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State Mandates, Housing Elements, and Low-income Housing Production

Darrel Ramsey-Musolf

Abstract

In order to create low-income housing opportunities and mitigate exclusionary zoning, in 1968 Congress mandated that municipalities receiving comprehensive planning funds must create a housing element. In tandem, many states mandated that municipal housing elements must accommodate low-income housing needs. After examining empirical research for California, Florida, Illinois, and Minnesota, this review found aspirational success because those states rewarded the municipal planning process. In order to increase low-income housing, this review argues for state housing policy reform. Under US Department of Housing and Urban Development's revised fair housing rule, which requires an assessment of local data, states can no longer ignore the exclusionary behavior of municipalities.

Keywords

low-income housing, municipalities, California, Florida, Illinois, Minnesota, housing elements, state mandates, fair housing

Introduction

A housing element is a collection of planning techniques (e.g., density bonus, accessory dwellings, inclusionary housing, and mixed use) that municipalities implement in order to satisfy housing needs (Ohm, Merrill, and Schmidke 2000). In many states, housing elements are required chapters within general plans and the plan's elements (e.g., land use, housing, and circulation) communicate a municipality's housing vision (Baer 1997; Kelly 2009, 47). After considering local demand, municipal housing elements should position local housing inventory in relation to regional demand (*Housing and Urban Development Act of 1968*). Regarding low-income households, many housing elements accommodate low-income housing needs by designating sites, identifying subsidies, and adopting intergovernmental programs that broaden participation (Bratt 2012; Briggs and Mayberry 2003). This collective attention to housing should produce desirable housing for all economic segments (Listokin 1976, 6; Pendall 2000, 126, 129). However, empirical research indicates that low-income housing production via housing elements is constrained for two reasons: municipal barriers and unfunded mandates.

Fiscally, municipalities have reasons for barring the entry of low-income housing. A low-income household, which limits housing costs to less than 30 percent of its income, will require a subsidy unless the household endures conditions of overcrowding,¹ filtering,² or subfamilies (Steele 2001).³ In turn, any low-income housing unit will require a consistent subsidy for the unit's effective period. If a municipality closes gaps in low-income housing costs and experiences a subsequent loss of revenue (e.g., tax-exempt units, lower household discretionary income), then the municipality might increase taxes to prevent

municipal service deterioration. As theorized by Tiebout and tested by others, when municipal residents face increasing taxes and/or declining services, high-income and mobile residents may "vote with their feet" and relocate to communities catering to their self-interest (Banzhaf and Walsh 2008; Basolo 1999a; Dawkins 2005; Fischel 1992; Tiebout 1956). In California's City of Palo Alto, for example, these residents organized and repealed an approved sixty-unit low-income housing project (Sheyner 2013). Due to reduced federal budgets, contingent state grants, and high-income residents, municipalities enact exclusionary zoning policies (e.g., large lots, limited multifamily housing, open space preservation) that allows housing that produces high tax revenue, requires low service needs, and reduces potential low-income households (DeSantis 2002; Ihlanfeldt 2004; Mitchell 2004; Schmidt and Paulsen 2009). Returning to Palo Alto, the site intended for low-income units is now approved for sixteen market-rate single-family homes (Lee 2016).

Regarding low-income housing policy, housing elements are unfunded mandates that masquerade as supply-side strategies. A supply-side strategy should increase the housing supply to deflate existing housing prices or provide new units at all prices (Galster 1997; Listokin 1976). Alternatively, a

demand-side strategy should increase low-income housing consumption by directly raising household incomes through vouchers or indirectly with compulsory education (Chevalier et al. 2005; Landis and McClure 2010). The housing element is a “quasi” supply-side strategy because it attends to low-income housing needs, but federal or state agencies do not provide consistent subsidies for planned low-income units, deficiencies in household incomes, or increases in housing prices. Therefore, a housing element may raise attention and comply with state mandates but not produce low-income housing units.

In this review, I examine the efficacy of housing elements as a low-income housing intervention. Unlike other housing plans that enjoy federal subsidies (e.g., housing assistance, areawide housing opportunity, and consolidated plans), state-mandated housing elements are no longer tethered to federal revenue, but signal a municipality’s attention to local low-income housing (Baer 1986; Struyk and Khadduri 1980; Varady and Birdsall 1991). As planners we need to know whether housing elements have an impact on actual housing production or whether they are otherwise meaningless activities. Therefore, I ask: to what extent have housing elements increased low-income housing production? After examining the existing empirical research, this study found aspirational success (i.e., attention to, planning for) rather than low-income housing production (Connerly and Muller 1993; Goetz, Chapple, and Lukermann 2003; Hoch 2007; Lewis 2003, 2005; Ramsey-Musolf 2016). This aspiration is due to state housing policy that does not evaluate subsequent housing production or provide consistent subsidies, but simply rewards the planning process.

In this review, I take two positions. First, I argue that until researchers and analysts understand housing element efficacy, then the delivery of low-income housing via housing elements will continue to be uneven and the ability to reform state policy will remain limited. Our current understanding of housing elements is based on partitioned knowledge because the existing research focuses on individual states. This narrow focus illuminates an individual state’s efforts but does not permit comprehensive knowledge of housing elements with regard to low-income housing production. Scholars may caution against applying a single evaluation metric to multistate efforts due to nonequivalent planning tools, political processes, and units of analysis (Graddy and Bostic 2010, i98). However, scholars cannot determine whether California’s housing element performance, for instance, is better or worse than the housing element performances in Florida, Illinois, Massachusetts, New Jersey, Oregon, Pennsylvania, or Washington due to nonuniform processes and outcomes (Basolo and Scally 2008; Bratt 2012; Calavita, Grimes, and Mallach 1997; Meck, Retzlaff, and Schwab 2003).

Second, I argue that housing elements, with stronger state policy and enforcement, could increase low-income housing production if the states evaluated the housing element and the subsequent housing production. Of the fifty states in the United States, twenty-seven states (or 54 percent) require municipal comprehensive plans (Appendix Table A1). Of that group, fifteen states (or 56 percent) require a housing element.

Alternatively, forty states (80 percent) require comprehensive plans as a condition for adopting zoning or maintaining a planning commission, and of that group, twenty-two states (55 percent) require housing elements. Considering the research of May and Burby (1996), if states provide planning assistance that enhances municipal planning capacity and adopt penalties based on housing production, then state policy incentivizes municipalities (via the housing element) to provide equal opportunities for low-income and market-rate housing production.

Recently, the US Department of Housing and Urban Development (HUD) revised its rule regarding the agency’s implementation of the Fair Housing Act of 1968 and now requires its program participants⁴ to complete an assessment of fair housing (AFH; *Affirmatively Furthering Fair Housing* [AFFH] 2015). The AFH may address municipal land use and zoning (“local knowledge”) that increase segregation and impede a low-income household’s access to housing opportunities (*AFFH Rule Guidebook* 2015, 49–50, 200). The AFH may suggest land use and zoning reforms as “meaningful actions” within a “strategic plan” to reduce the impact of any factor that restricts fair housing choice (pp. 311, 316–17). As a caveat, HUD does not mandate AFH content but only accepts or rejects the AFH. In addition, land use and zoning reforms may not occur if the offending jurisdiction does not receive HUD funds. However, states can mandate housing element content, as part of their AFH because all consolidated plans must contain an accepted AFH.

While some may question these positions, I would counter that federal low-income housing expenditures undergo a congressional scrutiny that may deliver conflicting results (Heathcott 2012; Lang, Anacker, and Hornburg 2008; von Hoffman 2012; Wolch 1998). The Hope VI program, for example, exemplifies these conflicts: redevelopment of distressed public housing, dispersal of households with vouchers, suspension of the one-to-one replacement of demolished units, and implementation of the one-strike rule (Goetz and Chapple 2010; Hanlon 2012; Hellegers 1999; Johnson 2001). Under regional initiatives, rotating municipal leadership governs regional agencies under the aegis of cooperation (Lindstrom 2010; Vogel and Nezelkewicz 2002; Wheeler 2002). Under cooperative paradigms, a redistributive decision (i.e., equitable low-income housing distribution) may be just talk, since regional agencies do not enjoy “the attributes of sovereignty—the power to tax, to regulate, and to condemn” (Babcock 1972, 61; Innes and Gruber 2005; Mogulof 1971). With stronger state enforcement, I argue that municipal housing elements are a viable method for increasing low-income housing because municipalities are created and regulated by the state (Briffault 1990; Burns and Gamm 1997). States grant autonomy via home rule.⁵ States can restrict autonomy as home rule foments dissent. Lastly, states can mandate statewide low-income housing policy.

