June 2024

Housing in Session

A Brief Survey of State Legislative Activity on Affordable Housing

About the National Association of Counties

The National Association of Counties (NACo) strengthens America's counties, serving nearly 40,000 county elected officials and 3.6 million county employees. Founded in 1935, NACo unites county officials to:

- Advocate county priorities in federal policymaking
- Promote exemplary county policies and practices
- Nurture leadership skills and expand knowledge networks
- Optimize county and taxpayer resources and cost savings, and
- Enrich the public understanding of county government

NACo's Mission

Strengthen America's Counties.

NACo's Vision

Healthy, safe and vibrant counties across America.

Contact

Kevin Shrawder
Associate Director, Economic & Government Studies
National Association of Counties
kshrawder@naco.org

This report was written and prepared by Ben Kelly, a public policy researcher and strategic communications consultant based in Denver. His communications background includes working with public and private sector clients in economic development, housing, urban planning, transportation and elections. He tracks local and state elections across the U.S. on land use and housing. Connect with Ben at **www.benkelly.info**.

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Executive Summary

In state legislative chambers and governors' offices across the U.S., interest in local affordable housing issues is on the rise. The contexts are unique to each state and region, but the common thread is a multi-dimensional housing crisis that shows few signs of abating.

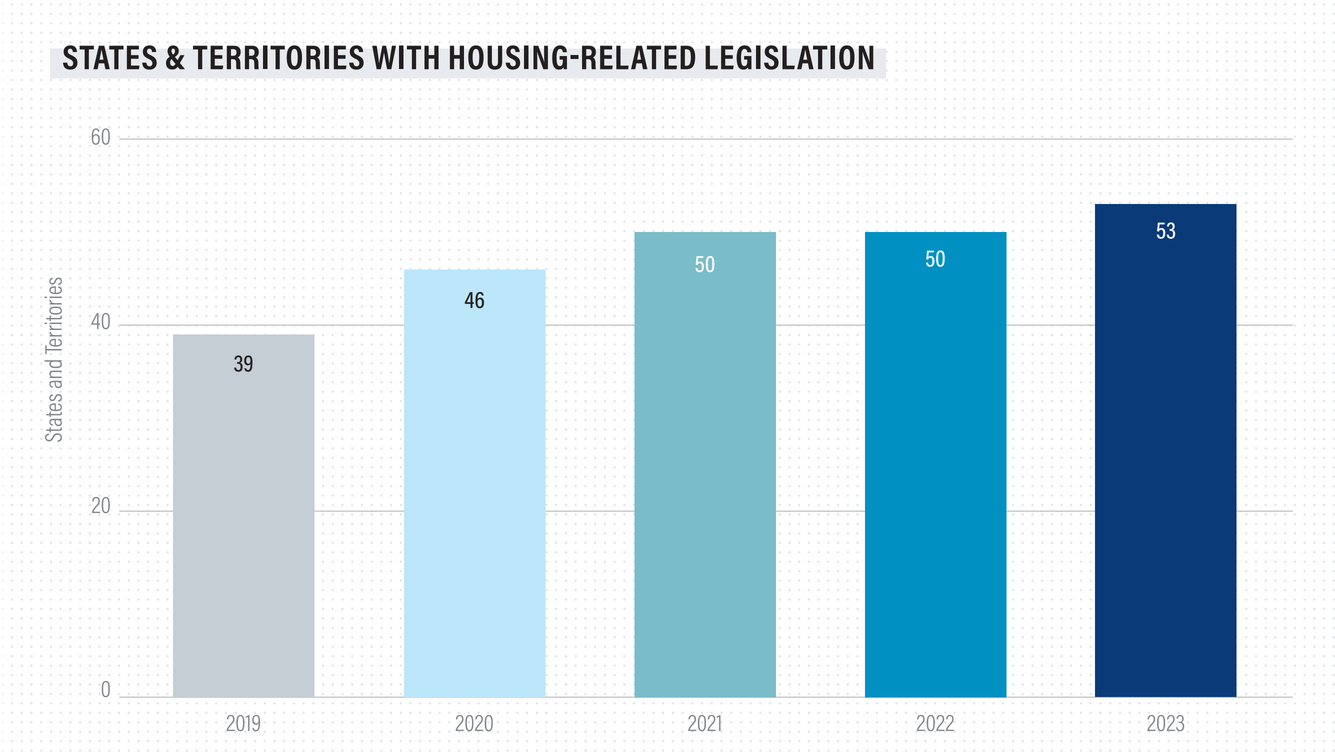
State legislation that deals with housing spans dozens of policy areas, many of which are interconnected. This study looks at a few of them, a mix of supply-side and demand-side topics broadly categorized as:

- Land use and zoning
- State resources (e.g., infrastructure, land and funding)
- Homebuyer supports
- Manufactured housing
- Home repair and rehabilitation
- Ballot measures

These are a mere handful of the areas where lawmakers shape current housing policies and advance new ones.[1] County leaders play a major role in the policy dialogue at the state level, and it is more important than ever for county leaders to engage with state legislators and executive branch agencies, provide the unique perspective of county governments in urban, suburban and rural contexts, and elevate housing issues that determine the health and vibrancy of their communities and the economic mobility and opportunity of their constituents.

[1] This study focuses on state legislation starting in 2019, with an emphasis on activity in 2022 and 2023. There are many issues that intersect the housing policy landscape in the nearly 1,200 housing bills enacted in state legislatures in the past five years: homelessness, permanent supportive housing, emergency shelter, short-term rentals, inclusionary zoning, rent control and rent stabilization, residential building codes, insurance regulations, community land trusts, tenant rights, foreclosures–and the list goes on. The categorization and compilation of bills in the topics covered here and across the housing spectrum are taken from the ***National Conference of State Legislatures Housing and Homelessness Legislation Database.***

Introduction



As the legislatures gavel in, every state chamber and executive office is confronting the ringing alarms of housing markets and conditions. Median home sales prices are 26% higher than before the pandemic, and rising housing costs consistently outpace wage growth.[2] A decades-long trendline of housing development is illustrated by the astonishing growth in many cities and suburbs that paradoxically masks a 3.8 million-unit national housing deficit. Some regions are confronted with a desperate housing undersupply, while others have more pressing needs for home repair and rehabilitation for an aging housing stock. The point-in-time data gathered by by the U.S. Department of Housing and Urban Development (HUD) in January 2022 counted 582,500 persons who were experiencing homelessness.[ii] About one-half of Americans (49%) say the availability of affordable housing in their local community is a major problem.[iii]

