

FEBRUARY 2023

Incentivizing Housing Production:

State Laws from Across the Country to Encourage or Require Municipal Action

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ACKNOWLEDGMENTS

We would like to express our sincerest thanks to everyone who contributed to the typology and reviewed state laws for this project. We also thank our colleagues at the Housing Crisis Research Collaborative for their comments on this research, particularly Vicki Been for review of early drafts of this brief. The Housing Crisis Research Collaborative is supported by the Wells Fargo Foundation and JPMorgan Chase & Co. and is managed by the Urban Institute. We are grateful to them for allowing the Collaborative to advance its goals. We also thank David Garcia and Ben Metcalf for their review and comments on this paper, and Cora Johnson-Grau and Shiori Green for all of their support.

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*Note: Prior to publication, Elizabeth Kneebone transitioned to the Federal Reserve Bank of San Francisco. The views expressed in this report do not necessarily represent the views of the Federal Reserve Bank of San Francisco or the Federal Reserve System.

Introduction

For decades, the United States has produced housing at a rate inadequate to account for growth in population and the nation's wealth. This underproduction is national in nature,¹ and has reduced housing affordability in communities nationwide.² Recent projections estimate that the U.S. is short millions of units,³ and certain states, like California,⁴ have a particularly significant gap between the number of units needed and those actually being produced. Numerous factors contribute to this shortfall in housing production, including high construction costs, household income inequality, and limited availability of construction materials.⁵

Local land use regulations, such as zoning policy, also play an important role. These regulations shape the scale and location of new housing development, and can influence development costs. In the context of metropolitan jurisdictional fragmentation, some municipalities leverage local zoning to limit new housing construction and prevent lower-income families from moving in.^{6,7} Such limitations can prevent equitable access to opportunities like well-funded public services and employment for people of color and households in poverty.⁸

State governments can implement laws designed to encourage or require changes in municipal land use policy to counter these limitations to housing production and access. While states largely delegate power over land use regulations to local governments, some states have long been implementing policies designed to encourage a fairer distribution and more adequate availability of housing. Beginning in the late 1960s, several state legislatures and courts began requiring that municipalities allow the construction of

affordable housing. For example, since the 1970s, California's housing element statutes have required municipalities to zone enough land for residential use to meet their future housing needs, including for lower-income households. Some states have also used "smart growth" mechanisms to protect green space on the edge of urban areas while spurring infill construction on already developed land.⁹ Those laws have had mixed effectiveness, but point to strategies other states could use to compel action by municipalities to promote greater availability of housing.

Anecdotally, the number of state-level "pro-housing" laws—which are designed to encourage or require municipalities to increase local housing availability—has expanded over the past several years in response to continued shortfalls and exacerbating affordability. In some cases, these new bills draw on the experience of states around the country to update and improve existing policies.¹⁰ In other cases, recent legislation extends state intervention into new domains, such as linking transportation funding to housing planning and production.¹¹

As far as we know, there has not been a systematic effort to categorize and synthesize the various ways by which states have intervened in municipal policy to stimulate housing production. As the need for new housing has become an issue of national political and economic concern,¹² policymakers and advocates would benefit from understanding the types of legislative and regulatory tools state governments have used to incentivize or require that localities adopt pro-housing policies.

In this paper, we present insights from the first nationwide database of 144 state pro-housing laws. Though this database is not comprehensive, it is the largest

yet assembled. We establish a typology illustrating how states around the country are attempting to influence local government action on housing production and access. This typology, which we developed through iterative review of state laws, can be used to demonstrate the different approaches states have taken to advance housing production.

Through examples of laws from a cross section of states, we show the variety of tools that states have implemented, including:

- Requiring localities to plan for the housing needs of their respective regions
- Implementing state standards for local land use and planning regulations
- Providing carrots for municipalities to incentivize some kind of production goal
- Imposing sticks to penalize jurisdictions for failing to carry out their housing production obligations.

We further characterize each law by its target housing type (for instance, does the law try to increase the total number of housing units produced overall or does it target a specific kind of housing, such as subsidized affordable housing?). We also categorize whether the law has additional goals beyond production, such as an aim to reduce discrimination or to promote sustainable development. In so doing, we demonstrate the broad diversity of state approaches to promoting housing production by encouraging or mandating local government action. We additionally show that many states have passed laws that integrate multiple tools, such as both carrots and state standards, in order to reach pro-housing goals.

Our typology and the accompanying database set the stage for a more comprehensive effort to compile and characterize all relevant state laws and to develop a platform for national research and best practice identification. As such, this work is only the first step in a larger project seeking to understand how state rules influence housing supply. The passage of a law does not guarantee its successful implementation. Nor do we have sufficient evidence about the effectiveness of the policies we explore, or the tools these policies employ.^{13,14,15,16} Nevertheless, through this typology and illustrated through a sample of laws from states across the country, we provide a roadmap to understanding the potential for state intervention in local land use laws to expand the supply of and improve access to housing.

Methodological Approach

Reviewing State Laws

To understand the breadth of state pro-housing laws, we began by conducting a scan of published research that mentioned state laws designed to produce more housing production at the local level. We then used a legal search engine to identify laws not mentioned directly in the scholarship. We focused on laws that required, encouraged, permitted, or prohibited local government action related to housing production. We did not include laws focused on issues besides production (such as those providing down payment assistance for homebuyers). Nor did we include laws solely aimed at developer or homeowner action (such as subsidies for private developers or tax incentives for home renovations). While these types of

subsidies and incentives are important mechanisms for stimulating new supply, we focused on state laws that impact local planning and zoning decisions.

We limited our search to laws passed by state legislatures and approved by governors. As such, we did not examine legislation that was never enacted. Nor did we consider individual actions by municipalities. These could, of course, be quite consequential if, for example, a municipality implemented a policy designed to substantially increase housing production within its boundaries. Finally, we did not consider regulations produced by state agencies, some of which are the product of the laws we compiled.

In conducting our scan, we found that while states sometimes adopt novel approaches, or borrow model interventions from other states, the development of state land use policy typically follows an iterative process. Legislation may build off or amend pre-existing laws. For example, the laws we reviewed often reformed existing land use statutes, which are the baseline rules governing how local governments can execute policies like zoning and were typically passed decades before the amending legislation. In other cases, we identified legislation that aimed to clarify or strengthen laws previously passed in order to incentivize local housing production.

In total, for this preliminary analysis we identified 144 laws in 20 states (Figure 1). The full list of laws included in our database is available in Appendix A. Due to limited time and resources, this selection is neither comprehensive nor necessarily a representative sample of all relevant legislation nationwide. We did not intentionally exclude any states from the law identification process. However,

we were unable to find housing-promoting laws in 30 of the states; this may be reflective of actually existing differences in state action or it may reflect a gap in our review. The large number of laws from California, Oregon, and Washington reflects both that we focused our search of law databases on these states, as well as the fact that these three states have passed a large number of land use laws in recent years.

