in their requirements, to the benefit of the VA bill. The plans submitted under the VA Housing Targets bill involve the inclusion of actual and specific housing growth policies (e.g., eliminating minimum lot size requirements, increasing building height limits, streamlined permitting for multifamily housing, etc.). AHPAA's requirements are much less stringent, allowing NELGs to brainstorm incentives the local government can use to entice affordable

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[30] Cozzola, M. (2024, January). *Navigating the Evolution of Illinois's Affordable Housing Planning & Appeal Act*. Advocacy In Action: An Impact for Equity Issue Brief. Retrieved from https://impactforequity.org/wp-content/uploads/2025/01/IFE-Issue-Brief-AHPAA.pdf#:~:text=AHPAA%20publishes%20a%20list%20of%20NELGs%20at,start%20of%20each%20cycle%2C%20and%20in%202018&text=that%20from%202018%20to%202022%20only%20167,promoted%20as%20affordable%20were%20proposed%20across%20all

[31] Housing Appeals Board. (2025). *Board and Commission Details*. https://govappointments.illinois.gov/boardsandcommissions/details/?id=cf14cb5e-2007-ee11-8f6d-001dd8068008

[32] Housing Action Illinois. (2025, March). *New Data Shows Dire Shortage of Affordable Homes in Illinois as Proposed Cuts Threaten to Worsen Crisis*. https://housingactionil.org/blog/2025/03/13/new-data-shows-dire-shortage-of-affordable-homes-in-illinois-as-proposed-cuts-threaten-to-worsen-crisis/#:~:text=Even%20for%20those%20with%20a,Area%20Median%20Income%20(AMI)

housing developers or to craft their own strategies to mitigate constraints on the development of affordable housing. The explicit menu of strategies that can be implemented under the VA Housing Targets bill makes the evaluation of implementation more straightforward.

The two programs bear the most similarity in their Appeals Processes. While the VA Housing Targets Bill creates the Housing Approval Board, the AHPAA created a State Housing Appeals Board (SHAB), and just like the VA Housing Targets Bill, the SHAB has the authority to both overturn a local decision and to approve the associated application. However, both approval boards' determination processes could be hampered by vague conditions – "good faith implementation of strategies" (VA Bill) and "infeasibility of a development" (AHPAA). Lastly, and perhaps more simply, ensuring that the Approval Board is staffed and fully-functioning will already place it lightyears ahead of the SHAB, whose inability to acquire any appeals was only compounded by the fact that it struggled to remain staffed and active.

E. Montana: the Montana Land Use Planning Act (SB 382)

In Montana, a slew of housing bills, which collectively came to be known as the "Montana Miracle," restored the ability to build ADUs (SB 528) and duplexes (SB 323) in cities across the state, permitted multifamily housing in commercial zones (SB 245), and rewrote Montana's planning statutes (SB 382).[33] These unprecedented major zoning reforms were the result of a bipartisan coalition that was convened by the Governor on a housing task force followed by a report recommending regulatory changes to boost housing affordability. Within these reforms, what bears the most resemblance to the VA Housing Targets bill is the Montana Land Use Planning Act (SB 382).

1. Key Features of the Montana Land Use Planning Act (SB 382)

a. Baseline Legal Requirement

SB 382 narrowly applies to cities with populations over 5,000 that are located in counties with populations over 70,000[34], but other jurisdictions may opt in. The law intended to

[33] Brady, M. E. (2025, March). *Montana's Housing Crisis Fix Survives Constitutional Challenge*. State Court Report. https://statecourtreport.org/our-work/analysis-opinion/montanas-housing-crisis-fix-survives-constitutional-challenge

[34] The affected cities are: Belgrade, Billings, Bozeman, Columbia Falls, Great Falls, Helena, Kalispell, Laurel, Missoula, Whitefish.

front-load public participation during the planning phases and move towards administrative approvals later in the process.