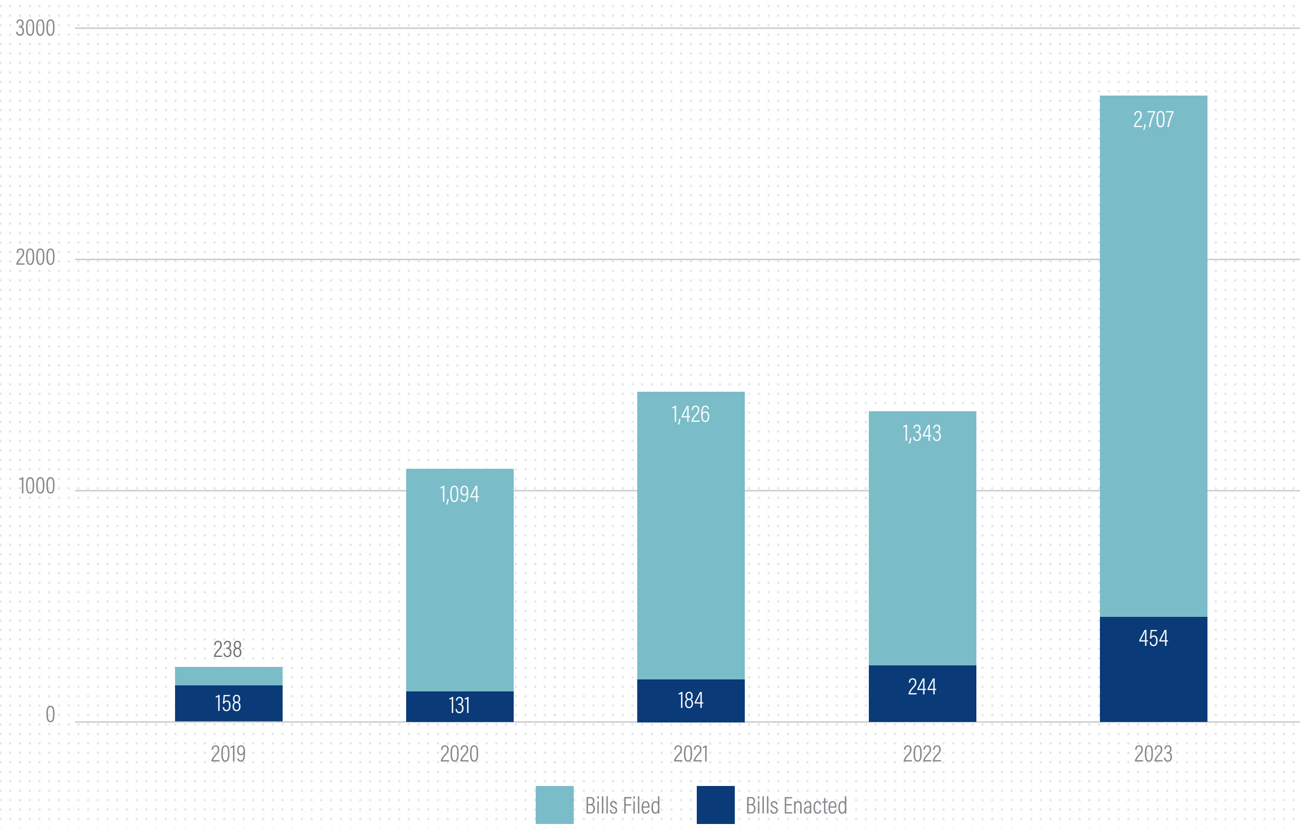
[2] *States that do not have regular sessions in even-numbered years are Montana, Nevada, North Dakota and Texas. Legislative bodies in Washington, D.C. (City Council) and in US territories meet through the entire year.*

The costs to build housing have never been higher. The National Association of Homebuilders' 2022 nationwide survey reported that, on average, 61% of the sales price of a home is due to construction costs, only the fourth year since 1998 that the number has crested 60%.[iv] Urban and rural counties alike face housing shortages, price increases and rising construction costs.

These trends intersect and exacerbate the challenges faced by state and local governments in fostering economic mobility, grounded in the principal goal that each generation's economic status improves. Access to affordable housing determines access to basic needs such as jobs, education, childcare and health services. The rising cost burden that housing imposes on individuals and families–rural, urban and places in-between–may have significant impacts on their ability to achieve financial stability, build wealth and achieve economic security and prosperity.

The National Association of Counties' recognition of housing's central role in economic mobility led to the 2022 formation of the [Housing Task Force], the launch of the [Housing Solutions Matchmaker Tool] and the research series ["Housing Affordability for America's Counties."] This study is connected to those initiatives and focuses on the relationship between state legislatures and local governments in the housing arena; how state legislative actions impact local housing policy and programs; and how state legislation and budgeting influences local land use, zoning regulation and financing.

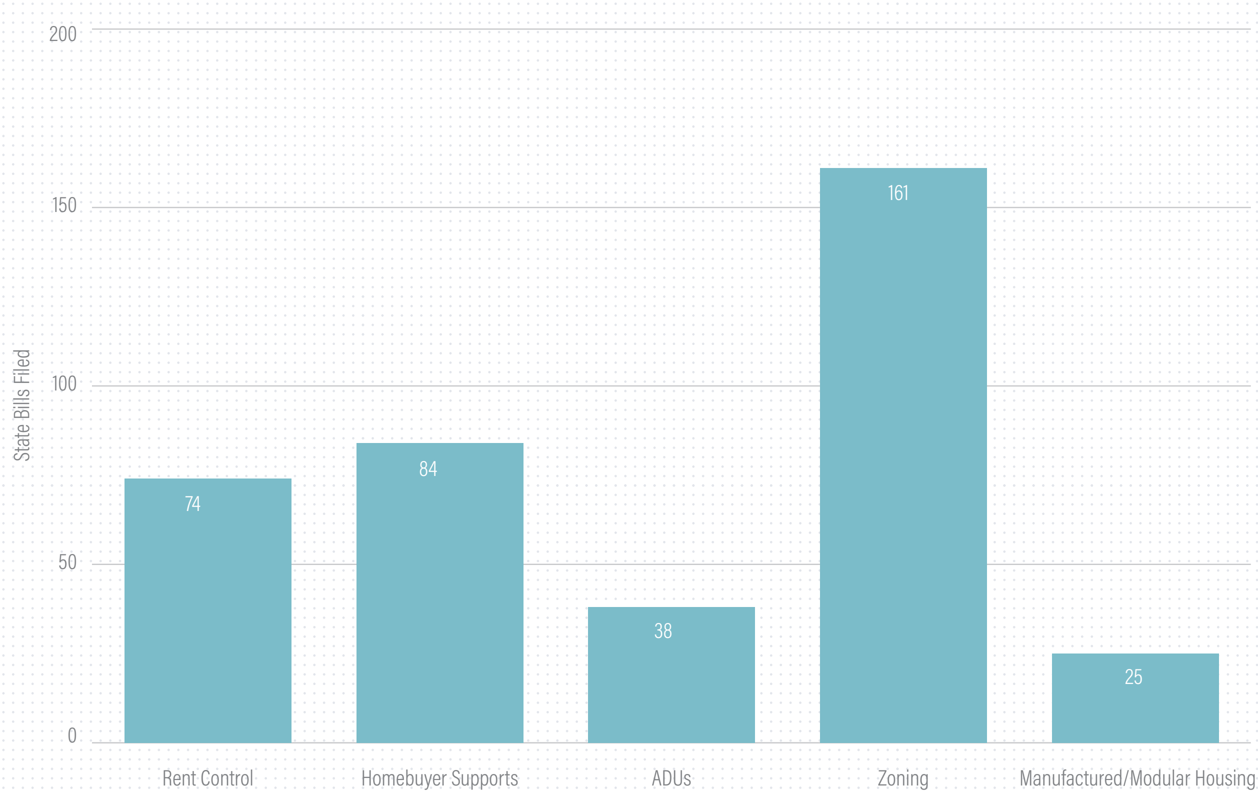
TOTAL HOUSING & HOMELESSNESS RELATED BILLS FILED AND ENACTED