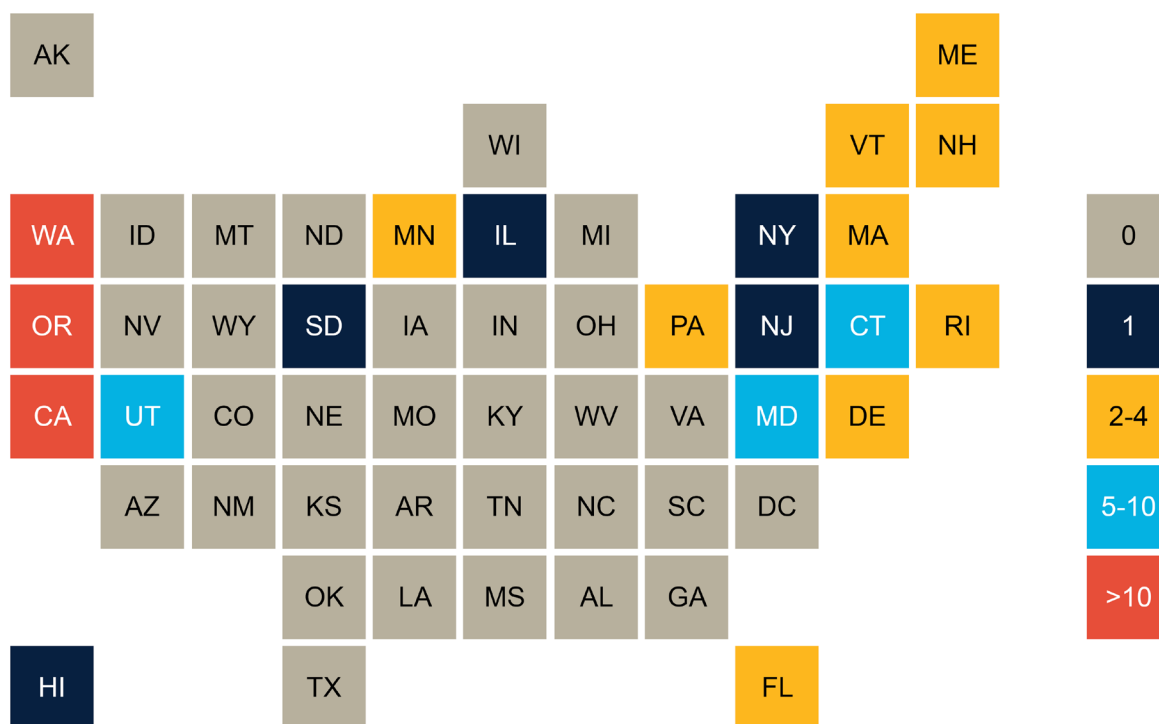
For each law in our database, we recorded its name, title, year passed, and features. We analyzed both the text of the initial legislation and the state statute to understand the law's design and approaches used, and ultimately integrated the law's attributes into the typology (see next section).

Typology of Land Use Laws

To build out the typology of different approaches to state pro-housing laws, we began by brainstorming the elements of state laws that might be used to encourage localities to produce more housing. In the process, we developed five key regulatory concepts—plans, state standards, sticks, carrots, and escape hatches—that we used to categorize laws. Following an iterative approach, individual members of the team reviewed a random sample of laws collected from our database, coded them following the typology, and raised questions about whether the typology code accurately matched the intent of the law.

Over time and with repeated expansion of the typology and clarification of concepts, we tested the framework against a growing number of laws to ensure the typology could reflect a broad spectrum of laws. We modified the typology as we went, and offered outside reviewers the opportunity

Figure 1. Number of Laws Analyzed by State



to examine our approach. This process included several iterations to ensure it sufficiently captured the laws’ complexity since many laws integrate multiple tools or approaches. Our typology thus reflects our best attempt to develop a classification system that represents the major components of the breadth of relevant state laws.

The resulting typology includes three dimensions. The first characterizes the overarching purpose of the law by identifying the functional goal—whether it aims, for example, to increase affordable housing or further smart-growth objectives—and the market segment—for example, the specific housing type or the population the housing serves—it aims to boost. The second details the type of policy lever employed: sticks that punish munic-

ipalities for non-compliance, carrots that reward municipalities for compliance or incentivizing production, state standards that supersede nonconforming local policies (or require their replacement), and/or planning approaches. The final dimension indicates whether the law includes an escape hatch that exempts certain jurisdictions from following elements of the law under specific conditions.¹⁷ Most elements of the typology are designed to be formatted as binaries, meaning a law does or does not include the relevant element; laws can address more than one element of the typology simultaneously. The complete typology and elements are presented in Figure 2.

The typology is designed specifically to address how each law encourages or requires localities to produce more¹⁸

Figure 2. Typology of State Housing Production Laws

PURPOSE		
Functional Goals	General production	Expands supply of market-rate housing
	Affordable housing	Enables production or preservation of housing with subsidy, price restrictions, or income limits
	Fair housing	Aims to reduce discrimination or segregation
	Sustainability and smart growth	Includes elements of transit-oriented development, infill development, or priority area development
Market Segment	Emergency Shelter	Targets emergency shelters
	Affordable	Targets housing with subsidies or price restrictions specifically for low- and moderate- income individuals
	Middle- or moderate-income	Targets housing affordable to middle- or moderate- income households ¹⁹
	Missing middle	Targets “missing middle” development, such as townhomes, duplexes, fourplexes, and other low- density multi-family housing types
	Accessory dwelling unit (ADU)	Targets accessory dwelling units
	Multifamily	Targets buildings with five or more units
	Public land	Relates to the disposition, development, and/or management of publicly- owned land
POLICY LEVERS		
Plans	Minimum or reasonable space for housing	Requires jurisdictions to zone for a “reasonable” or some minimum amount of land for future units or a housing type
	Fair housing goal	Includes provision to achieve or plan for some fair housing goal
	Process standard	Establishes requirements for the legal parameters of municipal development processes
	Data to public	Jurisdiction must provide some data to the public
	Data to state	Jurisdiction must provide some data to the state
	Data from state	State must provide data to localities
	Technical assistance from state	State must provide technical assistance to localities
State Standards	Consultation and engagement	Establishes requirements for public engagement in planning
	Allowing housing type by-right	Allows some category of housing by right (meaning with only administrative review before approvals)
	Limit parking minimums, fees, other costs	Limits or bans enforcement of some element of the land -use code (e.g., parking minimums)
	Streamlining reviews	Streamlines or exempts review processes (such as environmental or design) for a category of housing
	Density bonuses	Permits a higher level of density than would otherwise be allowed by the zoning code for a category of housing
	Eliminate or reduce density caps	Limits or bans caps on housing density
	Displacement protections	Includes provisions to mitigate displacement

Figure 2. Typology of State Housing Production Laws (Continued)