While many plans have facilitated low-income housing (Meck, Retzlaff, and Schwab 2003), this review examines housing elements because municipalities are ground zero for

housing production. At present, federal low-income housing policy emphasizes renting via housing vouchers (demand side) or tax credits (supply side) and operates at scales greater than municipalities (Goetz 2012; Landis and McClure 2010). Returning to HUD programs, both the Community Development Block Grants (CDBG) and HOME Investment Partnerships Program (HOME) provide support for low-income housing; however, they are not the focus of this article because these programs are driven by population-based formulas rather than local land-use decisions.⁶ What is needed, is a local measure that influences the local housing market.

In this case, the housing element satisfies four local conditions. First, the municipal housing element articulates the municipality's multifamily housing policy to local developers. Second, if states require vertical consistency between a long-term general plan and the short-term zoning code, then housing elements direct municipal housing implementation (Growth Management Act [GMA] 1985; *General Plan Guidelines* 2003). Third, housing elements are a true measure of municipal commitment to low-income housing because an element's goals, policies, and programs signal whether low-income housing implementation is supported with municipal revenue or contingent and exogenous sources (Baer 1986; Basolo 1999a, 1999b; Nguyen, Basolo, and Tiwari 2013). Fourth, if states embed HUD's recent fair housing rule into the state's housing policy, then states can measure municipal housing elements (and subsequent housing production) as meaningful actions that overcome fair housing impediments.

To locate the pertinent research, I input multiple terms in multiple combinations (e.g., housing element, regionalism, affordable housing, low-income housing, and fair share) into the Web of Science, Social Sciences Citation Index, and Google Scholar databases. I also consulted Meck et al.'s regional housing research (2003, appendix B). Even though the housing element has existed since the mid- to late-1960s and nearly 50 percent of US states require this housing document, my literature search found that there is a dearth of *empirical* housing element research. Many researchers have examined housing in Maine, Massachusetts, New Hampshire, New Jersey, Oregon, Vermont, Washington, and Wisconsin; however, that research (and the numerous law reviews) examined other housing interventions. To determine whether municipal housing elements have increased low-income housing production, this review examines the housing element performances of California, Florida, Illinois,⁷ and Minnesota. To date, these are the only states with empirical housing element research.

Following this introduction, the review has three subsequent parts. The second section chronicles the emergence of housing elements as a federal intervention to mitigate housing discrimination. This section also outlines my framework for strengthening state enforcement of housing elements. The third section applies that framework to California, Florida, Illinois, and Minnesota by analyzing each state's planning doctrine, housing policy, and the pertinent empirical research. In the final section, I discuss the commonalities of the empirical research and propose a state plan for equitable housing production.

The Housing Element as a Government Intervention

The housing element is one of many federal interventions (zoning, planning, and home rule) in municipal autonomy. I discuss these interventions in order to demonstrate how Congress positioned the housing element as mitigation against housing inequity. This background is important because Congress set the precedent for intervening in municipal planning. This section focuses on Section 701's impact on planning and housing. I close with considerations for transforming the federal Section 701 program to a state program to increase low-income housing.

During the 1920s, the US Department of Commerce issued the Standard State Zoning Enabling Act and the Standard State City Planning Enabling Act. The former formalized zoning while the latter fostered long-term planning by specifying master plans—a precursor to the general plan (Hoover 1926; 1928). As Secretary Hoover noted, these acts “endeavor to provide, so far as it is practicable to foresee, that proper zoning can be undertaken . . . without violating property rights” (1926, III). Figure 1 charts the adoption of zoning in the United States from 1904 to 1932. These federal acts also encouraged states to devolve home rule authority to municipalities by cloaking zoning within police powers (protection of health, safety, and general welfare; Knauss 1930). After years of contention, Congress passed the Housing Act of 1937. This act inaugurated publicly funded housing but limited housing occupancy to low-income households, prohibited aesthetic designs, and required the demolition or rehabilitation of one slum unit for every new public housing unit (von Hoffman 2005). Congress adopted these limitations to ensure that public housing would not compete with market-rate housing (Flanagan 1997).

During the post-World War II housing shortage, Congress revised national housing priorities with the Housing Act of 1949, through which the Federal Housing Administration increased suburban homeownership by “redlining” urban and minority neighborhoods as unacceptable for mortgage insurance (Quigley 2000). The act accelerated slum clearance with urban renewal also known as “negro removal” because minority neighborhoods were often targeted as blighted (Arnstein 1969, 218; Massey and Denton 1993, 56). A municipality could not receive federal slum clearance funds unless its urban renewal plan conformed to the municipality's general plan (*Housing Act of 1949*, Title I, Section 105). Upon implementation, federal officials found that, for small localities (25,000 persons or less), the “housing and building codes were outmoded and poorly administered,” with no local planning mechanism to guarantee the federal urban renewal investment (Feiss 1985, 179). In response, Congress added Section 701 to the Housing Act of 1954 to authorize 50 percent matching grants to states and municipalities for “planning assistance (surveys, land use studies, urban renewal plans, technical services and other planning work)” (*Housing Act of 1954*, 640). By 1956, 242 small municipalities had received planning grants from an initial appropriation of US\$1 million (“Hearings

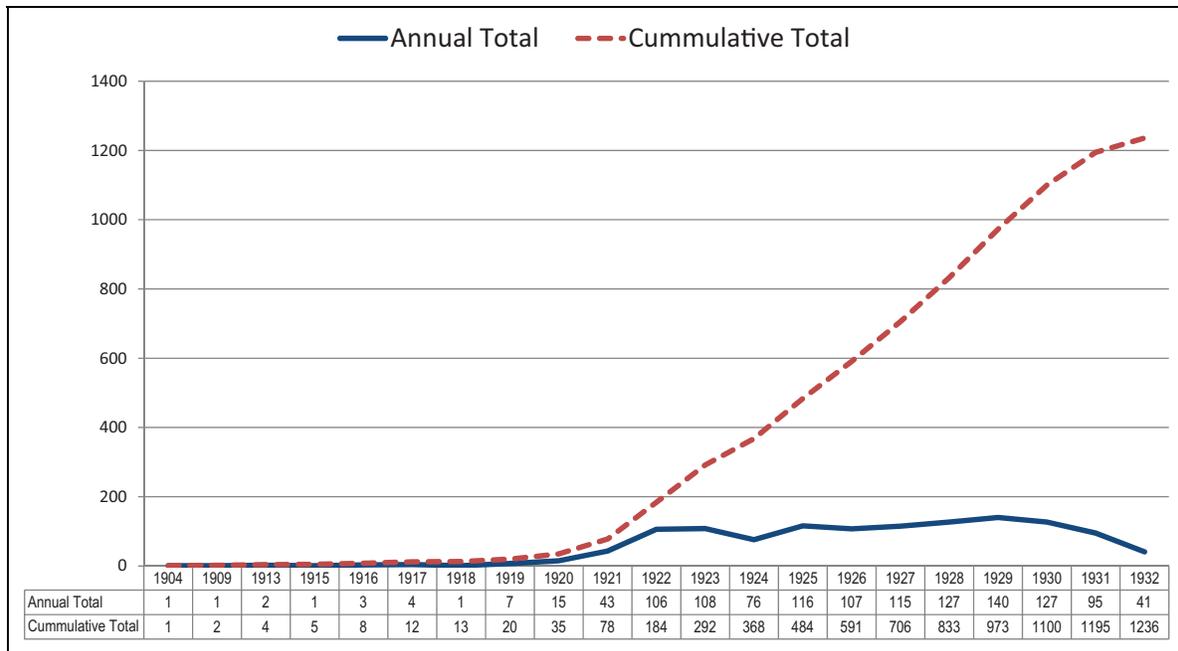


Figure I. Zoned municipalities in the United States (1904–1932). *Source:* Knauss (1933, 6–7, table II).

before the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency” 1968, 93).

During the 1960s, Congress expanded federal intervention in municipal planning by amending Section 701 to support comprehensive planning and increasing matching grants to 66 percent (*Housing Act of 1961*). By 1965, Section 701 supported plans for college housing, open space preservation, sewer projects, mass transit, and regional planning (*Housing and Urban Development Act of 1965*). By 1967, 44 states, 27 councils of governments, and 6,200 small municipalities had received Section 701 grants (“Hearings before the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency” 1968, 93). In 1968, America’s social, economic, and racial cleavages erupted (e.g., white flight, civil unrest, and dislocation of minority residents; Pritchett 2008; Rasmussen 2014). In response, Congress required that any comprehensive plan funded by Section 701 must include a housing element to address local and regional housing needs (*Housing and Urban Development Act of 1968*). As an intervention, the housing element represented a sea change for Section 701 on two fronts: discrimination and direction.