It is not a new phenomenon for state governments to play an assertive role in local housing and land use matters. A timeline of housing policymaking over recent decades is punctuated by state laws to advance the 1968 Fair Housing Act, establish smart growth policies, slow urban sprawl, create state housing finance authorities, and establish regional growth planning systems. What makes this time different is the legislation is evolving to respond to crisis-level housing pressures, particularly since the pandemic.

By acknowledging that housing is essential for both individual health and local economic prosperity, governors and state legislators are moving into housing policy spaces that traditionally have been the domain of local oversight and decision-making. This creates both opportunity and difficulty for county action. The implications are big and the outcomes have generational consequences for both economic vibrancy at a local level, and economic mobility at an individual or household level.

SELECT CATEGORIES OF STATE HOUSING LEGISLATION, 2019–2023



Legislating to Boost Supply Through Land Use and Zoning

Announcing the launch of a statewide housing task force in 2021, Montana Governor Greg Gianforte put one agenda item front-and-center: "Zoning regulations constrict housing supply and make affordable housing less accessible," he said in an executive order.v "It's time to remove these roadblocks so Montanans can better afford to live in the communities they work in."

It would be hard to find a policy debate that generates more friction than statehouse officials intervening in local zoning codes.[3] Even so, state lawmakers across the U.S. are focused on legislating zoning reform, reshaping local development authority and loosening local restrictions on how much and where new housing can be built.[vi]

Acting on Zoning

According to the National Conference of State Legislature database on housing and homelessness legislation,[vii] in 2019 there were three zoning-related bills filed in two states. In 2023, that total jumped to 64 bills filed in 16 states.

Lawmakers in California's state capitol have been the most prolific. A brief but hardly adequate synopsis of the past few years would include enacted legislation that:

- Caps the number of local government hearings on certain affordable housing developments (Senate Bill 8);
- Allows by-right lot splits and additional units in single-family residential zone districts (Senate Bill 9);
- Limits local discretionary review on multi-family housing near transit (Senate Bill 10); and
- Expedites permitting for multifamily infill projects in jurisdictions that are off track in meeting housing construction targets (Senate Bill 35)

The 2023 session showed continued momentum in zoning and land use reform. California passed into law Senate Bill 4, which allows religious communities, churches and non-profit colleges to bypass certain local zoning and discretionary reviews to build affordable housing on their properties. Assembly Bill 2011 streamlines review processes for 100% affordable housing developments in commercial zone districts–enough land area, according to one study, to accommodate 1.6 million to 2.4 million new housing units with potentially 400,000 income-restricted affordable homes. In approving Senate Bill 423, state lawmakers took the controversial Senate Bill 35 (enacted in 2017), tightened some provisions, expanded its reach and added ten years to Senate Bill 35's original sunset provision in 2026.

[3] In 28 states, county governments zone unincorporated areas, and municipalities zone within town and city boundaries. There are eight states where counties have no zoning authority: Rhode Island, Connecticut and parts of Massachusetts have no county government; and New Jersey, Pennsylvania, New Hampshire, Vermont and Maine where township governments–outside of municipalities–have zoning authority over unincorporated areas. Alaska's Unorganized Boroughs are similar to counties, but have no government powers.

ZONING-RELATED BILLS FILED AND BILLS ENACTED

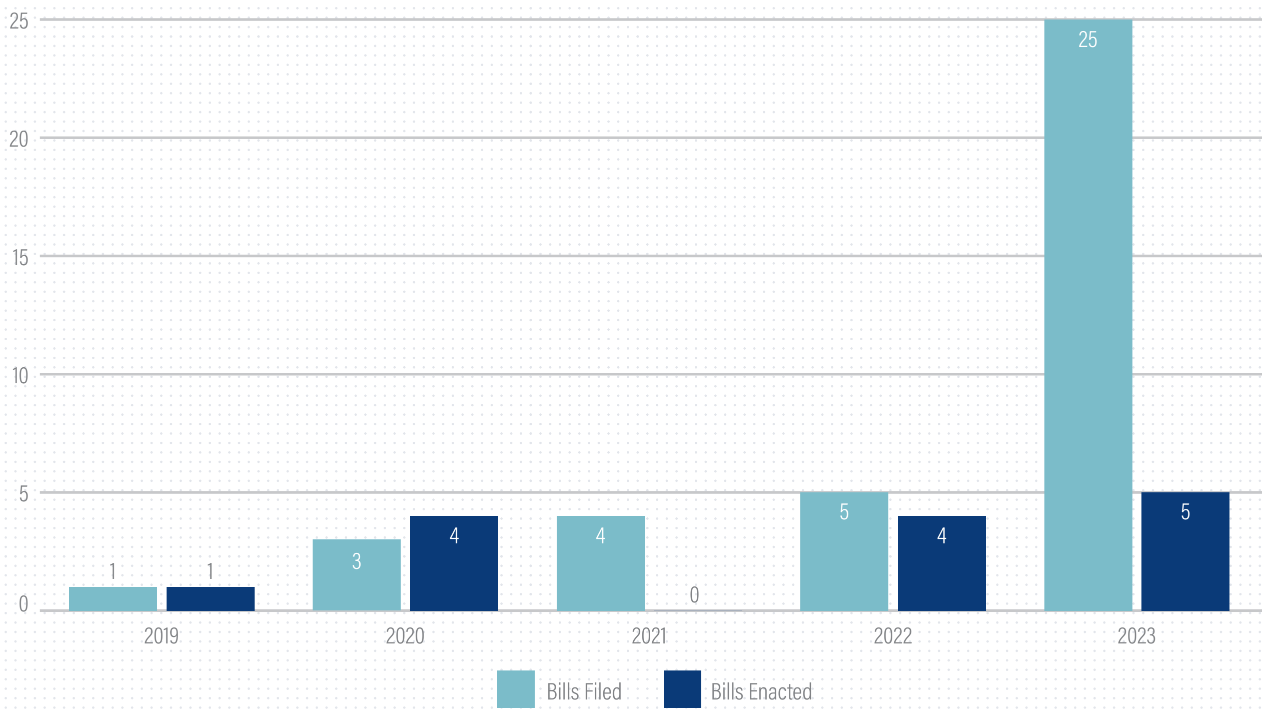
	2019	2020	2021	2022	2023
Bills Filed	3	31	35	28	64
Bills Enacted	3	5	8	8	11