POLICY LEVERS (CONTINUED)		
Sticks	Fines	Charges fines or fees on locality for noncompliance of state housing laws
	Withheld funds	Withholds funds from jurisdiction for noncompliance
	Granting developers a builder’s remedy	Developer can override local zoning or other land use rules in context of jurisdictional noncompliance
	Streamlining review	Developer can receive streamlined or exempted review in the context of jurisdictional noncompliance
	Municipalities losing powers	Locality loses power over some issue in the context of noncompliance
Carrots	Funding	Locality can receive additional funding as an incentive for increased production, or receives additional funding for meeting production targets
	Land use rule flexibility	Locality is granted additional flexibility over land use to encourage specific production goal or locality is granted new powers over land use when found compliant with state housing laws
EXEMPTIONS		
Escape Hatches	Municipal override votes	Municipal government may override policy (or element of policy) with council vote
	Exemption based on municipal type or goal achievement	Municipality is exempt from certain requirements because of some characteristic of the municipality or achievement of a specific housing goal
	Exception approval by state	State agency can exempt a municipality

Source: The authors, based on data collected from states. Notes: In our database, we also included notes on key features of legislation that may not be captured by binaries presented in the typology. Each policy lever also includes an “other” write-in category to account for instances when the law does not neatly fit within one of existing subcategories. “Municipalities” here refers to any local land use jurisdiction, which can include cities, towns, counties, and other localities, depending on the state.

housing. Though the typology includes some elements that reflect non-production elements, such as displacement protections, we included these because they are often used by states as a mechanism in the process of achieving pro-housing outcomes. In other words, a state may include a displacement protection element in a new law as one approach to achieve its broader goal of adding housing, since protecting existing low-income residents from displacement could ultimately mean more housing units kept on site, rather than being redeveloped into fewer, more expensive new units.

In future work, we hope to continue to test and iterate the typology and coding scheme, expand the database to capture a more comprehensive set of state pro-housing laws, and analyze the resulting data to identify any geographic or temporal trends. This future work will also provide the full updated and expanded coding for the full database of laws. We acknowledge that our typology may not be universally applicable to all laws that have been or will be undertaken by states to promote housing production; it is also possible that we are missing key regulatory elements that may be of interest to policy stakeholders. Despite these limitations, we hope that our typology can aid researchers and policymakers in understanding how states are regulating municipal action as it relates to housing production.

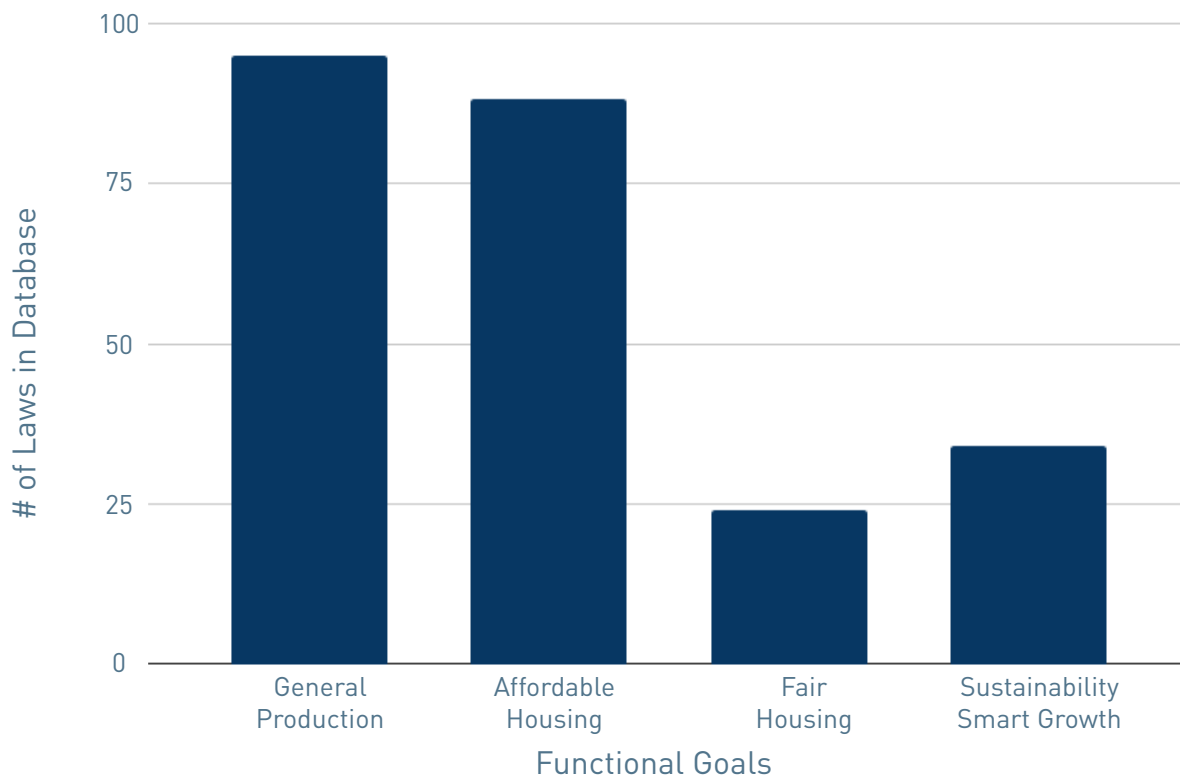
Findings

The majority of the laws we reviewed were designed to boost production of housing generally and/or to specifically target the development of affordable housing (Figure 3). However, we found that state laws aiming to address local housing production often have multiple goals, target a variety of housing types, or employ more than one policy lever.

Of the laws reviewed, the most common policy levers employed were those that fit the definition of either a plan or a state standard. Roughly half of the 144 laws that we reviewed had a component that required municipalities to plan for the housing needs of their respective regions in some way or expanded existing requirements to plan for housing locally. In contrast, the least common policy lever utilized among the laws in our database was a stick to penalize localities for failing to fulfill their housing production obligations (Figure 4).