Regarding discrimination, during the 1968 housing act hearings, Governor Kerner, chairperson of the National Advisory Commission on Civil Disorders, testified that “freedom of residency and open occupancy is essential to solving” the overcrowded central city conditions because suburban municipalities “will not adopt ordinances to allow the Negroes to live near their homes” (“Hearings before the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency” 1968, 356, 359). Likewise, Senator Paul Douglas, chairperson of the National Commission on Urban Problems,⁸ testified that “the suburbs must be opened up for low-income housing. . . . This whole question of zoning is

rigged by the suburbs to keep out the poor and to keep out the Negroes” (“Hearings before the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency” 1968, 759–760). With regard to low-income housing production, Edward Kaiser, chairperson of the President’s Committee on Urban Housing, testified that “private developers who want to build [low-income] housing for a profit can be stopped cold by communities opposed to minorities moving into their boundaries” (“Hearings before the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency” 1968, 269). The testimony from the National Association of Housing and Redevelopment Officials and the National Association of Home Builders also supported housing elements (“Hearings before the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency” 1968, 222, 319, 321). Lastly, the National Commission on Urban Problems endorsed housing elements by reporting that “nearly every major city already had a building code, but not more than 50 to 100 cities had housing codes” (*Building the American City* 1968, 160, 173).

Regarding direction, although Section 701 existed for fourteen years, “there were no requirements as to what grant recipients must undertake” since grants could be applied to planning surveys, comprehensive planning, transportation, or other federal planning efforts (Wellborn 1976, 13). Thus, states and municipalities not concerned with comprehensive planning could apply Section 701 grants to any endeavor requiring a plan.⁹ In the revised 1968 Housing Act, Congress positioned the housing element as a *funded planning mandate* to require municipalities to consider regional housing needs by increasing local housing opportunities for low-income households. Moreover, these low-income housing opportunities were intended to directly mitigate exclusionary municipal zoning and indirectly

mitigate inequitable federal housing policy (e.g., public housing restrictions, Federal Housing Administration insurance redlining, and urban renewal; Hillier 2003; Martinez 2000; Meyerson and Banfield 1955; Teaford 2000).

As with any federal intervention, there were issues with local implementation. In 1968, the federal Office of Management Budget (OMB) recognized, through conflicting applications from multiple agencies, that there was no unified mechanism for coordinating intergovernmental aid (Rothenberg 1983; Stam 1980). In response, in 1969 the OMB issued the A-95 circular to require municipal applications for federal funding to adhere to a regional “clearinghouse” review in order to increase intergovernmental program consistency (Gordon 1974). Consequently, regional agencies employed the A-95 circular to restrict and/or withhold federal funds if a municipality departed from regional priorities (Mogulof 1971). In 1974, Congress revised Section 701 to require that comprehensive plans include a land-use element for guiding “governmental policies . . . with respect to the pattern and intensity of . . . residential, commercial, [and] industrial” development (*Housing and Community Development Act of 1974*). More importantly, HUD positioned the land-use element as a safeguard against the adoption of national planning legislation (“Land Use Bill Killed” 1975; Ash 1974, 56).¹⁰

By 1976, HUD’s A-95 regulations allowed Section 701 grants to support not only comprehensive planning but also the planning required by CDBG, the Office of Coastal Management, the Department of Interior, and the Environmental Protection Agency (701 Comprehensive Planning Assistance: Statutes, Regulations, Interagency Agreements, Departmental A-95 Implementing Instructions 1977). The expanded regulations also allowed regional agencies to prepare areawide housing opportunity plans (AHOP) to implement fair-share housing schemes (701 Comprehensive Planning Assistance: Statutes, Regulations, Interagency Agreements, Departmental A-95 Implementing Instructions 1977, pp. 28–29). Fair-share distributes low-income housing within a region in a manner that is equitable to the recipient communities while providing the potential housing occupants with geographic choice and access to community amenities (Rubinowitz 1974 in Listokin 1976, 1). In 1976, the regional planning agencies in Albany, Dayton, Denver, Hartford, Los Angeles, San Diego, and San Francisco maintained fair-share housing schemes (Listokin 1976, 217–21).

While the Section 701 program raised awareness of planning by creating plans and planners, the program had detractors (Brooks 1988; Feiss 1985). First, Section 701 was costly (Figure 2 illustrates the annual appropriations) and its efficacy was unproven. Due to the 1970s economic crisis and the Vietnam War, in 1974 the OMB recommended Section 701 suspension because “after 20 years and \$600 million in planning grants, there is little hard evidence of program benefit (although ‘701’ [has kept] many planners and planning agencies in business)” (Ash 1974, 49). Second, Section 701 lacked focus. From 1969 to 1980, the Section 701/A-95 circular grew from 50 to 240 federal programs (Steinman 1982). In a second

OMB evaluation, Staats (1977) noted that Section 701 planning programs were haphazardly initiated to satisfy particular demands, federal agencies ignored regional clearinghouses, and states disregarded state planning agencies. Third, the Section 701/A-95 clearinghouse review did not ensure equity. Regional staff often lacked social e-service expertise because the staff’s primary function was to service municipalities, “not to administer the A-95” (Russo 1982, 55–56). Fourth, municipalities complained about “insufficient pre-application assistance, unnecessarily complex contract arrangements, [. . . and] slow payment of funds” (Post 1974, 5). Fifth, regarding housing element efficacy, HUD only required two paragraphs for any Section 701 application. Thus, it was not clear how HUD or any regional agency could evaluate a municipality’s mitigation of exclusionary zoning. Lastly, many critics contended that “the reviewed [municipalities] can’t do the reviewing” of applications because member municipalities lead regional agencies (Mogulof 1971, 419).

In 1981, President Reagan slashed HUD’s budget authority (terminating Section 701 grants) and issued Executive Order 12372 (rescinding the A-95 circular; Bratt and Keating 1993; Graham 1985). Under the Tax Reform Act of 1986, the US Department of Treasury terminated passive loss tax deductions (Guthrie and McQuarrie 2005). This termination deterred private investment in multifamily construction—units most likely to house low-income households due to economies of scale (DeSantis 2002; Schwartz and Johnston 1983). For many municipalities, these federal actions exacerbated resistance to low-income housing because “only the most expensive single-family homes yield[ed] sufficient revenues to offset the service costs incurred from new residents” (Goetz 1995; Myers 2002, 8).

In closing, the federal government not only formalized planning and zoning but also recognized that *exclusionary municipal zoning* would repel minority and/or low-income households from the suburbs. In response, federally mandated housing elements with state and regional review required municipalities to consider local and regional housing needs. With the demise of the Section 701/A-95 circular, municipalities now receive less federal pressure to accommodate low-income housing needs. Even though HUD recently amended its rule on the 1968 Fair Housing Act (US Department of Housing and Urban Development 2015), the rule’s influence on low-income housing production is to be determined. A key component will be HUD’s evaluation of any recipient’s meaningful actions that “overcome” the negative factors that affect housing choice as well as the recipient’s discussion of local knowledge. HUD defines local knowledge as “state and local laws, regulations, and processes such as occupancy, land use, and zoning codes . . . that is known or becomes known to the program participant, and is necessary for the completion of the AFH” (*AFFH Rule Guidebook* 2015, 49; US Department of Housing and Urban Development 2015). Even though HUD does not require an analysis of local knowledge, recipients cannot ignore local knowledge either, especially if such knowledge (i.e., land use, zoning) impedes fair housing choice.

