

An Overview of Chapters 40R and 40S: Massachusetts' Newest Housing Policies

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Housing has become increasingly unaffordable for low and moderate income households in Massachusetts, particularly in the Boston metropolitan region. In 2004, *The Greater Boston Affordable Housing Report Card* reported that there were only 27 communities in Boston's Primary Metropolitan Statistical Area in which a median-priced single-family home would be affordable to a family earning that community's median household income. And, in only one community, Milton, could a typical first-time homebuyer who earned 80 percent of the town's median income be able to afford a house priced at 80 percent of the median. Recent research by the Rappaport Institute for Greater Boston suggests that the high price of housing in Massachusetts is driven in part by local land use regulations. Massachusetts recently passed two new laws—Chapters 40R and 40S—that provide financial incentives to Massachusetts communities to encourage new housing supply. Will these be enough to overcome local resistance to new housing?

Land use regulations constrain the supply of housing by either restricting the number of units that can be built or increasing the costs of construction. While regulations often intend to advance local interests, these local interests may or may not mirror the general public interest. For example, growth management regulations can benefit everyone by minimizing the costs associated with rapid development,

such as congestion and environmental degradation. But other regulations may work against broader public goals. For instance, local zoning that prevents denser or more affordable development addresses the important local concern that new tax revenues may not cover the cost of services—such as sewers, roads, and education—required by new residents, but exacerbates the affordability problem. Chapters 40R and 40S seek to address this problem with incentives—or “carrots” —for communities that build more affordable and market rate housing. As Professor Barry Bluestone of Northeastern University noted, in order to increase the supply

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of housing, “We have to get the incentives right for local communities, so that their interests and the interest of the Commonwealth align.”

Massachusetts first addressed local regulatory barriers to affordable housing development in 1969, when it passed Chapter 40B. This law promotes the public goal of increasing and dispersing the supply of affordable housing by using a stick approach—regulating a required

amount of affordable housing. 40B compels communities to host at least 10 percent affordable housing. Under the law, eligible developments featuring mixed-income and affordable housing can be granted comprehensive permits by a Local Zoning Boards of Appeals (ZBA). Comprehensive permits streamline and consolidate the typically lengthy local permitting process. For a development to be eligible, it must use government housing programs or funds approved under 40B, reserve a percentage of housing for low-income households, and ensure that at least a quarter of the planned units include long-term affordability restrictions. If a qualified development is denied a comprehensive permit by a ZBA in a community with less than 10 percent of its housing affordable, the developer may appeal the decision to the state Housing Appeals Committee (HAC). The HAC reviews the case, weighing regional need for affordable housing against stringent interpretations of the development's potential impact on public health, safety, and welfare.

Communities with more than 10 percent of its housing affordable may still grant applications for comprehensive permits, but the local decision may not be appealed to the HAC. Where a community stands relative to the 10 percent standard is tracked in the Department of Housing and Community Development (DHCD)'s Subsidized Housing Inventory (SHI). Which units are "affordable" and count towards the 10 percent standard is defined not by their price relative to local or

The new laws promote state goals while addressing community concerns about the net costs of new housing

state median incomes but by use of the state, federal, and quasi-governmental programs approved under 40B. Communities have expressed concern about what is and is not counted towards the 10 percent standard, prompting revisions of the definition of eligibility in recent years.

Because it establishes requirements that can be counter to local interests, 40B has consistently met with local resistance. Local officials have claimed that the comprehen-

sive permit granted under 40B limits their ability to conduct effective planning consistent with sustainable development principles. Another issue is that 40B forces municipalities to accept developments out of scale with established community character. And 40B had no provisions to address growing local concerns about the additional service costs of new housing developments.

Nonetheless, 40B has been the Commonwealth's most important affordable housing production policy since its establishment, especially in suburban areas. A recent study by Northeastern's Center for Urban and Regional Policy found that 40B developments accounted for 60 percent of all new affordable units in the state, and 80 percent of those outside the city of Boston. However, in part because of local resistance, 40B has not been able to significantly increase the supply of affordable housing throughout the Commonwealth. According to the SHI, as of January 2006, affordable units accounted for 10 percent or more of the housing stock in only 47 of the state's 351 communities.

As problems with affordability continued to mount in the Commonwealth, the Romney administration changed the nature of the housing debate by establishing new policy priorities to promote smart growth. An Office of Commonwealth Development was established in 2003 to integrate the actions of several state departments in the interest of promoting smart growth in the state. Smart growth refers to mixed-use development concentrated around transportation nodes and community centers. The state's new commitment to smart growth, combined with the need for additional housing, spurred the development of two new housing production policies: Chapters 40R and 40S. These laws aim to add enough new housing within established growth areas to moderate housing price inflation, so that increases would be more in line with the growth in family incomes. The architects of the law believe that this goal can be accomplished with a relatively modest increase of 33,000 new market-rate and affordable housing units over the next 10 years.