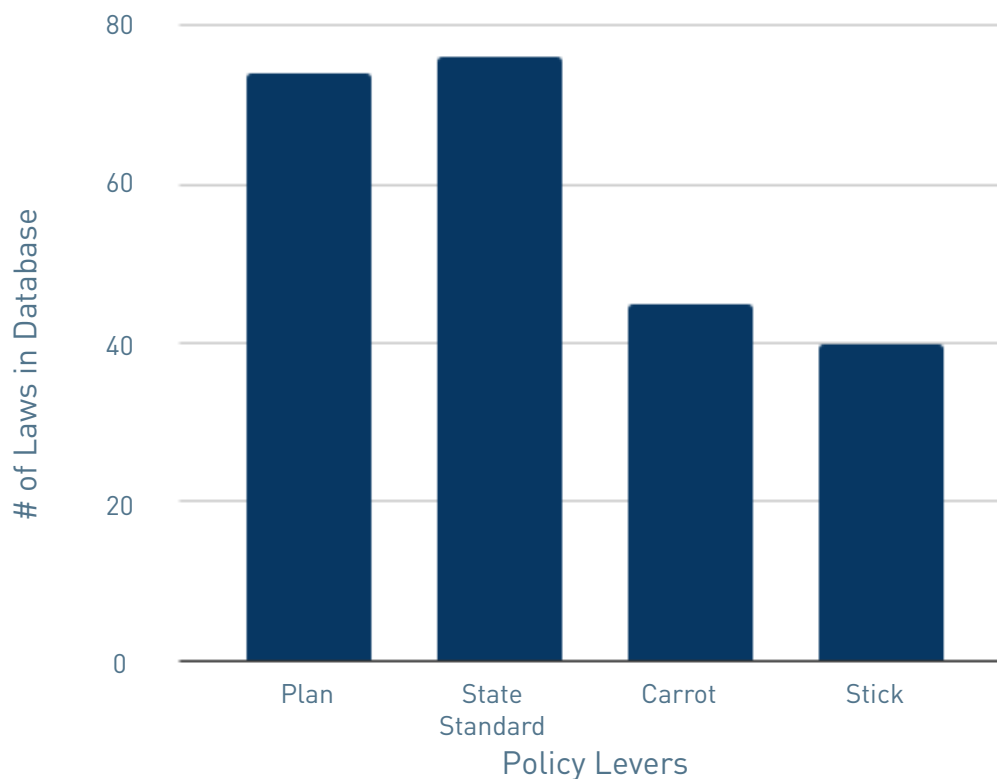
From the full database, we selected 25 illustrative laws from 13 states to provide a cross section of the typological elements described above. We selected these laws based on their geographic diversity and how clearly they exemplified different aspects of the typology. In the rest of this brief, we provide examples of each of the elements of the typology through an examination of these 25 laws, illustrating the various approaches that states are taking in an effort to stimulate housing production and access to housing at the municipal scale. Full typology coding for each of these illustrative laws can be found in Appendix B.

Figure 3. Functional Goals of Laws Reviewed



Note: Laws often have more than one goal and as a result fall into multiple categories.

Figure 4. Types of Policy Levers Utilized in Reviewed Laws



Note: Laws often employ more than one policy lever and as a result fall into multiple categories.

Functional Goals and Market Segment

In our review, we identified two elements that best captured the central purpose or focus of each state law: its functional goal and the market segment it targets. While all of the laws reviewed reflect state legislative efforts to encourage local housing production, the specific vision or priority of each law varies.

Functional Goals

The functional goal of the law refers to its underlying intent or purpose. For example, state legislatures may pass legislation specifically to spur affordable housing production, or to encourage sustainable development to control sprawl or help mitigate climate change. We categorized laws according to four potential functional goals: increasing production of market-rate housing generally, encouraging the development or preservation of affordable housing, furthering fair housing by reducing discrimination and exclusion in housing markets, and promoting sustainability and reducing greenhouse gas (GHG) emissions through planning and development.

For example, we categorized **California’s Senate Bill (SB) 9 (2021)** as general production because it aims to boost production of housing by allowing modest increases in density across the state in neighborhoods previously zoned only for single-family homes. SB 9 requires ministerial approval—meaning without discretionary review by elected or appointed officials, or public hearings—of qualified applications for lot splits and housing developments with up to two units (i.e., duplexes) on parcels previously zoned for single-family. This law has the potential to increase housing opportunities

in areas where local governments have banned duplexes and homes with smaller footprints, effectively allowing owners to create up to four units of housing where previously only one was allowed.¹⁹

Increased production of affordable housing is a focus of numerous state pro-housing laws. **Washington’s SB 5287 (2021)**, for example, made a series of changes to the state’s Multi-Family Property Tax Exemption (MFTE), several of which aim to incentivize new affordable housing development. For example, prior to SB 5287, the MFTE included two tax exemption programs designed to spur new multifamily housing in the largest cities and towns in Washington: a 12-year exemption that required 20 percent of units be sold or rented as affordable to households with low- and moderate-incomes, and an eight-year exemption for which affordable housing is not mandatory. SB 5287 introduced a new 20-year exemption designed specifically to encourage affordable homeownership. Under this new program, local governments may offer a 20-year property tax exemption to qualifying projects, provided that at least 25 percent of units are sold to a qualified nonprofit or local government partner that will guarantee permanent affordable homeownership for households earning 80 percent of the area median income (AMI) or less. For projects with an existing exemption, SB 5287 offers a 12-year extension under the condition that eight-year projects convert to the 12-year program and adopt affordability requirements, and that existing 12-year projects take on deeper affordability requirements moving forward. Crucially, the bill additionally expands jurisdictional eligibility for the program to all cities, greatly expanding the reach of the property tax exemption incentive offered through MFTE.

State laws may include specific provisions related to local government's responsibility to further fair housing, generally referring to efforts to identify and address inequities among protected classes, reduce exclusion and segregation, and expand access to resources and opportunity. For example, **Washington's House Bill (HB) 1220 (2021)** made amendments to the state's Growth Management Act (GMA), the state law that guides how municipalities are required to plan for housing needs in their communities. Under the GMA, counties and cities must adopt a comprehensive plan for land use, including a mandatory housing element that follows state requirements. HB 1220 made a series of updates to the GMA, including new housing element requirements and new requirements for local governments related to "racially disparate impacts, displacement, and exclusion in housing".²⁰ For example, localities must now identify local policies and regulations that result in racially disparate impacts, displacement, or exclusion, as well as areas at high risk of displacement, and put forth policies to address these impacts and prevent displacement.

The last functional goal we identified is sustainability and smart growth, referring to laws that prioritize or encourage environmentally-sensitive development, for example through increased density, infill development, and building near transit in order to reduce the need for car travel. In 2009, **Maryland's SB 273/HB 294** made updates to the statutory goals, referred to as visions, of the Maryland Economic Growth, Resource Protection, and Planning Act of 1992 to reflect more recent development patterns and trends. The original eight statutory visions—around which state and local funding decisions and municipal comprehensive plans

in Maryland are organized—were replaced with 12 new ones, including visions specifically about sustainability, priority growth areas, and community design. For example, the law envisions that "growth is concentrated in existing population and business centers" and community design is "compact, mixed-use, walkable" and "located near available or planned transit options".²¹

Laws can and typically do meet the criteria for more than one goal listed in our typology. **Washington's SB 5287**—discussed above as an example of a bill that furthers affordable housing—is also an example of a law that aims to further sustainability and smart growth. The MFTE tax incentive is only available within designated areas to discourage urban sprawl and encourage the creation of mixed-income projects in urban centers. **Washington's HB 1220**, highlighted as an example of a bill that prioritizes fair housing, also sought to strengthen and clarify local governments' responsibility to develop affordable housing. Most notably, the bill amended the GMA such that jurisdictions "plan for and accommodate" rather than simply "encourage" housing affordable to moderate-, low-, very low-, and extremely low-income households.

Market Segment

The market segment element of the typology focuses on the housing type a law is designed to incentivize. For example, a law may target the production of housing for a particular income group—such as low- or middle-income households—or a specific housing product, like accessory dwelling units (ADUs). Seven target market segments are covered in our typology, including emergency shelter, affordable housing with subsidies or rent

and/or price restrictions, and missing-middle developments, a term used to describe small-scale multifamily housing and which we define in this analysis as those with two to four units.