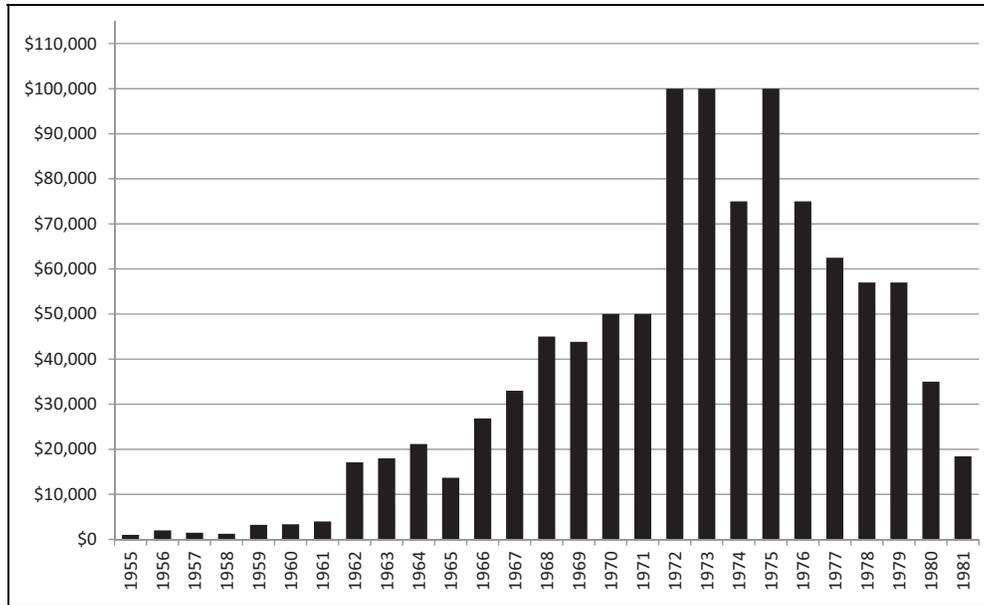


Figure 2. Annual appropriations for 701 comprehensive planning assistance, 1954–1981 (dollars in thousands). *Source:* Tutman (1981).

At the state level, municipal planners must adhere to enduring state mandates that require housing elements to accommodate low-income housing needs (Appendix Table A1). Thus, what is the housing element’s current role? Is the housing element just another “expensive and unused” plan (Feiss 1985, 175) or should states invigorate housing elements to increase equity? This review argues that states should lead in low-income housing production because states create municipalities and regulate municipal behavior. In addition, states are the direct recipients of HUD funding and cannot ignore the exclusionary zoning of municipalities if local regulations impede fair housing. Thus, states can increase low-income housing production by adhering to HUD’s new rule that requires meaningful actions as well as by learning from Section 701’s missteps in governance, goals, compliance, forecasting, density, penalties, and finance.

Regarding governance, congress conceived Section 701 as planning assistance; however, the program’s function as a cash transfer did not hold municipalities accountable to federal aims. Section 701’s goal was plan creation, but goals must be linked to qualitative or quantitative objectives that demonstrate plan efficacy. In addition, the cumulative planning functions added by Congress imbued Section 701 with mission creep. Figure 3 illustrates that cities were second in grant awards but no research connects cities with Section 701 program efficacy. Regarding compliance, a plan’s compliance with any law should evidence not just expended funds but also the measurable attainment of the plan’s objectives. To date, no evaluation of Section 701 and housing or land-use elements exists. Regarding forecasts, Section 701 supported regional fair-share AHOPs to increase metropolitan housing equity. In a seven-year period, HUD approved more than sixty AHOPs; however, no agency can determine whether the forecasts were accurate or regional fair share was met (Tutman 1981).

Any discussion of housing should also include a discussion of density. While Section 701 housing elements must consider regional housing needs, the attainment of regional housing equity requires infringement on local prerogatives on density. When faced with municipal barriers, regional agencies have withheld transportation or infrastructure funds as a penalty; however, a “built out” municipality may not desire federal support. Regarding subsidies, Section 701 supported plans, planners, and planning consultants *attending to* low-income housing, but low-income housing require a consistent subsidy. In the subsequent discussion of housing element research, I intend to reference these issues.

A Review of Housing Element Research

California

Since its inception, California has granted home rule autonomy to municipalities and currently allows them to incorporate under hierarchal state law or under a charter that bestows broad autonomy in reference to state planning law (Peppin 1941; Walsh, Roberts, and Pellman 2005). Prior to the federal acts, in 1917 California granted zoning authority to any incorporated city or town (*Chapter 734*). In 1947, California required municipalities to maintain a general plan (*Conservation and Planning Act 1947*).

California’s Housing Element Law. In 1967, California passed the housing element law in order to increase suburban housing production by requiring general plans to include a housing element that “endeavor[s] to make adequate provision for all economic segments of a community’s housing needs” (*Housing Element Law 1967*, chap. 1658; Baer 2008, 55).¹¹ One of the law’s five goals declares, “Housing affordable to

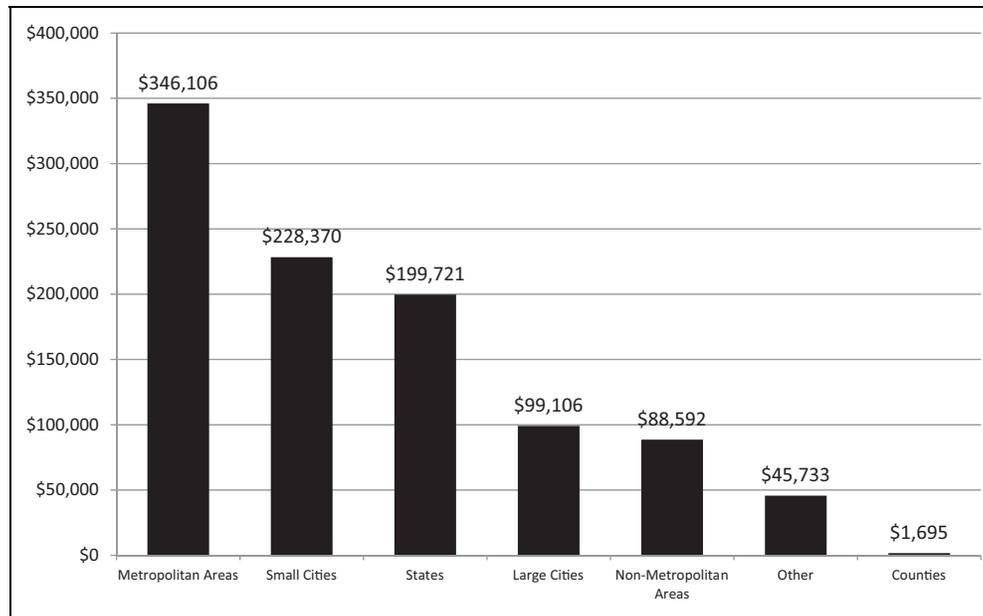


Figure 3. Total appropriations for 701 comprehensive planning assistance by recipient, 1954–1981 (dollars in thousands). Source: Tutman (1981).

low- and moderate-income households requires the cooperation of all levels of government” (*Housing Element Law* 1967, Section 65580). During Governor Brown Jr.’s progressive first term, California’s Department of Housing and Community Development (CAHCD) initiated a fair-share scheme to stratify housing needs by household income (i.e., very-low, 0–50 percent of HUD’s area median income [AMI]; low, 51–80 percent; and moderate, 81–120 percent; market-rate is greater than 121 percent). As a vertical consistency state, zoning codes must implement a general plan’s housing element, which in turn advances California’s goals for housing equity (Table 3).

California’s implementation. California implements the housing element law in four general steps. First, CAHCD forecasts and distributes housing needs to each regional Council of Government (COG). Second, the COGs prepare multiyear fair-share housing allocations, reflecting each municipality’s housing needs and production capacity. Third, a municipality incorporates its allocation into its housing element to specify planning actions that accommodate low-income and market-rate housing during the document’s five- to eight-year effective period. To facilitate low-income housing, California requires a housing element to identify the quantity of constructed, rehabilitated, and/or preserved units and guarantee that the municipality contains enough appropriately zoned land to absorb constructed units. The housing element must also list any planning technique that will increase low-income housing (i.e., annexing vacant land, density bonuses, inclusionary zoning, residential rehabilitation, sites of increased density, tax increment, and/or mixed use). Lastly, a municipality submits its housing element to CAHCD to determine whether the document’s goals, policies, programs, potential subsidies, proposed densities, and identified sites comply with the law. Compliant municipalities may compete for state and federal funds; noncompliant

municipalities risk lawsuits from private parties. If a lawsuit prevails, then all permitting ceases until the housing element is cured (Dodge, Shoemaker, and Stone 2002, 8). While detailed, the law neither evaluates housing production nor issues penalties, despite lobbying by housing advocates (*Housing Element Law* 1967, Section 65585; Housing Element Working Group 2004).