A scan of other states includes Oregon's House Bill 2001 (passed into law in 2019), which creates state-level standards to allow duplexes and other "middle housing" by-right in single-family zone districts. Washington's House Bill 1110 (2023) requires most cities and counties to allow fourplexes by-right on single-family lots, which bumps up to six-plexes if close to transit. Florida's Senate Bill 102 (the "Live Local Act," 2023) says local governments must authorize multifamily projects in commercial and industrial zoned areas if at least 40% of the units are affordable.

State legislation to promote Accessory Dwelling Units (ADUs) as an affordable housing supply solution has emerged. In 2023, eleven state legislative sessions featured a bill devoted to ADUs, and those 25 bills (in total) almost double the number of ADU bills filed in the prior four years combined. Many of them preempt cities and counties from over-regulating ADUs by setting prohibitive standards for parking requirements, minimum lot sizes, floor-to-area ratios or lot coverage. Connecticut's House Bill 6107 makes ADUs a use by-right on single-family residential zoned lots in the state's 169 municipalities. Utah's House Bill 82 requires cities and counties to classify most ADUs as a permitted land use. Maine's LD 2003 (2022) creates state-level guidelines for ADUs to which local governments must adhere.

The Montana housing policy conversation launched in 2022 achieved several legislative outcomes in the 2023 session. The state enacted a set of new laws that streamline Montana's subdivision procedures (House Bill 211), open commercial zone districts to multi-family housing development (Senate Bill 245), allow duplexes by-right in single-family residential zone districts (Senate Bill 323), limit local design review procedures (Senate Bill 407), and prevent local governments from blocking ADUs by tacking on code requirements for parking and owner-occupancy (Senate Bill 528).

BILLS ON ACCESSORY DWELLING UNITS



A Housing Paradigm Shift

These new state laws in Montana and elsewhere signal a transformation in housing policymaking that counties should monitor closely. In this changed policy environment, state lawmakers are pivoting away from ordering localities to meet quantitative targets for new housing growth and affordable housing, targets which lie at the heart of the 1968 Fair Housing Act and "fair share" regulations that require the distribution of low- and low-moderate income housing development across all regions. Instead, these recent state statutes focus on lowering barriers to density and laying out new ground rules for the types of housing structures that localities must permit to be developed in single-family residential and commercial zone districts. They bring state actors into the realm of local comprehensive plans and zoning codes in a new way.

For counties in particular, one area of counterargument against these state laws to catalyze new housing supply is that the new rooftops put pressure on local infrastructure and services in unincorporated areas that are already stressed (or, in some cases, not in place), such as water and wastewater systems, school capacity, public safety and emergency services. For example, officials from rural areas note that while they certainly have the land area to accommodate ADUs and additional housing (which county codes may even allow as a use by-right), local regulations still must be followed to ensure there is adequate water, wastewater, fire and police service, electricity and septic system infrastructure in place before they issue a building permit. They also point out the new laws' potential to overwhelm the local planning staff, planning commissions and oversight bodies that must comply with them. Further, lowering regulatory guardrails does not touch the litany of other barriers to building housing affordably, such as high interest rates, high cost of materials, and the limited availability of skilled labor.

One relief valve has been to establish carve outs in zoning-related bills for small communities, unincorporated areas and rural regions. In Montana's case, legislation that introduces by-right duplexes and multi-family development in commercial zones applies only to cities over 5,000 in population. Agriculture, ranching and environmental interests supported or remained neutral on most of the eventual package of Montana land use bills, in part because directing housing growth to cities, employment centers and services also protects rural open spaces and agricultural lands.

Similarly, Maine's legislation on ADUs and multifamily housing only applies to areas that are designated for housing growth in a local comprehensive plan, are served by a public sewer system, and are located within a "compact area of an urban compact municipality." For a lot split or multi-family project in an unincorporated area to qualify for expedited review under California's Senate Bill 9, the property must be a "legal parcel wholly within the boundaries of an urbanized area or urban cluster" designated by the Census Bureau.

However, these important exclusions can be inconsistently applied. Washington's House Bill 1100 promoting housing density provides some exemptions for cities under 25,000 population, but a 2023 bill that preempts local land use authority on ADUs (House Bill 1337) omitted such carve outs for rural and unincorporated areas.

The Long Game

Seeing the fruits of state-level zoning reform will require a long time horizon. A 2023 Urban Institute study determined that California's loosening of local zoning restrictions has resulted in less than one percent increase in housing supply and not much evidence of increased housing affordability (though the report also emphasized that "reforms that increase land-use restrictions and lower allowed densities are associated with increased median rents and a reduction in units affordable to middle-income renters)." A HUD study on ADU reforms in California found a substantial increase in ADU permits, particularly on larger lots in neighborhoods with moderate rents and close to job centers–two of the primary building blocks for housing stability and economic opportunity.

Legislating to Provide Resources

State legislatures have been much more active in appropriations and infusing funds for housing programs. In 2019, eleven states introduced a total of 19 bills related to housing funding. By 2023, the numbers had climbed to 274 bills in 44 states.

Much of this legislation seeks to bend the cost curve for new housing in ways that intersect or overlap with county interests. Let's look at three: 1) subsidizing housing-related infrastructure, 2) positioning publicly-owned land for affordable housing, and 3) budget appropriations.

Horizontal Infrastructure

Some states have focused on the mundane but essential antecedents before a home foundation is even poured: streets, curbs and gutter; electric, water and sewer system expansions (particularly for infill redevelopment); traffic signals, streetlights, and sidewalks. This expensive infrastructure is vulnerable to the same capital, materials and labor cost upswings that drive up housing prices.

State legislatures and governors have sought to mitigate these costs to prompt housing starts, moderate housing prices by absorbing some infrastructure costs that would otherwise be folded into home purchase prices and rents, and leverage other public policy goals.