State pro-housing laws often focused specifically on making it easier to develop affordable housing and housing for people experiencing homelessness, such as emergency shelters. **California’s Assembly Bill (AB) 2162 (2018)**, for instance, is designed to expand the housing opportunities available to people experiencing homelessness or who otherwise are in need of housing with supportive services. AB 2162 authorizes and streamlines local approval of affordable housing that includes a share of units for people who are eligible for supportive housing²² in zones where multifamily and mixed uses are permitted. Under this law, cities are required to grant ministerial approval of qualified projects with a minimum share of supportive housing in areas that already allow for multifamily housing developments.

State laws can also emphasize expanding the supply of unsubsidized housing, and, specifically, making changes that produce lower-cost and diverse housing options. Legislatures have passed several laws in recent years that encourage the development of missing middle housing. **California’s SB 9 (2021)**, also discussed above, encourages missing middle housing by allowing duplexes to be developed in areas previously zoned only for single-family homes. **Oregon’s HB 2001 (2019)** similarly encourages missing middle development by requiring certain jurisdictions to allow for a variety of small multifamily housing types—including but not limited to duplexes, triplexes, and townhouses—in areas that previously allowed only single-family dwellings as well as the by-right

development of a duplex on a parcel previously zoned only for single-family homes. The bill also establishes deadlines for local governments to reflect these changes in their land use regulations and comprehensive plans.

Encouraging ADUs has become an increasingly popular strategy for expanding the supply of lower-cost housing options, particularly in single-family neighborhoods. California’s legislature in particular has passed a series of bills to promote the development of this housing type. The adoption of SB 1069 and AB 2299 in 2016, along with follow-up state legislation in subsequent years, has laid a foundation for ADU development across the state. For example, **California’s AB 670 (2019)** effectively bans homeowner associations from prohibiting ADU construction, so long as the development meets certain minimum state standards. ADU permitting and construction in California has significantly increased in the years following these legislative changes and the development of local policies encouraging ADU creation.²³ **Connecticut’s HB 6107 (2021)** promotes ADU development by requiring municipalities to allow for the construction of at least one ADU by-right on lots containing a single-family dwelling. In addition to allowing homeowners to build ADUs without special permission, the bill prohibits municipalities from requiring more than one parking space for each ADU.

State pro-housing laws may also specifically target the use of public land or property—typically referring to property owned by local governments, housing authorities, or districts—for housing production. **Oregon’s Housing Needs and Production Laws (HB 2003, 2019)**—which establishes a statewide assessment of housing needs by affordability level—

includes a section detailing how local governments may provide for the development of housing on publicly-owned land. For example, the law specifies that at least 50 percent of residential units in a project developed on public property must be affordable to households with incomes at or below 60 percent of AMI.

Policy Levers

In our review, we identified four policy levers that best captured state intervention into local land use planning. In many cases, requirements that localities plan for the housing needs of their communities and broader region form the foundation for other policy levers. Many laws either created new planning requirements of localities or strengthened existing ones. In addition to planning requirements, we found that the state laws we reviewed often created new state standards for planning and zoning, offered incentives for production (carrots), or imposed penalties on municipalities for failing to comply with existing laws or meet housing production goals (sticks).

Plans

Plans refer to laws that require localities to identify and address the housing needs of their regions. These laws can also map out what must be included in local housing plans and set requirements for the planning process. For example, a plan requirement may mandate a municipality to report on housing needs to the state, share an inventory of development plans to the public, or require a community engagement process. We identified eight approaches that laws utilize to impose plan requirements on localities, listed in Figure 2 above.

An example of a plan-based policy is **Oregon’s Housing Needs and Production Law (HB 2003, 2019)**, which established a statewide assessment of housing needs by affordability level. This law requires the state, in collaboration with localities, to establish methods for calculating regional housing needs, existing housing stock estimates, housing shortages, and an estimate of the number of housing units needed to accommodate anticipated population growth over the next 20 years.²⁴

Plan-based policies can also push for specific housing objectives such as the development of housing for low-income households or the incorporation of fair housing goals in local plans. This can be seen in laws like the **Minnesota Metropolitan Land Planning Act (1976)**, which requires that municipalities develop comprehensive plans consistent with the plans developed by the Metropolitan Council, a regional policy making body for the Twin Cities region. These plans must also identify land available for the development of housing affordable to households with low- and moderate-incomes. The law allows the Metropolitan Council to override plans or plan elements, and the law requires the Council to provide supportive materials; it may also provide other forms of technical assistance.

Massachusetts’s Chapter 40R (2004) encourages cities to create dense residential or mixed-use districts with high affordability levels, near transit, and/or in areas of concentrated development. Communities can use state-authorized Smart Growth Zoning to allow projects either by-right or with a limited plan review process. The law requires a minimum level of housing density in new zones

established by municipalities. Once cities and the state approve this overlay district, cities become eligible for Smart Growth Housing Trust Fund investments, a state fund that provides a financial incentive, or carrot, for denser development. The law also provides an escape hatch: municipalities with fewer than 10,000 inhabitants may plan for a lower housing unit density than the state-approved standard.

State Standards

State standards limit localities' authority over some aspect of land use decision-making. State standards may do this by restricting certain powers or imposing new obligations. For example, some laws prohibit municipalities from adopting design standards that limit housing. Others require localities to enact ordinances to prevent displacement. In some instances, standards set a baseline, or floor, for municipal land use policy. For example, a law might require cities to zone to allow at least one ADU per single-family lot; however, localities would be permitted to allow for more than that floor, such as allowing two ADUs per lot). In other instances, such standards set a ceiling for development. For example, a law might limit the number of required parking spaces for new housing construction to two spaces per housing unit; however, localities would be allowed to set requirements less than that ceiling, such as by only requiring one parking space per unit. Ceilings tend to be a more heavy-handed preemption of local land use, while floors tend to provide jurisdictions with more flexibility to tailor the regulation to their specific circumstances. We identified six categories of state standards in our typology, including allowing a housing type by-right, limiting parking minimums, fees, and other costs, and requiring cities to provide density bonuses.

To overcome local opposition to housing development, some state laws have allowed housing types by-right, especially developments that include affordable housing units. For example, **California's Affordable Housing and High Road Jobs Act, also known as AB 2011 (2022)** requires ministerial approval, which is the administrative review by the local planning body, without discretionary review or public hearings, for residential projects in zones previously allowing only commercial uses that include 100 percent affordable units and adhere to set density levels and labor standards. The law serves sustainability and smart growth goals by limiting its scope to zones where office, retail, or parking are a "principally permitted use".²⁵ Ministerial review is also available for mixed-income housing projects along commercial corridors, defined as local roads with a right-of-way of 70 to 150 feet (generally four to eight lanes). **Connecticut's HB 6107 (2021)**, discussed above for its focus on ADUs, prohibits local zoning ordinances that do not permit at least one ADU on single-family lots by-right.