Annual compliance with the Housing Element Law has been inconsistent because many municipalities view the law as an intrusion on home rule (Calavita, Grimes, and Mallach 1997).¹² During the 1990s, California’s compliance rate climbed from 9 percent to 50 percent due to technical assistance from CAHCD, leverage of federal funds (e.g., HOME funds for construction, CDBG funds for rehabilitation, Section 8 vouchers for preservation), and potential lawsuits from the state’s attorney general. During the 2000s, California’s compliance rate peaked at 90 percent in 2010, dropping to 45–60 percent after the housing crash. The initial 1967 law contained two paragraphs; at present, the law spans over forty-five pages. Lewis (2003) noted, “Highly detailed statutes are often evidence of widespread disagreement on a given policy . . . In the case of [California’s Housing Element Law], the result is an unwieldy law that is often difficult for outside observers to comprehend in its entirety or details” (p. xii). In response to the law’s complexity, municipalities hire planning consultants for housing element creation.¹³

Evaluation of California’s Housing Element Law. In the 2000s, Lewis examined the Housing Element Law to determine its influence on housing. In 2003, he regressed the 1991 compliance status of 202 municipalities on their 2000 Census housing data and determined that compliance had no relationship to a municipality’s change in total housing units or ratio of multifamily units to total housing units. While he argued that

compliance had no influence on housing, his analysis did evidence that compliant municipalities produced more multifamily units than noncompliant municipalities. In 2005, Lewis regressed the 1994 compliance status of 354 municipalities on their 1994–2000 residential permit data and determined that housing unit age, population, household income, and job/worker ratio, not compliance, influenced housing production. While notable, Lewis' work has limitations. First, Lewis relied on census and permit data that did not identify low-income housing units. Lewis also implemented a cross-sectional research design to test a longitudinal phenomenon, as housing elements are effective from five- to eight-years. Lastly, his analysis may have been skewed due to low municipal rates of compliance with California's mandate.

Recently, Ramsey-Musolf (2016) used similar data sources from a purposive¹⁴ sample of Los Angeles and Sacramento region municipalities ($n = 53$) to determine how low-income housing production changed over time (1990–2007) and whether compliance with the Housing Element Law influenced low-income housing and annual housing production (2016). Regarding compliance, the sample's performance was 13.7 percent in 1990, 50 percent in 2000, and 75.3 percent in 2005, mirroring California's performance. Regarding low-income housing production, the sample produced 32 percent of the 1990–1997 allocation and 42 percent of the 1998–2005 allocation. In contrast, the sample produced 78 percent and 160 percent of the respective market-rate housing allocations. Regionally, the Sacramento subset of municipalities performed better than the Los Angeles subset in terms of compliance (58.7 percent vs. 35.7 percent), low-income housing production (47.1 percent vs. 30.6 percent), market-rate housing production (166 percent vs. 78.3 percent), and overall housing production (97.6 percent vs. 49.6 percent). In short, suburban municipalities with access to vacant land were more likely to be compliant and produce surplus market-rate housing but experience deficient low-income housing production.

While controlling for various municipal conditions, Ramsey-Musolf determined that compliant municipalities were associated with a 2.3 percent increase in low-income housing production relative to noncompliant municipalities. In contrast, compliant municipalities were associated with a $-.22$ percent decrease in overall housing production relative to noncompliant municipalities. "Affordable housing advocates can argue that compliance increases the low-income housing options in compliant municipalities, while also counteracting municipal resistance" (Ramsey-Musolf, 2016, 504). Alternatively, private capital can argue that compliance reduces the overall housing production in compliant municipalities, in contrast to the state's goals for housing equity for all incomes. While this recent research suggests that California's Housing Element Law may operate with conflicting goals, the findings are limited to the purposive sample. Ramsey-Musolf omitted the San Francisco region municipalities and did not randomly select the examined urban, suburban, and rural municipalities. Neither Ramsey-Musolf nor Lewis could establish a counterfactual because no pretest data exists and all municipalities

received the intervention (Shadish, Cook, and Campbell 2002). Thus, more research is required to confirm the law's relationship to housing.

In summary, California's Housing Element law attends to housing equity. This attentiveness is due to the law's devolved consensus because no single agency (e.g., CAHCD, COGs, and municipalities) governs the law, no agency directs other participants, and no agency issues penalties. Density foments municipal resistance because the law's fair-share goals require a municipal response to forecasted low-income and market-rate housing demand. Since CAHCD does not evaluate housing production in relation to the forecasts, compliance does not signal efficacy. Fiscally, municipalities may use federal funds to support low-income housing (i.e., construction, rehabilitation, and preservation); however, the municipalities and federal agencies may double count these low-income housing units in their respective reports.

Florida

Unlike many states that adopted the 1920s federal zoning acts, Florida did not adopt statewide zoning until 1939 (*Florida State Zoning Enabling Act 1939*).¹⁵ In 1968, Florida updated its 1885 constitution and established municipal home rule (Williams 1998). Even though 1968 federal housing policy required housing elements, Florida did not require them until the 1975 Local Government Comprehensive Planning Act (LGCP) that required municipal comprehensive plans (i.e., future land use, housing, and four other elements) and consistency between the comprehensive plan and future development. Under the LGCP, the housing element should address blight, anticipate future housing, and identify future housing sites. State and regional agencies could review draft comprehensive plans, but no revision was required. Strikingly, Florida did not mandate comprehensive plan implementation. As a result, "zoning continued . . . to drive the [comprehensive] plan rather than the plan framing zoning, subdivision regulations mechanisms" (DeGrove 1989, 34).

Florida's GMA. During the 1980s, Governor Graham convened a resource management task force that concluded that if Florida was serious about growth, then Florida must create, fund, and implement an integrated planning system (state, regional, and local; DeGrove 1989, 35). In 1984–1985, Florida required the governor to prepare a state comprehensive plan (Rhodes and Apgar 1984) and revised comprehensive planning by passing the GMA. The GMA heightened state authority over municipal comprehensive plans by redefining consistency and adding the concepts of concurrency and comprehension (*GMA 1985*). Consistency now required comprehensive plans to adhere to GMA as well as state and regional plans (Noll et al. 1997). Concurrency required municipalities to demonstrate that "adequate infrastructure and services be available concurrently with new development" and adopt an implementing ordinance within one year of plan submission to the state (Noll et al. 1997, 495). Comprehension required that a

comprehensive plan's required elements articulate the municipality's development vision.

Florida's implementation. To facilitate low-income housing, Florida's GMA required municipalities to integrate low-income housing into their overall housing production. Florida's Department of Community Affairs (FLDCA) managed the GMA and evaluated housing elements using a comprehensive set of agency rules. In Florida, a housing element must inventory municipal households (in comparison to the home county), substandard units, rental units (subsidized and non-subsidized), group homes, mobile home parks, and current housing production. The housing element must analyze current and future demand, land availability, private sector housing activity, and municipal incentives (i.e., streamlined permitting, waived fees, federal, or state pass-through funds). Finally, the housing element must identify sites and infrastructure for low-income housing as well as the quantity of rehabilitated and preserved units.

Unlike California, Florida enacted penalties. Under the GMA, the FLDCA "may direct state agencies not to provide funds to increase the capacity of roads, bridges, and water and sewer systems in [non-compliant] local governments" (*GMA* 1985, Section 163.3134 (8)(a)). Plan updates (every five to seven years) would allow FLDCA to continually influence municipal planning (Frank 1985). In 1992, Florida adopted the Sadowski Affordable Housing Act to subsidize low-income housing construction, rehabilitation, and homeownership via real estate stamp taxes. In 1993, Florida established uniform methods for forecasting housing needs; however, Noll et al. identified multiple constraints: FLDCA's usage of existing and free data; the municipal desire that "a single number designate the housing need in a given year;" forecasts were not consistently integrated in plans; and lastly, forecasts made no fair-share attempt to distribute housing needs (Connerly and Smith 1996; Noll et al. 1997, 506).¹⁶

Evaluation of Florida's GMA. By 1991, nearly 75 percent of Florida's municipalities had adopted comprehensive plans with attendant housing elements. In 1993, Connerly and Muller evaluated "the potential and limits of state actions to stimulate local planning responsibility for affordable housing" (p. 186). The authors examined five municipal and five county housing elements to determine whether a significant number of people live in jurisdictions lacking "good housing plans" (p. 198). Using a broad, seven-component rubric of planning and public administration best practices, the authors gave the sample failing scores because the housing elements "lack[ed] the specificity and comprehensiveness" to address Florida's low-income housing crisis (p. 196). While the GMA's housing needs assessment only required a housing affordability analysis and a limited structural deterioration analysis, the authors faulted the sample for lacking any analysis of discrimination, neighborhood revitalization, or estimates of homelessness (1993, tables 11.1–11.3). In addition, the authors faulted local governments

for not implementing allowable impact fees, tax increment finance, or state tax credits as housing subsidies.