Cities meeting the threshold requirement have three years to complete a "Land Use Plan" and "Future Land Use Map" that analyze current conditions and 20-year projections for housing, local services & facilities, economic development, natural resources, environment, hazards, and land use. After adoption, the land-use plan and map must be reviewed every five years. Each local government must also establish, by ordinance or resolution, a planning commission. The planning commission will meet to hear and decide appeals from any site-specific land-use decisions made by the planning administrator, and its decisions may be appealed to the local governing body.[35]

b. Calculation Methodology

SB 382 requires affected jurisdictions to analyze existing and projected housing needs, but it does not require a specific housing goal. Instead, local governments that know they may not meet the total amount of needed housing types because of insufficient resources, infrastructure, etc., can determine the minimum number of housing units that may be "rehabilitated, improved, or developed" within the jurisdiction over the 20-year planning period.

c. Administration and Compliance:

Regarding housing, at minimum, the land use plan must include:

i. Analysis of existing and projected housing needs for the projected population including the location, age, condition, and occupancy required to accommodate existing and estimated population projections;

ii. Inventory of sites available to meet the jurisdiction's needed housing types;

iii. Analysis of constraints to housing development and identification of incentives to encourage development; and

iv. Progress toward the construction of needed housing units to meet projected needs during the 20-year planning period.

[35] Mont. SB 382 Section 4(3)(b), (2023). https://legiscan.com/MT/bill/SB382/2023

If the local government determines that the total needed housing types may not be met due to lack of resources, development sites, infrastructure capacity, or other documented constraints, the local government shall establish the minimum number of housing units that may be rehabilitated, improved, or developed within the jurisdiction over the 20-year planning period. In addition, the local government must lay out actions they could take to remove constraints to the development of those units over that period.

The land use plan and future land use map must also include an implementation section that (1) establishes implementation measures for the use and development of land within the jurisdiction based on the land use plan and future land use map, (2) provides direction for more detailed land use regulations and future land use maps, and (3) requires identifying programs, actions, or land-use regulations that may be part of the overall strategy for implementing the land-use plan.

The zoning regulations allowed by a local government must include a minimum of five of the following housing strategies that encourage the development of housing:

1. Allow, as a permitted use, for at least a duplex where a single-unit dwelling is permitted;
2. Zone for higher density housing near transit stations, places of employment, higher education facilities, and other appropriate population centers, as determined by the local government;
3. Eliminate or reduce off-street parking requirements to require no more than one parking space per residential dwelling unit;
4. Eliminate impact fees for accessory dwelling units or developments that include multi-unit dwellings or reduce the fees by at least 25%;
5. Allow, as a permitted use, for at least one internal or detached accessory dwelling unit on a lot with a single-unit dwelling occupied as a primary residence;
6. Allow for single-room occupancy developments;
7. Allow, as a permitted use, a triplex or fourplex where a single-unit dwelling is permitted;
8. Eliminate minimum lot sizes or reduce the existing minimum lot size required by at least 25%;
9. Eliminate aesthetic, material, shape, bulk, size, floor area, and other massing requirements for multi-unit dwellings or mixed-use developments or remove at least half of those requirements
10. Provide for zoning that specifically allows or encourages the development of tiny houses, as defined in appendix Q of the international residential code as it was printed on January 1, 2023;

11. Eliminate setback requirements or reduce existing setback requirements by at least 25%;
12. Increase building height limits for residential dwelling units by at least 25%;
13. Allow multi-unit dwellings or mixed-use development as a permitted use on all lots where office, retail, or commercial are primary permitted use uses;
14. Allow multi-unit dwellings as a permitted use on all lots where triplexes or fourplexes are permitted uses.

d. Enforcement Pathway:

Any final administrative land use decision – including, but not limited to, approval or denial of a zoning permit, preliminary plat or final plat, imposition of a condition on a zoning permit or plat, approval or denial of a variance from a zoning or subdivision regulation, or interpretation of land use regulations or map – may be appealed by the applicant or any aggrieved person to the planning commission.[36]

Appeals must be submitted in writing within 15 business days of the challenged decision, stating the facts and raising all grounds for appeal that the party might raise in district court. The planning commission appeal is strictly limited to the issues raised on appeal, and the appellant has the burden of proving that the appealed decision was made in error. Any final land use decision by the planning commission may be appealed by the applicant, planning administrator, or any aggrieved person to the governing body.

A challenge/appeal of a land use decision cannot be brought in district court until every part of the administrative appeal process has been exhausted. Any final land use decision of the governing body may be challenged at the district court within 30 calendar days after the written decision is issued. This challenge in district court to a final land-use decision of the governing body is limited to the issues raised by the challenger on administrative appeal.