In recent years, several states have responded to the research showing that parking requirements can raise housing costs.²⁶ Both of the bills discussed above, as well as **Maine's Legislative Document (LD) 2003 (2022)**, prohibit or limit parking requirements for new developments.

Additionally, states promote housing development with laws that require localities to provide density bonuses, or permission for developers to build additional units, in exchange for including affordable housing on-site. California enacted a density bonus law in 1979 and has expanded and strengthened the law in recent years in order to increase its

usage.²⁷ **California’s AB 2345 (2020)**, for example, increases the maximum number of units that can be approved through density bonuses. **California’s SB 290 (2021)** requires municipalities to adopt ordinances implementing state density bonus law.

California is not the only state that has set standards for local density rules. **Maine’s LD 2003 (2022)**, mentioned above, mandates that municipalities allow affordable multifamily housing developments to have 2.5 times the density allowed by local zoning codes. Enacted in response to the findings of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions, the bill combines the density provisions with numerous other approaches to promoting housing production. These approaches include establishing statewide housing production goals and limiting local zoning restrictions on ADUs, missing middle, multifamily, and affordable developments. LD 2003 also promotes fair housing by requiring municipal ordinances and regulations to affirmatively further fair housing, as defined by the federal Fair Housing Act of 1968.^{28,29}

States can also set standards for development processes. Adopted in **1969**, **Massachusetts’s Comprehensive Permit Law (Chapter 40B)** sought to increase the number of affordable homes in areas with insufficient affordable units. This law was intended to streamline and simplify local approvals processes for affordable housing by entitling developers to an expedited approval process for projects with affordable housing units. It enables a local zoning board to approve affordable housing developments under flexible rules (the law also has a stick component, which we describe below).³⁰

Sticks

Sticks refer to laws that allow the state to impose penalties on municipalities for noncompliance with a regulation. For example, a stick may be imposed when a municipality fails to meet a legal requirement, misses a quota, or blocks development that is rightfully and legally allowed. Our typology includes five approaches that laws have taken to imposing sticks, such as levying fines, withholding funds, and granting developers a builder’s remedy.

State land use laws may employ the use of financial sticks. For example, **Utah’s SB 34 (2019)** requires cities to show how they will address moderate-income housing needs in their General Plans, including by showing that they have a plan for residential and commercial development aligned with population and employment projections. When a locality fails to plan for moderate-income housing near transit, the state may withhold funds from its transportation grant programs. In addition to this stick, this law also employs a carrot approach by providing zoning and funding incentives for the construction of housing for households with moderate incomes and a plan approach by requiring plan submissions to the state government.

Another example of a stick-based land use policy is **Massachusetts’s Comprehensive Permit Law (Chapter 40B) (1969)** (discussed above as well), which created a state appeals process in the event that a local zoning board denies an application for an affordable housing project. The stick is triggered when a developer raises an appeal within a municipality that identifies less than ten percent of their housing stock as affordable. In such cases, the State of Massachusetts can override local zoning law.³¹ The stick works by

granting developers a builder's remedy, which allows developers to bypass the zoning code. In addition to being a stick, this law also provides an escape hatch where municipalities can receive one- or two-year exemptions from state appeals by adopting a housing production plan and meeting short-term production goals.

This stick approach has been used in other contexts as well. For example, **New Hampshire's SB 342 (2008)** encourages the development of middle- or moderate-income housing in response to the state's shortage of housing for working families. The law requires that local land use regulations provide reasonable and realistic opportunities in the majority of residentially zoned areas the development of "workforce housing", defined in the law as for-sale housing affordable up to 100 percent of AMI. While the law is not intended to be a prescriptive, statewide land use regulation, municipalities must allow for this category of housing to be located in a majority of the land area zoned for residential uses.³² The stick is triggered if a developer's proposal for workforce housing investment is denied by a local planning board and the locality is found to be noncompliant with the requirements provided in the law. In this case, a superior court can rule to grant construction and help negotiate a plan between the developer and municipality. This law illustrates how state laws can restrict or curb a locality's power to reject development. In addition to being a stick, this law also uses a plan approach by requiring municipalities to establish reasonable zoning for this category of housing.³³

Not all stick-based plans fit neatly into one category. For example, **California's AB 1398 (2021)** enforces shorter deadlines to strengthen the implementation of

California's Housing Element Law. Under the Housing Element law, a locality must rezone certain properties to allow for by-right development if it cannot identify sufficient sites to accommodate its housing needs. AB 1398 revises the timeline for penalizing a locality for failing to adopt the required rezoning from three years to one year. The stick is triggered when a locality fails to complete rezoning within 120 days of its statutory deadline. Until the rezoning is complete, the municipality's Housing Element is prohibited from being found in substantial compliance, which renders the jurisdiction ineligible for certain state and federal funding programs.³⁴ In addition to this stick, AB 1398 also employs a plan approach by revising the submission deadlines of a plan to the state.

Carrots

Carrots incentivize municipalities to promote state housing goals by offering rewards for past or future pro-housing actions. Carrots can also expand local authority over land use decisions. Our typology includes two main categories of carrots: funding and flexibility in land use rules.

Funding-based incentives provide increased access to state resources for localities that promote housing. **Minnesota's Metropolitan Livable Communities Act (1995)**, for example, established a grant program available to localities that take prescribed actions to promote affordable housing. To be eligible for Livable Communities Act grants, the law requires localities to negotiate "long-term affordable and lifecycle housing goals" with the Metropolitan Council.³⁵ Eligibility also requires localities to spend minimum amounts of local funds on affordable housing annually.

California’s AB 1029 (2021) similarly uses funding opportunities to incentivize local actions. At the time of AB 1029’s passage, existing law in California allowed the state’s Department of Housing and Community Development (HCD) to designate specific localities as “prohousing jurisdictions”, based on their adoption of local policies that facilitate the creation of new housing. Localities that earn this designation are then given additional points in the scoring of applications for state housing and infrastructure funding. AB 1029 expands the list of local policies which may qualify a jurisdiction for HCD’s prohousing designation to include the extension of existing project-based rental assistance covenants. Recognizing the outsized cost of building new affordable housing and the risk of losing thousands of affordable housing units with expiring rental restrictions, the legislature passed AB 1029 to incentivize affordable housing preservation and avoid potential displacement of low-income tenants.³⁶

States also utilize carrots to target specific types of housing. **Florida’s SB 2188 (2004)**, for example, offers increased flexibility in local land use rules in order to address the shortage of affordable rental housing units across the state. Specifically, SB 2188 allows a local government to adopt an ordinance allowing ADUs in any area zoned for single-family residential use, provided that the locality finds that there is a shortage of affordable rentals within its jurisdiction. ADUs permitted under an ordinance authorized under SB 2188 must be rented at a rate affordable to a very low-income, low-income, or moderate-income person or persons. By granting localities the power to allow for ADUs to be constructed in zones where previously only single-family homes were allowed, the legislature lends greater flexibility to

localities in order to increase the availability of affordable rental housing. Each ADU adopted pursuant to SB 2188 is then counted towards the locality’s existing affordable housing obligations.³⁷ Florida’s legislature also required the state Department of Community Affairs to evaluate the use of ADUs to fulfill affordable housing shortages.³⁸

Escape Hatches

Escape hatches provide municipalities that meet certain criteria exemptions from a state land use law or regulation. Our typology identifies three approaches that laws take to include escape hatches: municipal overrides through votes, exemptions based on municipality type or the achievement of a goal, and exemptions based on state approvals.