As an early plan quality evaluation, Connerly and Muller's study has limitations. First, the authors did not analyze the state plan. Florida mandates vertical consistency between state, regional, and municipal comprehensive plans, so it was unclear whether deficiencies stemmed from a vague state plan or are local failures. Second, the authors compared municipal and county housing elements without recognizing that municipal and county processes are nonequivalent (Lobao and Kraybill 2005). Lastly, Florida's GMA takes a containment approach to development, so it may be unrealistic to expect future low-income housing production without specific planning policies that address the political, fiscal, and technical aspects of low-income housing production (Downs 2004; Levine 1999; Scally 2013; Tighe 2012).

In 2014, Aurand examined the impact of housing element low-income housing policies on housing affordability. He determined that, on average, low-income policies increased from three policies per housing element (1988–1993; Connerly and Muller's study period) to five policies per housing element (1996–2004). Using ordinary least squares regression, Aurand determined that 1988–1993 policies were not associated with four measures of housing affordability, but the 1996–2004 policies were associated with decreases in homeowner cost burden and increases in affordable housing inventory. Even though Aurand found inconsistent associations, his analysis of low-income housing policies suggests transactive planning—a mutual and longitudinal learning process in which municipal planners may have improved their housing policy implementation (Friedmann 1973). Alternatively, Florida's enforcement, funding, and (then) robust housing market may have also improved low-income housing policy implementation (Aurand 2014, 15).

In summary, Florida employed a hierarchal scheme in which the FLDCA, with regional inputs, determined housing element compliance but did not evaluate housing production. Even though Florida provides a low-income housing subsidy, Florida raids the trust fund ("Stop Raids on Housing Trust Funds" 2015; Schweers 2016). In addition, Florida's forecasts may not reflect changes in immigration, account for development cycles, or observe interactions between local and regional housing markets. Finally, Florida eliminated the FLDCA and rescinded many of FLDCA's rules in 2011. Thus, the accommodation of low-income housing is locally determined using various state housing programs but without state direction (e.g., no housing needs forecasts, no housing element updates, and no compliance assessment).

Illinois

Despite the impact of Burnham's 1909 Plan for Chicago, Illinois planning law does not coalesce around a unified planning doctrine.¹⁷ A key factor has been the fear of domination by either Chicago or the state (Stroud 1943, 130). Between 1919 and 1921, Illinois adopted zoning, but master plans were not

required (Emmerson 1919, 278; 1921, 94). In 1961, Illinois authorized voluntary comprehensive plans (*Illinois Compiled Statutes* 1961). In the 1920s, the Illinois legislature first debated home rule; however, municipal home rule was not authorized until 1970 (*Constitution of the State of Illinois* 1970, Article VII, Section 6; Emmerson 1921, 306–308).

In 1999, the Illinois legislature’s urban revitalization committee concluded that small, fast-growing municipalities lacked planning capacity. After three years of home rule debate (“Regular Session House Transcripts” 2000, 50–69; “Regular Session House Transcripts” 2001, 85–101), Illinois adopted the 2002 Local Planning Technical Assistance Act in order to encourage, fund, and develop model ordinances to promote comprehensive planning. The act operates as a planning assistance grant by outlining plan elements (e.g., land use, housing, transportation, and community facilities) but does not mandate content. Housing elements follow the federal model by documenting local and regional housing needs and identifying barriers to housing production; however, no implementation is required. If a municipality does adopt a comprehensive plan funded by this act, then the municipality must maintain consistency between the adopted plan and any land-use regulations and/or decisions for only five years after the plan’s adoption (*Local Planning Technical Assistance Act* 2002, Section 30 (a)). In 2006, Chicago’s Metropolitan Mayors Caucus and Metropolitan Planning Council advised municipalities to adopt comprehensive plans for legal protection. “If, unfortunately, the jurisdiction finds itself in court over land-use issues, having a comprehensive plan that explains the community’s goals and future plans is an excellent defense” (Meck and Retzlaff 2006, 2).

Illinois’ Affordable Housing Planning and Appeal Act (AHPAA). In order to address low-income housing, in 2003 Illinois passed the AHPAA. Proponents stressed that the AHPAA respected home rule, affected a small number of communities, and emphasized low-income housing planning (“Regular Session Senate Transcripts” 2003, 68–78). In contrast, opposing legislators objected to the act’s penalties. The AHPAA “encourages counties and municipalities to incorporate” low-income housing into their housing inventory if the Illinois Housing Development Authority (ILHDA) annually determines that 10 percent of municipal inventory is not affordable to low- and moderate-income households (*AHPAA* 2004, Sections 10 and 20). Noncompliant municipalities must file an affordable housing plan with the ILHDA.

Illinois’ implementation. To facilitate low-income housing, Illinois affordable housing plans must quantify the low-income units required for 10 percent compliance, identify potential construction sites, list any municipal incentives, and adopt one of three inclusionary goals (*AHPAA* 2004, Section 25). The inclusionary goals include 15 percent of new units as low income, a 3 percent increase in the municipality’s overall low-income housing inventory, or 10 percent of the municipality’s existing housing inventory. If ILHDA deems a plan compliant, then the plan is effective until the next assessment of

municipal housing inventory. To counteract resistance, low-income housing developers may appeal onerous approval conditions or permit denials to the State Housing Appeals Board. A municipality is protected from appeal only if it has filed an affordable housing plan *and* can demonstrate that the plan’s implementation has increased low-income housing inventory (*AHPAA* 2004, Section 30(d)). In 2005, Illinois revised the AHPAA to authorize municipal land trusts, trust funds, and intergovernmental agreements to facilitate low-income housing; however, intergovernmental agencies cannot double count low-income housing units.

Evaluation of Illinois’ Affordable Housing Plan and Appeal Act. In 2007, Hoch evaluated the AHPAA by asking: did this mandate shift local policy attention to affordable housing; were the mandate’s justifications perceived as legitimate; and were the submitted affordable housing plans consistent, coherent, relevant, and committed? Surveying municipal planners and elected officials from municipalities that missed the act’s initial deadline ($n = 49$, 59 percent response rate), Hoch determined that 51 percent of respondents agreed that the AHPAA focused attention on affordable housing, 59 percent believed the AHPAA imposed an unfair municipal burden, and 76 percent believed the AHPAA made little economic sense. Regarding the AHPAA’s goals to reduce the jobs/housing mismatch, increase residential and economic diversity, and reduce traffic congestion, 41 percent, 38 percent, and 28 percent of respondents, respectively, agreed with those justifications. Using plan quality methods on thirty-six plans, Hoch determined that 97 percent complied with the AHPAA, 47 percent discussed local market conditions, and a scant 14 percent documented commitments to low-income housing. Several municipalities disputed the ILHDA assessment: “Home rule municipalities claimed the law did not apply to them” (p. 93).

Hoch concluded, “despite skepticism and resentment, most localities did prepare affordable housing plans... [and focused] attention on the unpopular affordable housing issue” (p. 96). He also believed that these “mediocre” plans would neither alter perceptions nor guide planning practice (pp. 96, 98). However, did any of those mediocre plans increase low-income housing production in the subsequent years? Unfortunately, there are threats to the study’s validity and replication. Hoch’s sample consisted of “noncompliant jurisdictions without an adopted affordable housing plan” (p. 88); thus, these municipalities may not represent the population, suggesting selection bias. Regarding replication (and important to plan quality evaluations), Hoch neither operationalized his conceptual model (i.e., consistent, coherent, relevant, and committed) nor provided a protocol that guided his decisions (p. 89).

In summary, Illinois employs a hierarchal scheme in which the ILHDA manages the AHPAA by assessing affordable housing plans and low-income housing inventory (*AHPAA: 2013 Non-exempt Local Government Handbook* 2013). While the AHPAA does not specify forecasts or densities, the law provides a simple metric for assessing low-income housing (10 percent of housing inventory) and three inclusionary

housing goals for municipalities to adopt. Fiscally, Illinois municipalities may create trusts for reducing costs. To counter municipal resistance, an appeals board administers penalties; however, the lingering issue of home rule persists. In 2013, Illinois revised the AHPAA, potentially weakening its influence. First, the ILHDA will update assessments every five years based on decennial census data. Second, the appeals board members, appointed by the governor, no longer have expiring terms.

Minnesota

In Minnesota, the state guards its sovereignty. In 1895, Minnesota allowed all municipalities to create home rule charters as long as charters remained “in harmony with and subject to the constitution” (*Chapter 4* 1895). In 1913, Minnesota granted zoning authority to municipalities with populations greater than 50,000 persons (*Chapter 98* 1913; *Chapter 410* 1913). By 1929, Minnesota had expanded zoning authority to municipalities with populations greater than 10,000 persons or operating with a home rule charter (*Chapter 176* 1929). By 1933, fourteen municipalities had adopted zoning, which covered nearly 90 percent of Minnesota’s urban population (Knauss 1931, 26; 1933, 12, 35). Because no state agency had sufficient territorial scope, Minnesota adopted several regional planning laws to influence municipal development (*Regional Planning Act* 1957; *Regional Planning Board* 1965; *Regional Development Act* 1969). Under regional planning, the governor appointed the executive director, the regional commission, and any number of ex officio members.