2. Estimated Impact of Montana Land Use Planning Act

As of November 2025, there has been no statewide analysis of MLUPA, but there have been local analyses conducted by cities under their own purviews. One affected jurisdiction, Missoula, passed a new zoning plan and estimated an 85% increase in housing capacity after implementation.[37] In Missoula's new zoning plan, the most "restrictive" new residential zone, "Rural Residential," allows duplexes, townhouses, ADUs, and small storefronts in

[36] Mont. SB 382 Section 37(3)(a), (2023). https://legiscan.com/MT/bill/SB382/2023
[37] The City of Missoula. (2024, December). *Our Missoula: 2045 Land Use Plan*. Retrieved from https://www.ci.missoula.mt.us/DocumentCenter/View/74281/Our-Missoula-2045-Land-Use-Plan

addition to single family homes, while the largest new zone, "Suburban Residential," allows up to four-plexes along with those other types of housing allowed under "Rural Residential." These changes will result in more capacity for middle-density housing, from 42,056 to 78,073 homes (an increase of 36,017 homes). In Bozeman, there is no calculated sum total of increased housing capacity. However, the jurisdiction is updating its Unified Development Code to allow for at least a duplex where single-family zoning exists and to allow at least one ADU per single-unit dwelling, increasing the total number of potential homes.[38]

3. Montana's Legal Challenges

Predictably, Montana's new zoning reforms–including SB 382–drew ire from NIMBYs (particularly the "Montanans Against Irresponsible Densification") and were quickly challenged under the state and federal constitutions. A preliminary injunction was issued for all of the bills before they could become effective on January 1, 2024. However, in the fall of 2024, the Montana Supreme Court unanimously reversed the lower court's injunction and upheld in full all of the enjoined laws except the Land Use Planning Act, declaring that the public's constitutional right to participate in land-use decisions must be met. While this was a massive success for the Montana Miracle bills, in general, the ruling against the MLUPA's front-loaded participation process greatly limited the effectiveness of the law as it was meant to expand by-right development through ministerial approvals.

That case has been appealed, but places like Missoula, Bozeman, and others have stated that they will move forward with implementing the new land use plan process anyway–sans the front-loaded public participation portion. In this year's session, the League of Cities and Towns made some updates to the MLUPA to address the court's ruling and with those updates expiring in 2027, there remains room for the affected jurisdictions to implement their plans while the court case is sorted.

4. Montana Land Use Planning Act v. VA Housing Targets Bill

The Montana Land Use Planning Act (MLUPA) could be a case of giving too much freedom to localities. Not only is it applied to a small number of cities, cities are not assigned a specific housing goal. They must simply adopt a Land Use plan and Future Land Use Map, and they have the *option* of determining the minimum number of housing units that can be built or developed in the next 20 years. While both states require localities to include

[38] The City of Bozeman. (2025, October). *UDC Update - Public Hearing Review Draft Introduction*. Retrieved from https://engage.bozeman.net/udc

strategies from a menu of growth strategies, the VA bill does better by imposing a growth target for localities to meet.

However, both the MLUPA and the VA bill fail to install a system for reviewing local housing plans, except in the case of a developer appeal in Virginia. Determining compliance is limited to the appeals process under the VA bill, while Montana appears to lack any check on plans at all. By not certifying that localities are properly adopting legal housing plans, the housing plans themselves lose purpose, until an appeal at least.

Finally, the VA bill provides a designated appeals board, the Housing Approval Board (HAB), which will have the authority to overturn a locality's denial of a project while Montana developers are limited to returning to the planning commission and, if necessary, must file suit to overturn the decision. The use of a designated appeals board can benefit developers in Virginia by giving them power to appeal a nonsensical project denial without having to front the costs of a lawsuit. In Montana, not only does a developer have to exhaust all administrative appeals, delaying the project and likely increasing cost, the developer must also bring a suit that will undoubtedly exacerbate the developer's financial obligations.

F. Maryland: The Housing for Jobs Act, HB 503 (2025)

The 2025 Maryland legislature also assessed a housing targets bill similar to Virginia's, known as the Housing for Jobs Act.[39] The bill attempts to close "housing infrastructure gaps" or shortages of housing units determined by comparing housing stock to the total number of jobs in the region. A region must bring their jobs-housing balance under 1.5 (meaning there are less than 1.5 jobs per housing unit) to be exempt from the requirement to automatically approve new housing proposals.