Wisconsin's Assembly Bill 264 (2023) created a state-administered revolving loan fund for infrastructure installations, upgrades or replacements connected to new workforce and senior housing development, and the legislature capitalized the fund with a $275 million appropriation. Accompanying the loan fund is a policy lever that requires cities and counties seeking these funds to show how they have reduced (or plan to reduce) housing costs through zoning reform, streamlining review, shortening approval timelines, and reducing development fees.

In 2021, Washington passed into law the Connecting Housing to Infrastructure Program (CHIP) that provides grants to local governments and public utility districts for improvements that serve new low-income housing developments. Washington lawmakers supplemented the program with another $55 million in the 2023-2025 state capital budget, which state officials project will subsidize 12,000 new affordable housing units. Lawmakers included one criteria in the qualification process as a lever to achieve another housing policy goal: only Washington cities and counties that have adopted a dedicated sales tax or mill levy for local affordable housing are eligible for the CHIP grants.

Indiana's legislature in 2023 approved a $75 million housing infrastructure bill (House Bill 1005) that establishes a revolving loan fund for local governments to finance public infrastructure related to housing starts. Similar to Wisconsin's approach, Indiana established a scoring system that favors cities and counties that have adopted policies to promote affordable housing.

Underutilized Public Lands

Cost swings for developable land greatly impacts the pro forma of a proposed housing development. One strategy to reduce this cost is densification, as each incremental dwelling unit in a development decreases the land cost of all units. Another strategy is to bring no-cost or heavily discounted publicly-owned land into the equation.

This is not a new concept. More than 50 years-old now, California's Surplus Lands Act first created a framework for state-owned public lands to be included in housing development, and the California legislature passed a major update of the act in 2019 (Assembly Bill 1486) which now covers local governments. Nearly thirty years ago, Washington's King County Council passed a surplus lands ordinance to make county-owned property available for affordable housing development if close to transit services, child care, schools, jobs and medical services.

Recent legislation passed in state capitols establishes new surplus lands frameworks or refines existing ones. Maine's legislature passed LD 1394 (2019) which directs state agencies to conduct an inventory of surplus state-owned land and structures, and identify housing development opportunities. Washington's House Bill 2382 (2017) opened the door for state and local jurisdictions to sell or transfer land to affordable housing developers at below-market rates–or at no cost–to bypass regulations that otherwise required jurisdictions to accept offers from the highest bidder (more often than not a market-rate developer). In 2023, Florida amended its surplus land statute first enacted in 2006, and now all Florida counties and municipalities are required to maintain, publish and update every three years an inventory of publicly-owned properties that may be suitable for affordable housing development.

Counties and cities alike consistently highlight that state-level lawmaking in this area comes with caveats and complications for local control. First, identifying public land for housing development does not itself unlock affordability. Yawning finance gaps remain for affordable housing projects proposed on publicly-owned parcels, and developments still need tax credit equity, subsidies, loans, multi-jurisdictional partnerships and other tools to be financially feasible and meet affordability targets.

Second, counties, cities and other political subdivisions already have internal protocols and procedures for the disposal of surplus land, so new state laws add complexity. A workaround that local agencies have successfully built into new state laws are exemptions for disposing of parcels that are buffers from wastewater, electric utility or other facilities that are incompatible with adjacent housing.

State Appropriations

Meanwhile, state legislatures and governors are finding ways to buttress affordable housing programs in state budgets.

State governments already control most of the federally-sourced housing funds such as private activity bonds, low-income housing tax credits and block grants from HUD. While these resources are the engine for affordable housing programs in counties and cities, some state legislatures are complementing and supplementing them to help people across the housing continuum–homeowners in need of urgent repairs, first-time homebuyers in need of down payment assistance, low-income renters, individuals and households facing eviction, and people experiencing homelessness.

In the 2023 legislative session, Oregon's Senate Bill 5511 appropriated more than $2.5 billion in the biennial state budget for a host of initiatives, including down payment assistance and eviction prevention programs. In another bill, House Bill 5005, Oregon lawmakers committed $604 million in bonds for homeownership, permanent supportive housing and other housing programs. The state also enacted two bills (House Bill 2001 and House Bill 5019) in a $200 million emergency package to support homelessness solutions in all 36 Oregon counties (and not just in major urban centers).

Michigan's Senate Bill 7 (2023) included $150 million for affordable housing development and preservation, with $50 million dedicated to a "missing middle housing" program to support the development of starter homes and $100 million in grants to facilitate the adaptive reuse of commercial and office properties into housing. Arizona's state budget for 2024 infuses $150 million into the state's housing trust fund for rural housing, foreclosure and eviction protection, rental assistance and affordable housing development, and another $60 million was appropriated in the 2023 fiscal year for the newly created Homeless Shelter and Services Fund.[xii] Minnesota's housing omnibus bill (House File 2335), approved in 2023, lays out an ambitious $1 billion plan for general fund dollars and state-backed bonds to pay for new construction, down payment assistance, rental vouchers, and a range of other programs.

In these and other states, the surge in affordable housing funding coincides with increased federal investments in the wake of the pandemic. Thirty-two states and territories (American Samoa and Puerto Rico) have used some of their allocation from the Treasury Department's $350 billion Coronavirus State and Local Fiscal Recovery Funds (SLFRF) on housing, but the $8.76 billion they have invested is only 2.5% of the total amount distributed.[xiii] These pandemic recovery dollars must be obligated by December 31, 2024, and expended by December 31, 2026,[4] raising the question that housing advocates, state legislators and governors, counties and cities and homebuilders are all asking: what happens then?

[4] *See also: "Treasury Announces New Steps to Increase Affordable Housing Supply and Lower Long-Term Housing Costs for American Families," US Department of Treasury, 7/27/2022*

Legislating to Support First-Time Homebuyers

Legislatures are taking on upzoning, land use reform and infrastructure subsidies as strategies to catalyze new housing supply. But ultimately, these strategies will fall short if American households cannot afford to purchase or rent the new housing.[5]

On the homeownership side, the hurdles are high. Thirty-year mortgage rates remain well over 7%, drifting in levels not seen since early 2000.[xiv] It's no surprise that the National Association of REALTORs reported that in 2022, first-time home buyers comprised 26% of all home sales, down from 34% in 2021 and the lowest level in their tracking history.[xv] Households burdened with student debt and without intergenerational wealth face even stronger headwinds.

Longstanding federal programs like HUD's HOME Investment Partnership and Community Development Block Grant (CDBG) allocations can be used for grants, loans and credits to support first-time homebuyers. Often supplemented by local resources (especially in high-cost housing markets), these funds may be used to target local government employees, veterans and military personnel, teachers, public safety employees and other first responders with housing assistance. Other block grant programs strategically target homebuyer assistance to stabilize neighborhoods with high levels of foreclosures and vacant homes. An industry group counts nearly 2,400 down payment assistance programs in the U.S.,[xvi] many of them administered by cities and county governments.