One example of an escape hatch is included in the **New Jersey Fair Housing Act (1985)**, which mandated the provision of low- and moderate-income housing. This law was passed in response to the New Jersey Supreme Court ruling in *Southern Burlington County N.A.A.C.P. v. Mount Laurel Township* that required all New Jersey municipalities to allow enough housing for people of all classes through appropriate zoning. In response to the ruling, the New Jersey legislature passed the Fair Housing Act, as part of the state constitution, which created the Council on Affordable Housing (COAH) to oversee municipal efforts to provide affordable housing. This law requires municipalities to submit Fair Share Housing Plans along with their housing elements to the state government. Under our typology, this means that the law employs both state standard and plan-based policy levers. Originally, the law included an escape hatch whereby municipalities were able to “buy” their way out of these obligations

by subsidizing affordable housing development outside of the jurisdictions. The law was amended in 2008 to eliminate this approach, which was often referred to as a loophole.³⁹ Today, in cases where a locality has failed to meet its affordable housing obligations, the law employs a stick approach against municipalities by allowing a developer to seek a builder's remedies, which is a mechanism by which a court can overrule local zoning rules for a property.⁴⁰ For example, the court can put in place mandatory set-asides, density bonuses, or other changes to the property's zoning such as building height and lot coverage requirements, and can hold the municipality liable for related costs, such as sewer, water system, and road improvements.⁴¹

Another example of an escape hatch are cases where a municipality may be exempted from a targeted policy if it has already achieved a certain goal. This approach is evident in the **Illinois HB 625 Affordable Housing Planning and Appeal Act (2003)**, which encourages counties and municipalities to incorporate affordable housing within their housing stock to meet local needs through an affordable housing plan. A municipality can receive an exemption from HB 625 if it can demonstrate that it has achieved an affordable housing threshold (ten percent of units) or if it has a population of fewer than 1,000 residents. The Illinois Housing Development Authority determines which localities are exempt based on data provided by the latest decennial census.

Lessons for Policymakers

The growing need for new housing supply—and particularly for lower-cost housing that can help to address the affordability crisis—has spurred renewed interest in local land use regulations.

States across the country are grappling with how to encourage more housing production and are looking for ways to overcome many localities' efforts to limit new housing production through restrictive zoning policies. The costs of a limited housing supply are high: inadequate affordable housing in cities like San Francisco and San Jose costs the U.S. economy about \$1.95 trillion a year in lost wages and productivity due to workers living elsewhere.⁴² Research shows that more stringent local growth controls and local discretion in the permitting process are also associated with higher residential segregation and inequality.⁴³

In this paper, we present a typology that reveals the various mechanisms by which state governments have used their authority to encourage pro-housing policies at the local level. The typology makes evident the breadth of possible approaches: in some cases, states are attempting to stimulate overall market production through plans and policy levers, while in other cases, state laws are targeting a specific goal or market segment, like affirmatively furthering fair housing or ADUs. States have tried integrating more than one type of policy lever in the laws they pass, such as pairing carrots with state standards or plans with sticks. The laws profiled in this brief can serve as models for state legislatures nationwide interested in exploring approaches that might work under their specific legal, economic, and political conditions.

Our research shows that the development of pro-housing policies often occurs through years of work and an iterative approach. While some laws we reviewed were enacted as new sections of state code, the majority of laws were amendments to existing statutes. For example, California's legislature has amended its

housing plan requirement—known as the “Housing Element Law”—over 20 times since 2017.⁴⁴ States interested in encouraging more pro-housing policies at the local level should focus as much on implementation as passing new laws. Policy levers—including both carrots and sticks—can ensure that plans or other regulatory actions are associated with adequate incentives and accountability structures to be effective.

Our review of state laws opens up important avenues for future research. First, additional research is needed to understand whether state pro-housing laws—especially recent, high-profile legislation like California’s SB 9—are adequately stimulating new housing supply. More research that can assess which approaches are successful, and in what market contexts, could also help state policymakers decide which tools will work best in their jurisdictions. Innovation in state laws related to housing is blossoming, and research that can tease out the impact of stronger plan requirements, financial incentives, or streamlining on increasing supply or reducing the costs of development is critical. Second, we need further research that explores how these laws were passed. For example, research on Oregon’s HB 2001—which required the state’s larger cities to legalize duplexes and other low density multi-family housing types—highlighted the conditions under which the law was passed.^{45,46} Stakeholders described the broad and time-intensive coalition that was key to the law’s passage, and detailed how support for upzoning was generated over time, building off of both the failure of HB 2001’s predecessor bill (HB 2007, passed in 2017), and the success of an earlier law (HB 608, passed in 2019) that laid the groundwork for broad tenant protections that were important in

building support for the law. Additional research that delves into the coalitions that were formed to support new state legislation can help shed light on best practices and guide policymakers in identifying the right models and approaches for their own states and political environments.

Finally, we hope that this preliminary typology will lay the groundwork for a national database of housing policies that legislators can use to make informed decisions on new housing legislation. While we have only reviewed a selection of state laws, a comprehensive database would allow us to identify the degree to which states are implementing legislation designed to encourage or require municipalities to facilitate housing production. We envision being able to better answer questions such as whether the extent of state intervention in local land use policy has changed since the late 1960s. What types of policy levers are most commonly used to encourage specific outcomes, and why? Does a wave of states legalizing duplexes and fourplexes help the next state build political will for this type of land use reform? Our initial scan of state pro-housing laws identifies plans and state standards as the most common policy levers employed, but future work could confirm this trend and help shed light on why this is the case. This type of database could, finally, help policymakers identify policies being passed in housing markets similar to their own, benefit from model legislation and best practices, and learn from and collaborate with other states or jurisdictions.