Both laws provide the carrots of local financial incentives, in contrast with 40B's stick of regulatory requirements. Chapter 40R provides financial incentives to commu-

nities that establish a state-approved smart growth zoning district (SGZD). Within the zone, towns are required to allow for denser residential development — eight houses per acre for single family homes and at least 20 units per acre for condominiums and apartment complexes. In addition, at least 20 percent of the housing developed within a SGZD must be affordable to households making 80 percent of area median income. Upon state approval of a SGZD, a municipality receives a one-time incentive payment ranging from \$10,000 to \$600,000, depending on the number of total new housing units planned. An additional “density bonus payment” of \$3,000 per housing unit is disbursed when a building permit is issued. Chapter 40R also gives communities with approved SGZDs priority for discretionary funds from other state agencies. Furthermore, mixed-use and affordable housing is allowed as of right in the SGZD, relieving the developer of the need to secure multiple local permits or get approval for the development at a public meeting.

Communities worry that additional housing created under 40R will result in greater educational costs than what could be recovered through the property and excise taxes paid by those new households. Previous research does not conclusively show that new housing automatically implies increased housing costs. But an examination by the Commonwealth Housing Task Force found that in the 238 Massachusetts cities and towns not receiving state foundation aid for education, each single-family home costing \$550,000 or less built in an SGZD would likely increase net education costs by \$5,000. Net education costs are equal to the total increase in education costs per household minus any increase in property tax and excise tax revenues collected from the household. Analysis found that typical multi-family developments resulted in net education costs of \$320 per unit for 43 percent of communities in the Commonwealth.

To address the potential impact on education costs a companion law, Chapter 40S, creates a Smart Growth School Cost Reimbursement Fund to provide full reimbursement for any net new education costs resulting from housing units built under 40R. Only net new municipal costs attrib-

uted to eligible children, defined as children living in a SGZD and enrolled as of the prior year in an elementary or high school, are covered under 40S. The Commonwealth Housing Task Force estimates that, if the full 33,000 new units were built, by the tenth year the density bonuses would cost the state \$14 million annually and the school cost supplement would be \$35 million annually. Much of this cost is covered by a Smart Growth Housing Trust Fund, capitalized through the sale of surplus state land.

Will Chapters 40R and 40S induce the production of enough new housing units to moderate the Commonwealth’s housing price growth? It will be hard to know the answer; there are signs that the regional housing market is beginning to cool, so price growth may

The Commonwealth Housing Task Force

Formally established in 2002, The Commonwealth Housing Task Force is an ad hoc group representing diverse constituencies with an interest in addressing the housing affordability problem in Massachusetts. Now heralded as a model of public and private collaboration and an example of the power of uniting multiple stakeholders to solve complex policy problems, the Task Force followed on the heels of a contentious battle in the late 1990s between housing advocates and business leaders over the passage of the Community Preservation Act (CPA) in Boston. The CPA allows local communities the option of a local tax surcharge to fund housing, recreation or conservation projects.

As the state’s affordability problem grew throughout the decade, the formerly estranged constituencies decided that collaboration was needed if there was to be any hope of developing policies that could ameliorate the problem. The two sides convened in late 2001 and eventually expanded their membership to include the civic community, foundations, the environmental community, organized labor, real estate developers, elected and appointed officials at both the state and local levels, and members of the higher education community. Staff support is provided by the Boston Foundation and Northeastern University’s Center for Urban and Regional Policy. Eventually, the Task Force released the two reports that were the foundation of Chapters 40R and 40S, both of which are discussed further within this policy brief. Since the passage of the new laws, members of the Task Force have been involved in educating local officials about the incentives provided under them.

slow independent of any new or existing policy. If 40R and 40S have any influence at all, it will depend critically on how many communities decide to participate. It is still too early to know how many will ultimately take advantage of the policies, since regulations for 40R were promulgated only in March 2005 and the process of adopting new zoning regulations is relatively slow. As of January 2005, DHCD staff reported that only one municipality (Chelsea) had submitted a 40R application, though more applications are expected soon. Current grassroots efforts by the

Will 40R and 40S increase supply enough to moderate housing price growth?

Commonwealth Housing Task Force to educate more municipalities about the incentives and intent of the new law could increase participation rates.

However, observers and analysts have noted some potential obstacles to participation. The first is concern over loss of local control—especially with respect to the 40R provision that mixed-use and affordable housing is allowed as of right. A 2004 report by the Metropolitan Area Planning Council indicated that local officials were “...critical or completely opposed to giving the state a degree of control over their zoning decisions” and felt that “...the trade-off of giving

up control to the state was not worth the money and possibly not worth any amount of money.” While communities can pre-plan the types of developments that they allow as of right in SGZDs, the desire to maintain local control over the entire development process may be a significant stumbling block for 40R. Second, municipalities are not convinced that the state is committed to funding the financial incentives of 40R and 40S over the long term, given previous budget cuts resulting from changing fiscal conditions or policy priorities.

In creating Chapters 40R and 40S, policymakers recognized that respecting local concerns in the pursuit of statewide goals was a more effective strategy than mandating or regulating behavior. While the jury is still out on how effective 40R and 40S will be, moving from regulation to incentives is a commendable step for housing policy in the Commonwealth.

For further reading:

Building on Our Heritage: A Housing Strategy for Smart Growth and Economic Development. Report and Recommendations for the Commonwealth Housing Task Force. The Center for Urban and Regional Policy, Northeastern University, October 2003.

Chapter 40R School Cost Analysis and Proposed Smart Growth School Cost Insurance Supplement. Report and Recommendation for the Commonwealth Housing Task Force. The Center for Urban and Regional Policy, Northeastern University, May 2005.

Jonas, Michael. “House Rules.” *CommonWealth Magazine*. January 2006.