The goal of the bill was to create market-wide opportunities to build more housing near jobs and transit in Maryland in order to:

(1) Increase the state's economic competitiveness;
(2) Direct measurable new investment, jobs, taxes, and transit revenues across the state through increased housing construction;
(3) Increase the purchasing power of households by addressing housing costs,
(4) Reduce traffic congestion to enhance quality of life;
(5) Reduce greenhouse gas emissions

[39] Md. House Bill 503, (2025). https://mgaleg.maryland.gov/2025RS/bills/hb/hb0503f.pdf

1. *Key Features of the Housing for Jobs Act* (HB 503)

a. Baseline Legal Requirement

Only those localities with a housing infrastructure gap are obligated to approve new housing units. Exceptions exist when a specific adverse impact outweighs the community's need for housing, including the opportunity to negotiate development submissions to mitigate that impact.[40]

The Housing for Jobs Act also provides opportunities for localities to receive "enhanced reductions" by producing affordable housing units (deed-restricted at less than 60% AMI for at least 40 years) and/or housing units within 0.75 miles of a passenger rail station.

b. Calculation Methodology

Regional housing infrastructure gaps identify shortages of housing units by comparing housing stock to the total number of jobs in the region. If there are more than 1.5 jobs per housing unit, a region has a shortage. Local housing infrastructure gaps divvy up the regional housing infrastructure gaps to local jurisdictions by their percentage share of regional jobs.

c. Administration and Compliance:

Reductions in gaps occur through standard reductions and enhanced reductions. Each standard housing unit built will reduce the local housing gap on a one-to-one basis. For enhanced reductions, 1.5 units will be achieved per unit that meets at least one of the following requirements:

i. One (1) affordable housing unit built (deed-restricted to be affordable to a household earning 60% or less of the area median income for a period of at least 40 years)

ii. One unit built within 0.75 miles of a passenger rail station

[40] These impacts include: specific adverse impact to the health/safety of residents of the proposed development; insufficient school capacity (excess of 100% capacity at school in attendance area or adjacent schools); inadequate water or sewer facilities; necessary compliance with state or federal law; development location in an area zoned for heavy industrial use, conservation, or agricultural land; or development non-compliance with objective development standards at the time of application submission. Objective development standards are defined as those that are not subject to discretionary judgment and facilitate development at the density permitted on the site.

When denying a housing project, local jurisdictions must provide, in writing, the specific reasons for denial. If the provided reasons comply with allowable denials, the denial is final.

d. Enforcement Pathway:

A developer may appeal development denials in the appropriate Circuit Court venue.

If the denial of a housing development does not hold up to scrutiny, a builder may appeal to a Circuit Court judge to enforce the law. Once the judge determines the developer to have standing, the judge then determines whether the denial was legal.

2. Estimated Impact of Housing for Jobs Act (as introduced)

Since 2014, Maryland has permitted an average of 18,000 units annually,[41] or around 10% of the 149,206 units needed statewide for every county to meet the <1.5 jobs to housing ratio.[42] However, there is optimism that with increased authorization of housing units, the state may be able to increase housing unit construction by at least 20%-30% (17,808-19,292 units). While this increase would still be under pre-2008 recession building levels (29,000 annually authorized units), it shows movement towards the target number of units.

3. The Disappointing Fate of HB 503

Unfortunately, as it moved through the House, the bill was gutted to remove the "automatic approval" provision and other actionable elements. Instead, the revised version creates a housing commission to study the state's housing crisis and develop recommendations to address the state's affordable housing shortage.[43] Under this new model, Maryland's Housing Secretary and its Department of Housing and Community Development would set a 10-year housing target for housing production in the state, and every locality would report on annual progress.

A final 'nail in the coffin' was the addition of a "vesting rights" provision that would: (1) guarantee the developer's right to build on a property after project approval for five years and (2) ensure that the project is evaluated by the laws and policies in place at the time of

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[41] Comptroller of Maryland. (2025, October). *State of the Economy Series: Housing & the Economy.* Retrieved from https://www.marylandcomptroller.gov/content/dam/mdcomp/md/reports/research/housing-economy-print.pdf

[42] *Governor Moore's Housing for Jobs Act of 2025 - Overview* (Internal report).