To encourage local planning, in 1965 Minnesota adopted the Municipal Planning Act to grant planning, zoning, and subdivision authority to municipalities; to allow planning departments and advisory planning boards; and to authorize comprehensive plans (*Municipal Planning Act* 1965, Section 2, subd. 5). To manage the seven-county Minneapolis and St. Paul region, in 1967 Minnesota established the Metropolitan Council (Council) to coordinate planning and development. Subsequently, the region’s municipalities were required not only to submit their comprehensive plans to the Council but also any requests for federal funds. In 1975, the Minnesota legislature allowed the Council to suspend (up to twelve months) any comprehensive plan that conflicted with Council priorities.

Minnesota’s Land Use and Planning Act (LUPA). In 1976, Minnesota passed the LUPA to require municipalities in the Twin Cities region to adopt comprehensive plans (LUPA 1976). Under LUPA, comprehensive plans must examine land use (e.g., housing element), public facilities (e.g., transportation, sewer, and open space), implementation (e.g., zoning, housing, capital improvements), and, if applicable, urbanization. Urbanization plans specify the sequence of capital improvements for new development. As a carrot, LUPA funded up to 75 percent of a comprehensive plan’s cost (via Section 701 funds). As a stick, no plan implementation could occur prior to Council review, and the Council could sue municipalities with

comprehensive plans that departed from the Council’s priorities. Within nine months of Council review, the municipality must adopt the plan (effective until 1990, with subsequent five-year updates) and maintain consistency between the plan, zoning, and subdivision regulations.

Minnesota’s implementation. To address low-income housing needs, the Council established a fifteen-member, modest-cost housing advisory committee (consisting of elected officials, builders, consumers, and financial specialists) to develop residential development standards. The committee recommended that housing elements should “identify sufficient land to accommodate the communities’ [fair-] share of the region’s need for low- and moderate-income housing” (*Determining Affordable Housing Need in the Twin Cities 2011-2020* 2006, 2). To facilitate low-income housing, Minnesota required municipalities to set aside high-density land to directly allow multifamily housing and indirectly encourage low-income housing.

Evaluation of the Twin Cities’ LUPA. Citing that nearly 161,000 regional households were rent burdened or resided in substandard housing, Goetz, Chapple, and Lukermann evaluated LUPA’s impact on low-income housing (2003, 214). The authors asked, how did comprehensive plans facilitate modest-cost housing, did planners and/or developers make sufficient efforts to build low-income housing, and did municipalities downzone land originally set aside for future low-income housing? Of the region’s 144 municipalities, the authors examined housing elements from twenty-five suburban municipalities that experienced high population growth and had access to developable land. The authors determined that 1975–1990 housing elements facilitated low-income housing by implementing at least four planning techniques: planned unit developments¹⁸ (PUDs, 75 percent), increased density (58 percent), reduced unit sizes (58 percent), and tax increment subsidies (8 percent).¹⁹ From 1990 to 2003, housing elements employed at least two planning techniques: PUD (59 percent), tax increment subsidies (25 percent), increased density (19 percent), and reduced unit sizes (12 percent).

According to the interviews ($n = 41$), planners added accessory dwellings, reduced lot sizes, zoning variances, and fee waivers to the list of planning techniques. One planner suggested that the weak relationship between the housing element and low-income housing was due to politics: “Council members that may have worked on these things are not necessarily the same ones as we have today . . . [since] a housing plan adopted in one year is not necessarily embraced by” a subsequent council (Goetz, Chapple, and Lukermann 2003, 220). When queried about planning techniques, another planner responded, “I couldn’t have told you that was in the plan. Sounds like one of those great consultant ideas” (Goetz, Chapple, and Lukermann 2003, 220). Goetz et al. concluded that planners “generally failed to take initiative in monitoring and promoting . . . [low-income housing] through regulatory or political means” (Goetz, Chapple, and Lukermann 2003, 220). The

low-income housing developers identified land availability as their primary obstacle to low-income housing production, followed by neighborhood opposition, zoning regulations, and municipal support. As a result, the developers would not “work in communities where . . . [they were] not wanted” (Goetz, Chapple, and Lukermann 2003, 221). In contrast to Goetz et al., the developers valued planners’ efforts: “City staff ‘pushed on the Met Council and lobbied the Minnesota Housing Finance Agency for tax credit designation . . . MHFA tax credits was critical . . . couldn’t have done it without them . . .’ [while another developer] credited city staff with trying to ‘help with elected officials and countering neighborhood opposition’” (Goetz, Chapple, and Lukermann 2003, 221).

Regarding the availability of high-density land, Goetz et al. examined roughly 7,460 parcels (8,590 acres), compared each parcel’s 1980 and post-2000 land-use designation, and then determined that only 22 percent of parcels remained high density. The municipalities downzoned 38 percent of high-density parcels to low- or medium-density parcels, shifted 17 percent to nonresidential uses, and converted 16 percent to PUD. The authors conducted site visits, examined local rents, and then estimated that for every 100 acres originally set aside for high-density housing in 1980, roughly 5 acres *may* contain new low-income housing (p. 223); however, this estimate cannot be verified because no database links the original parcels with low-income housing units.

While Goetz et al. provided a constructive methodology for conducting regional housing element analysis and their sample reflected cities with growing populations, some issues remain. In 1995, the voluntary Livable Communities Act (LCA) supplemented LUPA. The LCA required municipalities to provide a one-to-one match for any Council funds designated for infill development that prioritized rehabilitated, preserved, and mixed-income housing. Therefore, municipalities may have decided to pursue LCA rather than LUPA. In addition, the authors did not consider the deeper impact of the Council ceasing fair-share allocations (2003, 216). The cessation may have allowed municipalities to operate without an external requirement for low-income housing and, thus, focus solely on their own self-interest. Lastly, this twenty-five year evaluation maintained clear bookends (1976 and 2001), but it, suffered from periodicity, as the intervening years were unexamined. Thus, we can only surmise the municipal decisions regarding the downzoning of high-density land.

In summary, Minnesota’s LUPA advanced low-income housing under a hierarchal scheme that permitted the Council to direct municipal land use via planning grants, compliance reviews, and lawsuits. Due to the absence of federal funds and shifts in housing priorities,²⁰ Council hierarchal command shifted to governance (“a system of cooperation”), creating a vacuum wherein municipal self-interest usurped regional needs (Vogel and Nezelkewicz 2002, 108). For example, Goetz et al. identified PUDs as the primary planning technique facilitating low-income housing. When developed in the mid-1960s, PUDs allowed “developers to mix land uses, housing types, and densities” when development may have involved multiple

parcels with multiple participants (Meck 2002, 8–76). However, PUDs became “contract zoning” occurring between the landowner and municipality at the exclusion of neighbors and the region (Babcock 1966, 11). Thus, LUPA would facilitate low-income housing if developers secured high-density land, the PUD included low-income units, and the proposal received municipal approval. In the period since Goetz et al.’s research, Minnesota eliminated the modest-cost housing advisory committee during a revision of the Council’s authority over comprehensive planning (*Metropolitan Land Planning Act Modifications* 2007).

Discussion

To support the argument that states should strengthen housing elements to increase low-income housing production, this review examined federal planning interventions, Section 701 planning grants and empirical housing element research. Regarding federal interventions, Gordon’s (1974) federalism typology provides a helpful lens (p. 47–49). Expansive federalism (1920s–1930s) simultaneously constructed limited public housing and encouraged states to allow municipalities to adopt local planning policy. Cooperative federalism (1940s–1950s) underwrote suburban homeownership, central city urban renewal, and municipal planning assistance. Creative federalism (1960s) recognized housing inequality by requiring municipalities to address exclusionary zoning via housing elements. New federalism (1970s) shifted low-income housing responsibility to states and regions (e.g., mandates, fair share, and AHOP), municipalities (e.g., housing elements, block grants, and housing assistance plans), and households (e.g., demand-side housing vouchers). Devolution (1980s) signaled the retreat of federal leadership and fiscal support. Currently, under neoliberalism (less government), no new federal expenditures for low-income housing are foreseen, as the preferred tools are vouchers and tax credits; however, HUD’s new rule on AFFH holds promise.