Many of the county-sponsored programs have been enhanced to reflect current market conditions. In Burlington County, New Jersey, county officials raised the assistance ceiling for an income-qualifying homebuyer's down payment, closing costs and credit enhancement from $9,000 to $25,000. Palm Beach County, Florida, recently upped the available level of funds for eligible applicants in its homebuyer assistance program to $100,000. Maricopa County, Arizona, designated $500,000 in federal funds for its down payment assistance program, and Miami-Dade County, Florida, created a new program for first-time homebuyers with interest-free loans. Polk County, Iowa, committed $5 million to a down payment program earlier in 2023. The biggest challenge these programs face is that there's not enough money to meet demand.

States Stepping Up

While cities and counties are enhancing local homebuyer assistance programs to adjust to today's market conditions, many state legislatures and governors are following the same track.

New Jersey's legislature passed Senate Bill 1446 in 2022–the "New Jersey American Dream Act"–adding $100 million ($25 million per year for four years) in loans and grants for low- and moderate-income homebuyers. New Jersey legislators also passed Assembly Bill A5415 to further support first-generation homebuyers–generally defined as a first-time homebuyer whose parents also rent–with access to an additional $10,000 forgivable loan.

[5] *Another critique of zoning regulatory reform is that increasing density through ADUs, duplexes, fourplexes and home rehab will not close homeownership and wealth disparities if access to capital–which is already more out of reach for disadvantaged communities–does not evolve and expand. See: "California's New Zoning Law Eases Building Restrictions but Depends on the Financing Industry to Play its Part," John Walsh, Jung Hyun Choi, Urban Institute, 1/6/2022.*

Iowa appropriated nearly [$20 million for homeownership opportunities] that will support down payment initiatives in dozens of communities. Illinois announced a new program with $10,000 for income-qualifying homebuyers' down payment and closing costs, projected to help more than 1,500 households. Rhode Island boosted its first-time homebuyer down payment program with $30 million from the $250 million in federal ARPA fiscal recovery funds that the state earmarked for housing support.

The Utah legislature launched the First-Time Homebuyers Assistance Program with a $50 million state budget appropriation (Senate Bill 240), enough to assist 2,400 income-qualifying households with up to $20,000 in zero-interest loans. A key policy feature in Utah is its emphasis on sustaining momentum for new housing starts: in this program, the down payment loans must be used for new construction.

In this housing market, first-time homebuyers often need more than one grant or loan program, and resources allocated by state legislatures are often supplemented by programs administered by counties and other local governments. Also, as indicated by Utah's legislation, state resources to promote home ownership may take shape with levers to achieve other outcomes important to counties–including neighborhood stabilization and closing racial wealth gaps.

Equity and Homeownership Gaps

It is well-documented how America's persistent wealth gaps are tied to the historic latticework of openly racist discrimination in mortgage financing, insurance, covenants, deed restrictions and HOA regulations. The legacy of redlining also means first-time homebuyers and first-generation homebuyers are disproportionately from Black, Latino, Native American and communities of color.

In the past five years, legislators in several states have introduced bills that seek to close racial disparities in homeownership, address the legacy of housing discrimination, and position housing as a critical path to achieving equity. The most ambitious effort is the Washington "Covenant Homeownership Program" passed into law (House Bill 1474) in the state's 2023 session. This legislation creates a down payment assistance program for Washington residents who must be first-time homebuyers with a household income at or below the area median income, and who can also demonstrate that:

1. They were a Washington state resident on or before the enactment in 1968 of the federal Fair Housing Act and "[were] or would have been excluded from homeownership in Washington state by a racially restrictive real estate covenant on or before that date," or

2. They are a descendant of a person who meets that criteria

The state approved $150 million for the Covenant Homeownership Program through 2025. Going forward, new funds will be added through a new $100 real estate document recording fee. A policy and implementation plan is being worked out, and the program is scheduled to launch in July 2024.

Legislating Support for Manufactured Housing

Manufactured housing remains the most affordable, unsubsidized segment of the housing continuum. It has a dual nature for policymakers who see it as a tremendous opportunity to add new affordable housing, and an urgent cause to preserve manufactured housing that is at great risk.

The category deserves attention from state and local policymakers for many reasons. First, it's a lot of housing for a lot of people. Manufactured homes house an estimated 21 million people, and there are approximately 43,000 manufactured home communities (most of them in unincorporated areas).[xix]

Second, new-build manufactured homes are affordable. Data from the Manufactured Housing Institute points to the manufactured home median cost of $127,000 ($85 per square foot, and these homes tend to be smaller) compared to the nearly three-times greater median cost of $413,000 (or $168 per square foot) for a site-built home.[xx, 6]

And third, this is a productive housing sector. Thirty-four manufactured home builders operate 145 plants across the US, cranking out nearly 113,000 dwelling units in 2022 alone that comprised 11% of new home starts. Manufactured homes enjoy tremendous economies of scale. A typical factory will make and ship dozens, even hundreds, of dwelling units annually, while a custom homebuilder working in a subdivision of homesites may produce only several or a couple dozen.

Reflecting this sector's importance, HUD will again produce its "Innovative Housing Showcase" to promote manufactured homes in 2024 (the first was in 2019). The White House has advocated for more tools–grant dollars, mortgage products and insurance, and local zoning reform–to level the playing field and expand availability of manufactured housing.

Parenthetically, a note on terminology. "Manufactured homes" are moveable (though they are not often moved from one place to another), must comply with HUD construction standards introduced in the 1970s and may be installed on permanent foundations. "Mobile homes" (sometimes called "trailer homes") are manufactured homes that pre-date the HUD building code. A "modular home" is manufactured in sections in a factory, shipped, assembled at the home site, and must comply with the local and state building codes that apply where it is assembled.

One critical difference is that most lenders consider modular homes to be site-built, which makes it easier for an owner to obtain more favorable financing terms and a mortgage. Also, modular homes are typically required to follow the same inspection process as site-built homes (e.g., inspection occurs in phases), while manufactured homes achieve certification upstream through the construction facility. This distinction impacts affordability in each of these methods. Phased inspection processes at the city or county level, for instance, can add time and are subject to the availability and capacity of local inspectors.

[6] *See also: Comparison Of The Costs Of Manufactured And Site-Built Housing, Chris Herbert, Chadwick Reed, James Shen, Joint Center for Housing Studies of Harvard University, 7/10/2023*

An At-Risk Category

The prevalence of manufactured housing obscures the challenges that state and local governments – and the residents of manufactured homes – face in trying to preserve it as a housing option.