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Appendix A. List of Laws Included in Database

STATE	BILL NUMBER/LAW NAME AND LINK TO STATUTE	YEAR ADOPTED
California	AB 101	2019
California	AB 1029	2021
California	AB 1174	2021
California	AB 1197	2019
California	AB 1255	2019
California	AB 1304	2021
California	AB 1397	2017
California	AB 1398	2021
California	AB 1483	2019
California	AB 1485	2019
California	AB 1486	2019
California	AB 1505	2017
California	AB 1515	2017
California	AB 1560	2019
California	AB 1561	2020
California	AB 1763	2019
California	AB 1851	2020
California	AB 2011	2022
California	AB 2162	2018
California	AB 2299	2016
California	AB 2345	2020
California	AB 2406	2016
California	AB 3194	2018
California	AB 434	2020
California	AB 571	2021
California	AB 602	2021
California	AB 634	2021
California	AB 670	2019
California	AB 671	2019
California	AB 678	2017
California	AB 68	2019
California	AB 686	2018
California	AB 72	2017
California	AB 725	2020
California	AB 73	2017
California	AB 787	2021
California	AB 831	2020
California	AB 879	2017

STATE	BILL NUMBER/LAW NAME AND LINK TO STATUTE	YEAR ADOPTED
California	AB 881	2019
California	SB 10	2021
California	SB 1030	2020
California	SB 1069	2016
California	SB 13	2019
California	SB 166	2017
California	SB 167	2017
California	SB 290	2021
California	SB 330	2019
California	SB 35	2017
California	SB 478	2021
California	SB 540	2017
California	SB 6	2019
California	SB 7	2021
California	SB 728	2021
California	SB 8	2021
California	SB 828	2018
California	SB 9	2021
Connecticut	Affordable Housing Land Use Appeals Act (General Statutes, 8-30g)	1989
Connecticut	Affordable Housing Plan (General Statutes, 8-30j)	2017
Connecticut	HB 5107	2000
Connecticut	HB 6107	2021
Connecticut	Incentive Housing Zone Program (General Statutes, 8-13n to 8-13x)	2007
Connecticut	PA 95-280	1995
Connecticut	PA 99-261	1999
Delaware	HB 506 (70 De. Laws 522)	1996
Delaware	SB 124 (72 De. Laws 122)	1999
Florida	SB 2188	2004
Florida	HB 1339	2020
Hawaii	Act 229; SB 55	1981
Illinois	Affordable Housing Planning and Appeal Act (HB 625)	2003
Maine	LD 970	2019
Maine	LD 2003	2022
Maryland	Economic Growth, Resource Protection, and Planning Act	1992
Maryland	HB 1141	2006
Maryland	SB 389	1997
Maryland	Smart and Sustainable Growth Act (SB 280/HB 297)	2009
Maryland	Smart Growth Goals, Measures, and Indicators and Implementation of Planning Visions (SB 276/HB 295)	2009
Maryland	Sustainable Growth and Agricultural Preservation Act (SB 236)	2012

Appendix A. List of Laws Included in Database (Continued)

STATE	BILL NUMBER/LAW NAME AND LINK TO STATUTE	YEAR ADOPTED
Maryland	The Planning Visions (SB 273/HB 294)	2009
Massachusetts	The Smart Growth Zoning Overlay District Act (Chapter 40R)	2004
Massachusetts	Smart Growth School Cost Reimbursement (Chapter 40S)	2005
Massachusetts	The Massachusetts Comprehensive Permit Act (Chapter 40B)	1969
Massachusetts	An Act Enabling Partnerships for Growth (H 5250)	2021
Minnesota	Community-Based Planning Act	1997
Minnesota	Metropolitan Land Planning Act	1976
Minnesota	Metropolitan Livable Communities Act	1995
New Hampshire	Housing Appeals Board (Chapter 679)	2019
New Hampshire	SB 342	2008
New Hampshire	SB 146	2016
New Jersey	New Jersey Fair Housing Act	1985
New York	Urban Development Corporation Act 174/68	1968
Oregon	SB 141	2021
Oregon	HB 2001	2019
Oregon	HB 2002	2017
Oregon	HB 2003	2019
Oregon	HB 2006	2021
Oregon	HB 2007	2021
Oregon	HB 2008	2021
Oregon	HB 2160	2021
Oregon	HB 2306	2019
Oregon	HB 2336	2019
Oregon	HB 2377	2017
Oregon	HB 2583	2021
Oregon	HB 2916	2019
Oregon	HB 2918	2021
Oregon	HB 3155	2021
Oregon	HB 3261	2021
Oregon	HB 3335	2021
Oregon	SB 1051	2017
Oregon	SB 262	2019
Oregon	SB 391	2021
Oregon	SB 458	2021

STATE	BILL NUMBER/LAW NAME AND LINK TO STATUTE	YEAR ADOPTED
Oregon	SB 534	2019
Oregon	SB 8	2019
Oregon	SB 8	2021
Oregon	SB 805	2021
Pennsylvania	SB 535	1988
Pennsylvania	Act 67, HB 14	2000
Rhode Island	Rhode Island Low and Moderate Income Housing Act	1991
Rhode Island	General Laws § 45-24-37	2017
South Dakota	HB 1094	2021
Utah	HB 82	2021
Utah	HB 98	2021
Utah	Quality Growth Act (HB 119)	1999
Utah	SB 164	2021
Utah	SB 34	2019
Vermont	Act 179	2020
Vermont	24 V.S.A. § 4412	2005
Washington	HB 1070	2021
Washington	HB 1173	2022
Washington	HB 1220	2021
Washington	HB 1724	2022
Washington	HB 2001	2022
Washington	HB 2061	2022
Washington	HB 2343	2020
Washington	HB 2673	2020
Washington	HB 2950	2020
Washington	RCW Chapter 36.70A	1990
Washington	SB 5024	2021
Washington	SB 5225	2021
Washington	SB 5235	2021
Washington	SB 5287	2021
Washington	SB 5755	2022
Washington	SB 5818	2022
Washington	SB 6617	2020

Appendix B: Typology of Select State Housing Production Laws (Continued)		LD 2003	The Planning Visions (SB 273/HB 294)	The Smart Growth Zoning Overlay District Act (Chapter 40R)	The Massachusetts Comprehensive Permit Act (Chapter 40B)	Metropolitan Land Planning Act
GENERAL	State	ME	MD	MA	MA	MN
	Year adopted	2022	2009	2004	1969	1976
FUNCTIONAL GOALS	General production	x	x	x		x
	Affordable housing	x	x	x	x	x
	Fair housing	x			x	
	Sustainability and smart growth	x	x	x		x
MARKET SEGMENT	Emergency Shelter					
	Affordable	x		x	x	x
	Middle or moderate income	x				
	Missing middle	x				
	Accessory dwelling unit	x				
	Multifamily	x		x		
POLICY LEVER: Sticks	Public land					
	Fines					
	Withheld funds					
	Grant developer legal rights				x	
	Streamline/ exempt review				x	
	Municipalities losing powers					
POLICY LEVER: Carrots	Other					x
	Funding			x		x
	Land use rule flexibility	x				
POLICY LEVER: State Standards	Other					
	Allow housing type by right	x				
	Limit parking minimums, fees, other costs	x				
	Streamlining reviews					
	Density bonuses					
	Eliminate or reduce density caps	x				
	Displacement protections					
POLICY LEVER: Plans	Other					
	Minimum or reasonable space for housing	x		x		
	Fair housing goals	x				x
	Process standard				x	
	Data to public					
	Data to state			x		x
	Data from state	x		x		x
	Technical assistance from state					x
	Consultation/engagement					x
ESCAPE HATCHES	Other		x			
	Municipal override votes					
	Exemption based on municipal type or goal achievement				x	
	Exception approval by state			x		
Other						