[43] Brown, D. (2025, March). *House members overhaul Moore housing bill with 'simpler' amendments - Maryland Matters*. Maryland Matters. https://marylandmatters.org/2025/03/29/house-members-overhaul-moore-housing-bill-with-simpler-amendments/

application. The House and Senate's inability to agree on language marooned the bill in committee, removing all chance of passage in 2025.[44]

4. *MD Housing for Jobs Act v. VA Housing Targets Bill*

Maryland's Housing for Jobs Act serves a similar purpose to the VA Housing Targets bill–to get more housing approved and built. However, the two vary in execution. Local jurisdictions in Maryland with a housing infrastructure gap would have been obligated to approve new housing units, barring a specific adverse impact that outweighs the community's need for housing. In contrast, VA localities are not outright required to approve housing. Maryland's Housing for Jobs Act also provides opportunities for localities to receive "enhanced reductions" by producing affordable housing units (deed-restricted at less than 60% AMI for at least 40 years) and/or housing units within 0.75 miles of a passenger rail station. The VA Housing Targets bill does not explicitly outline these kinds of "extra weight" considerations, but the Director of DHCD does have authority to "establish a method for giving extra weight… for increases in affordable housing stock."[45]

Under Maryland's bill, local jurisdictions must also provide in writing the specific reasons for denial. If the reasons comply with allowable denials for jurisdictions with gaps, the denial is final. There is no such requirement in the VA Housing Targets bill.

Lastly, the denial of a housing development in Maryland would result in a developer appealing to a Circuit Court judge instead of an established Housing Approval Board. A judge in Maryland would be limited to determining the legality of the denial, meaning they will simply be ensuring that building requirements and land use laws are applied appropriately. Under the VA Housing Targets bill, however, the board will likely take a more expansive approach because of the subjective "good faith effort" consideration involved in its decision to overturn local land use decisions. This could mean less predictable outcomes in Virginia.

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[44] Brown, D., Ford, W., Sears, B., & Condon, C. (2025, April). *Sine Done: On final day of session, lawmakers toggle between the serious and the silly*. Maryland Matters. https://marylandmatters.org/2025/04/08/sine-done-on-final-day-of-session-lawmakers-toggle-between-the-serious-and-the-silly/

[45] Virginia House Bill 2641, § 36-139(33) (2025). https://lis.virginia.gov/bill-details/20251/HB2641

VI. Conclusion

The Virginia Housing Targets bill represents a significant opportunity for the Commonwealth to take a more active role in addressing statewide housing needs through measurable, data-driven growth goals. While zoning reform has historically occurred at the local level, this legislation provides a mechanism for the Virginia Department of Housing and Community Development (DHCD) to align local planning efforts with the state's overall housing needs. As evidenced by other housing target programs nationwide, the passage and implementation of the VA Housing Targets bill may be similarly burdened by lawsuits or jurisdictional noncompliance, but it has the potential to dramatically increase the state's housing capacity while moving the needle closer to ending the housing shortage.

Findings from comparable programs across other states–such as California's Housing Element Law, Massachusetts' Chapter 40B, and New Jersey's Mount Laurel Doctrine–reveal that strong enforcement mechanisms, proactive state guidance, and realistic, data-informed targets are vital for success. Programs without consistent oversight or those lacking technical support for localities will likely fall far short of their intended outcomes, as illustrated by the severe underutilization of the original Affordable Housing Planning and Appeals Act (AHPAA) in Illinois.

For Virginia, implementation will be key. To maximize the efficacy of this bill, DHCD should be ready to provide technical assistance to help localities develop and implement compliant housing plans and should clearly define "good faith" compliance. While the bill moves in the right direction by expanding standing, enforcement should also extend beyond the Housing Approval Board (HAB) to include authority for DHCD and the Attorney General's office to act against persistent noncompliance. Lastly, the HAB must be adequately staffed and guided by transparent criteria to ensure objective review of housing projects.

Virginia's housing shortage–the result of decades of underproduction, regional disparities, and mounting affordability issues–will not be resolved overnight. It could, and likely will, take years to see the positive impacts of the Housing Targets bill. However, if implemented effectively, the Housing Targets bill could serve as the foundation for a coordinated statewide approach that encourages both accountability and innovation in housing production. It could also set the stage for later reforms such as state zoning guardrails (i.e., by-right ADUs, lot size reform, etc.) that can create statewide expansion of rights for property owners that are much less subject to interpretation (unlike under housing targets programs). With strong enforcement, flexible implementation options, and continued state

support, the Housing Targets bill can move Virginia closer to meeting its long-term housing goals and alleviating the growing housing shortage across the Commonwealth.