About 40% of manufactured homeowners own the underlying land where their home sits.[xxiii] This exposes households who lease their sites to unpredictable and steep rent increases, displacement and even homelessness. And since many of the 43,000 manufactured home communities are not zoned as a conforming land use, residents are at constant risk of losing their home if there is a change in ownership, a lapsed permit or a shift in land use regulations.

Natural disasters intensified by climate change also present a major threat, particularly in rural and unincorporated areas. Almost two dozen mobile home parks in California and Oregon were destroyed by recent forest fires. Only in the past 20-plus years have construction standards been raised for mobile homes to withstand high winds from hurricanes.

Protecting manufactured housing

Compared to the higher-profile arenas of land use, local zoning and down payment assistance, state legislation around manufactured and modular housing is relatively scant. In the 2023 statehouse sessions, six states had bills filed on manufactured and modular housing, and of the ten bills filed, only five were enacted. A sampling of the ones that were put into law highlight how this housing segment may fit in an affordable housing preservation strategy.

Maryland's "Manufactured Housing Modernization Act" (House Bill 23) requires mobile home park owners who receive a purchase offer on their property to notify their tenants 60 days in advance of the potential sale. This provides a time window for the homeowners to purchase the property, likely through the assistance of non-profit housing organizations, community land trusts and philanthropy. The overarching policy aim is to keep residents housed, so the Maryland bill also requires the offering buyer to make a binding commitment to operate the community for five years, and to limit rent increases to no more than 10% for three years.

Washington's Senate Bill 5198 outlines a legal process for residents in the state's 1,200 mobile home park communities–which house around 65,000 households, greater than the population of Yakima–to acquire the park property. Landlords are now required to provide two years' notice before closing a manufactured or mobile home community. Also, if a mobile home park owner lists a property for sale, Senate Bill 5198 requires that residents have 70 days to inform the owner that they are interested in buying the community.

Colorado's Senate Bill 160 (passed in 2022) established a revolving loan program to help residents of mobile home parks to purchase their communities. Bolstered by a $35 million state appropriation to fund the loan program, residents are connected to non-profits who can provide the technical background and legal assistance to pursue acquisition.

For about one-fourth of the owners of manufactured homes, their home is titled as personal property (like an automobile or recreational vehicle), meaning it cannot be financed with a mortgage.[xxiv] In most states, this ownership status does not open the door to affordable, safe financing which is a key building block to wealth-building.

Nevada passed Senate Bill 40 in 2023 to simplify the titling process for manufactured homes, making it easier for owners to submit the required documents and navigate the legal documentation processes. (The Nevada legislature also passed Senate Bill 275 to establish annual maximum rent increases in manufactured home parks, which was then vetoed by the governor).

Oregon's legislature approved House Bill 5019 (2023) which appropriates $50 million toward preservation and upgrades to manufactured home parks, $2.5 million to remove unsafe manufactured homes and provide loans for new ones that meet code, and $20 million to support modular home builders to spur new production. This supplements a 2022 bill (House Bill 4064A) that expanded eligibility for manufactured homes to be sited on single-family zone districts. In Iowa, a $20 million package to support homeownership programs included a project in Muscatine that built six modular homes for first-time homebuyers, targeting teachers and school district staff.

Implications for Counties

Mobile home parks generally are more prevalent in unincorporated areas, so county governments have more oversight with these communities and provide services to them. As counties update their land use regulations, zoning codes and comprehensive plans, the future of these communities is a pressing matter for land use and affordable housing. This is particularly true in states where state legislative interventions in local zoning is an emerging part of the affordable housing strategy.

Legislating Investments for Home Repair & Rehab

A nagging feature of the housing affordability crisis is its uneven distribution. More than 80% of US counties are affordable if the yardstick is the ratio between median housing cost and income.[xxv] Also, many of those counties have flat or declining populations. In contrast to high-cost, fast-growing urban centers, these communities need housing policies and programs that emphasize repair and rehabilitation for their aging housing stock.

Old homes and apartment buildings may present layers of problems: cracked foundations, faulty plumbing, leaking roofs, drafty windows, electrical systems that don't meet code, and health hazards like mold and lead paint. These housing conditions can lead to careening health impacts, and the energy required to heat and cool these homes is expensive for households on limited budgets.

Another dimension of this challenge is that the most vulnerable individuals and households have the most urgent home repair and rehabilitation needs. Community members with low or fixed incomes, seniors, and people living with disabilities have the toughest time affording home repairs, have the least amount of choice in their local housing market, and face the highest risk for housing instability.

In 2022, the Fed estimated that the amount needed for repairs to both owner-occupied and rental housing stands at $149.3 billion, a nearly 20% increase over 2018's total.[xxvi] Federal programs for home repair and rehabilitation are well established through HUD, the Veterans Administration, and Department of Agriculture. National expenditures in Community Development Block grants (CDBG) on housing for FY 2023 were $1.046 billion million, and of that, $627 million went to single-unit and multi-family home rehabilitation.[xxvii] ARPA and pandemic relief funding has been allocated by state and local governments into home repair and rehabilitation programs. But despite these investments and programs, the resources are inadequate to meet the scale of this challenge–so some state legislatures are taking action.

State Rehab and Repair Investments

Pennsylvania's legislature in 2022 passed the Whole-Home Repairs Program (Senate Bill 1135) to expand home safety, habitability and weatherization grants statewide. Administered through Pennsylvania's 67 county governments, the program provides access to grants up to $50,000 to repair and upgrade energy and water systems, improve habitability and install accessibility features for individuals with disabilities. Eligible homeowners can make up to 80% AMI, and small landlords who own no more than five properties and 15 units of affordable housing also qualify. The Pennsylvania legislature set aside $125 million from ARPA funds to launch the program, and by August 2023, 64 of the state's 67 counties had enrolled.[xxix] Moving forward, the reauthorization of the program and funding is subject to year-to-year negotiations at the statehouse.

Louisiana legislators created a program in 2022 that helps income-qualifying homeowners to upgrade their roofs. The "Fortify Roofs Act" (House Bill 294) dedicates $30 million in state funds to support homeowners who replace their roofs with higher-cost materials that are more durable and wind-resistant. The Gulf Coast's increasing hurricane strength and frequency have come with higher premiums from insurers, so a dual benefit of the program is lowering insurance costs. This intersection of housing and insurance policy has major implications for residents in rural and unincorporated areas that have heightened exposure to wildfires, hurricanes and floods.

Another strategy state legislatures have pursued is to marry home repair programs with other public policy objectives. Wisconsin's legislature enacted Assembly Bill 267 which expands the state housing authority's home repair loan program, targeting first-time homebuyers who have the resources to acquire a home with significant repair needs but require financial assistance to afford the repairs. Another bill–Assembly Bill 265–establishes a revolving loan fund to rehabilitate buildings in Wisconsin's small-town Main Street districts into housing and mixed-use projects, taking advantage of these buildings' proximity to services and transportation options. The state's goal is to increase housing supply while revitalizing struggling commercial districts that are climbing back from the decades-long market shifts of suburban growth and the more recent impacts of the pandemic.

In counties with lower-cost housing and declining populations, more dollars from the state legislature for home rehabilitation assistance can help people stay safely housed, stabilize and revitalize neighborhoods, and extend the reach of other programs that promote economic mobility. Ideally, the state funding framework provides counties with the flexibility to target the assistance to meet the needs of their communities.

Legislating Housing Solutions on Ballots

Every election cycle, voters in local jurisdictions make decisions on affordable housing. The bulk of ballot measures are about money for affordable housing subsidies, whether it is by way of issuing bond debt to raise capital or dedicating a stream of tax revenue. As with the other topics discussed here, ballot measures for affordable housing funding are not new on the scene. In November 2023, Seattle voters reauthorized their affordable housing mill levy for the sixth time, dating back to the first voter approval in 1981.[8]

Voters occasionally see zoning and land use questions on their ballots, often in the form of initiated referenda advanced by residents seeking to reverse decisions made by city councils and county boards. In recent years, voters have been asked to weigh in on tenant rights and eviction protections, short-term rentals, establishment of land banks, homelessness shelter and services, ordinances to prohibit homelessness encampments, and home occupancy regulations.

Most of these housing elections occur at the municipal level, though some county governments have referred propositions to their voters. In the past three years, county governments have held successful referenda to dedicate excise taxes for affordable housing (Alachua County, Florida, and Sacramento County, California); issue affordable housing bonds (Buncombe County, North Carolina; Palm Beach County, Florida; and Bernalillo County, New Mexico); establish an affordable housing trust fund (Brevard County, Florida); and amend the county charter to establish a more robust housing department (Maui County, Hawaii).

Sometimes the path for affordable housing ballot measures begins in the state capitol. In Colorado's 2022 session, legislators approved House Bill 1177 which enables local authorities to redirect a portion of their lodging tax revenues to workforce housing and childcare programs, as long as a majority of voters approve at the ballot box. In the two years following adoption of the bill, dozens of Colorado towns, cities and counties–all of them with substantial tourism economies–have gained voter approval to bolster their housing and childcare resources this way.

Legislatures in some states play oversight roles in local housing referenda. In 2022, voters in Burlington, Vermont, approved a referendum establishing rent control and eviction protections. But in accordance with state law, the charter amendment was first sent to the Vermont state legislature to be ratified, which legislators did–only to see it vetoed by the governor. In Massachusetts that same year, voters in six towns

[8] *Seattle Housing Levy https://www.seattle.gov/housing/levy*

on Martha's Vineyard approved the creation of a land bank for affordable housing and a real estate transfer tax to capitalize it. After the election, the voter-approved charter change still required the state legislature's authorization before the land bank could be established.

Cities and counties should be on the watch for new state laws that focus on the intersection between local zoning and the state election code. A law passed in Florida in 2023 (Senate Bill 718) prohibits referenda on land use code amendments and zoning ordinances, giving city councils and county boards of commissioners the final say. In the same vein, decrying what one state representative called the "weaponization" of Utah's elections code by local residents opposed to new housing developments, the legislature passed into law Senate Bill 199 (2023) prohibiting an initiated referendum on a zoning decision if the ordinance was approved unanimously by the local decision-making body (e.g., the city council or county council or planning commission).

Ballots in 2024

The high voter turnout and intensity of the 2024 election cycle will feature several critical ballot measures on housing and land use.

In California, various groups are organizing an initiated referendum to challenge a spate of recent state laws on local zoning. (Other challenges to the statutes have been made in the state courts. A lawsuit in Berkeley on the legality of Senate Bill 35 was rejected by an appellate court in 2021, allowing a 260-unit mixed-use project to proceed after the City Council had rejected it two years prior.) In the words of the proponent committee "Our Neighborhood Voices," their proposed constitutional amendment is "expressly intended to authorize local laws to override conflicting state land use planning and zoning statutes," and establishes that local codes instituted by local voters "shall not be nullified or superseded by state law."[9] The coalition says they will seek a spot for the amendment on statewide ballots in 2025 or 2026.

[9] *Our Neighborhood Voices draft initiative, accessed 10/24/2023*

A rundown of California's 2024 election cycle illuminates other touchpoints between state legislation, local governments and referenda:

- A $4.7 billion bond for mental health was legislatively referred (via Assembly Bill 531, the "Behavioral Health Infrastructure Bond Act") to California's March 2024 ballot, and it was narrowly approved by voters. The funds will be used to build treatment facilities and permanent supportive housing for people suffering from mental illness or addiction disorders.
- The state legislature also legislatively referred to November 2024 voters a constitutional amendment to lower the vote threshold from two-thirds approval to 55% for local infrastructure taxes and bonds, and add affordable housing as a category of infrastructure; if approved by voters, this will lower the hurdles for California counties and other local agencies to pursue bond financing for affordable housing projects
- Voters in the nine Bay Area counties could see an affordable bond measure totaling $10- $20 billion on the November 2024 ballot if the Bay Area Housing Finance Authority decides to advance it; the multi-jurisdictional authority was established by the state legislature in 2019
- A bill proposing a $10 billion bond measure for rental housing, homeownership, and supportive housing programs was introduced in 2023 (Assembly Bill 1657), but was held over until the legislative session re-starts in 2024; if approved by the statehouse and signed by the governor, this could also appear on the November 2024 statewide ballot

Voters in Massachusetts thirty years ago approved (by a 51%-49% margin) a preemption on local rent control. Advocates and legislators[10] are seeking to replace it with a new "Tenant Protection Act" that would enable Massachusetts municipalities to enact rent control and just cause eviction protections. A legislative version was filed in the state capitol in early 2023 but has moved slowly. A parallel effort to bring the proposal to voters in the November 2024 election by petition came up short, returning the focus to the state legislature while the potential for a future referendum remains on the sidelines.

As legislatures convene in 2024, affordable housing-related bills will be filed in statehouses across the US that could advance to the ballot. Some will stretch and pull at the boundaries between state interests and local control. Others will merely open the door for counties, municipalities and other local agencies to ask their voters to decide on new housing resources.

[10] *See Massachusetts Rent Control 2024, https://www.rentcontrol2024.com/,and Homes For All Massachusetts, https://www.homesforallmass.org/*

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660 North Capitol Street, N.W.
Suite 400 ▪ Washington, D.C. 20001
202.393.6226 ▪ www.NACo.org