To increase low-income housing, states should heed the lessons of Section 701 by recognizing that a planning mandate may only produce plans. However, low-income housing production requires three factors: clear rules that are easily interpreted by developers, housing advocates, and planners (Bratt 2012; Knaap et al. 2007; Mitchell 2004; Talen and Knaap 2003; Veazey 2008); strong political will to place low-income housing on the local/regional agenda (Basolo 1999b; Landis and McClure 2010; Mallach 2009; Mueller and Schwartz 2008; Mukhija et al. 2010; Scally 2013); and consistent subsidies that allow low-income households to live without financial hardship (Defilippis and Wyly 2008; Goetz 2002; McClure 2004). Under Section 701, Congress fiscally supported the creation of municipal planning (clear rules). Congress then required municipalities to create housing elements to address local and regional housing needs (political will), but it did not provide subsidies to support the planned low-income housing. Concurrently, states enacted housing mandates to focus municipal attention on low-income housing. However,

Table 1. General Plan and Housing Element Conditions for California, Florida, Illinois, and Minnesota.

State	Zoning Granted to Cities?	General Plan Required?	General Plan Reviewed?	General Plan Update?	Housing Element Required?	Low-Income Housing Needs Methodology?	Housing Element Reviewed?	Housing Element Update?
CA	1917	Yes	No	No	Yes	Housing needs stratified by household income	By state agency	Every five to eight years
FL	1920 by individual city, 1939 statewide	Yes	Yes	Every five to seven years	Yes	Overburdened renters and homeowners	Indirectly by state agency	With general plan update
IL	1919–1921 statewide	No	No	No	Suggested	10% of existing housing inventory	Housing element, no; affordable housing plan by state agency	Housing element, no; affordable housing plan every five years
MN	1921 for large cities, 1929 statewide	Yes	Yes	Yes	Yes	LUPA does not calculate need. LCA negotiates with the city	Indirectly by state agency	With general plan update

Source: Chapter 734 (1917), Chapter 292 (1919), Chapter 217 (1921), Chapter 176 (1929), Florida State Zoning Enabling Act (1939), Conservation and Planning Act (1947), Housing Element Law (1967), LUPA (1976), Growth Management Act (1985), Livable Communities Act (1995), *General Plan Guidelines* (2003), AHPAA (2004), Emmerson (1919, 278; 1921, 94), and Wright (1952). LUPA = Land Use and Planning Act; LCA = Livable Communities Act.

the examined research illustrates the uneven performance of these mandates because states overemphasized compliance with state laws rather than the production of low-income units.

California, the first state to mandate housing elements, employs an elaborate fair-share scheme that stratifies housing needs by income in order to create regional housing equity. California scaffolds housing elements with vertical consistency to ensure that daily municipal zoning implements long-term state goals; however, California does not provide a consistent subsidy and the Housing Element Law’s measurable outcome is a plan not evidence of a constructed housing unit. Florida was late to adopt zoning and comprehensive planning, but GMA compensated by requiring municipalities to adhere to state and regional priorities. In addition, Florida provides housing subsidies (i.e., carrots) and penalties (i.e., sticks); however, its measurable outcome is a plan that addresses housing affordability not housing production.

The Illinois AHPAA is exemplary in terms of legal clarity, forecasts (10 percent of housing stock), trusts (i.e., carrots), and penalties (i.e., sticks). However, home rule foments competing visions of planning and housing. Again, Illinois’ measurable outcome is a plan that is evaluated for compliance with AHPAA. Minnesota implemented a regional fair-share scheme that allowed its Metropolitan Council to impose authority over municipalities. Under LUPA, municipalities were required to set aside high-density land for future low-income housing production. However, the cessation of Section 701 funded forecasts, legislative tinkering reduced Council authority to governance, and municipalities did not restrict high-density land for either multifamily and/or low-income housing. Under LUPA as well as the other examined states, Table 1 illustrates that the measurable outcomes are plans not low-income housing units.

Despite these uneven performances, this article argues that states should take the lead in providing low-income housing by reforming state housing policy and home rule. Regarding

housing policy, a fair-share mandate would provide a floor on which municipalities could build on, instead of fragmented municipal prescriptions. States can design housing policies that are germane to their social, economic, and cultural values and recognize a state’s unique geographic features. Most importantly, the state’s housing policy should evaluate plans *and housing units*. Regarding home rule, the constitution is silent on municipal power. To that end, states grant municipalities autonomy. Thus, any reduction of autonomy would serve to reduce municipal resistance to housing equity. To be clear, these state actions would be controversial.

Recently, California’s Governor Brown Jr. attempted to revise the state’s housing development process by introducing builder’s remedies, as supported by recent scholarship (Reid, Galante, and Weinstein-Carnes 2016). If a housing project contained a minimum proportion of low-income housing units and a municipality denied the project, then the builder could circumvent California’s environmental laws and secure a permit from CAHCD. Unfortunately, the proposal neither reformed the state’s housing mandate nor provided any fiscal incentives but only antagonized labor, environmentalist, housing activists, and municipalities (Dillon 2016). To gird stronger state mandates for housing elements, states must revise their state mandate and not rely on shortsighted measures. Due to HUD’s new fair housing rule, states have an opportunity to commit to wholesale reform to the state’s housing policy because every consolidated plan requires an accepted AFH. When creating the state-level AFH, states must take into account local knowledge and data that identify impediments (e.g., land use, zoning) to fair housing choices (*AFFH Rule Guidebook* 2015, 49). Thus, states can no longer ignore impotent state housing policy as well as exclusionary municipal zoning.

To support the adoption of fair-share housing schemes, states should also consider the recent US Supreme Court

decision on disparate impact. Disparate impact is a practice that has discriminatory effect, which, predictably results in a negative impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin, even if the practice was not motivated by discriminatory intent (“Title 24: Housing and Urban Development, Part 100: Discriminatory Conduct under the Fair Housing Act” n.d.). In 2008, Inclusive Communities, Inc., charged that Texas’ method for distributing low-income housing tax credits perpetuated segregated housing patterns because Texas allocated “too many tax credits . . . in predominantly black inner-city areas and too few [credits] in predominantly white suburban neighborhoods (*Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*” 2015, 1). In 2015, the court held that the disparate impact claim was cognizable under the Fair Housing Act and directed Texas to eliminate the offending practice, rather than impose racial quotas.

While low-income households are not a protected class, HUD clarifies that:

It is not HUD’s intent to use the AFFH rule to expand the characteristics protected [by the Fair Housing Act. . . However, HUD must] administer its housing and urban development programs – that is, programs that target assistance to low-income persons—in a manner to affirmatively further fair housing. Accordingly, it is entirely consistent with the Fair Housing Act’s duty . . . to counteract past policies and decisions that account for today’s racially or ethnically concentrated areas of poverty or housing cost burdens and housing needs that are disproportionately high for certain groups of persons based on characteristics protected by the Fair Housing Act. Preparation of an AFH could be an important step in reducing poverty among groups of persons who share characteristics protected by the Fair Housing Act . . . In addition, a large body of research has consistently found that the problems associated with segregation are greatly exacerbated when combined with concentrated poverty. (US Department of Housing and Urban Development 2015, 43)

Thus, a state that adopts a fair-share scheme to reduce the concentration of low-income households and increase the households’ access to housing, employment, and educational opportunities should be consistent with HUD’s implementation of the Fair Housing Act.

While critics may contend that reliance on state housing policies creates fifty visions for housing, all states currently implement unique visions for education, health care, and environmental law. Furthermore, housing policy that may be successful in California may not be replicable in Florida, Illinois, or Minnesota due to California’s values, geography, and legislative framework. Uniqueness does not diminish the potency of a state policy but may aid the policy’s adoption. The challenge in strengthening low-income housing policy is that any mandate will undergo scrutiny that will argue against entitlements in favor of smaller government. However, the need for low-income housing persists, as do state laws requiring housing elements.

Theoretically, the best option for planners is an equitable approach that implements fair-share housing production. Under incrementalism, planners may fine-tune existing laws, but as demonstrated by Section 701, fine-tuning may encourage mission creep. Collaborative paradigms hold promise, as this approach brings different actors to the table; however, what measure ensures that powerful actors remain voluntarily committed to unpopular initiatives? Reflecting Habermas, planners can communicate issues (e.g., plans, meetings, and direct dialogue) in order to raise awareness and develop cohesive strategies. The nomenclature shift from subsidized to low-income, to affordable, to workforce, and now to life cycle housing evidences this approach (Goetz 2008). Unfortunately, communication alone may not ensure acceptance.

In the end, many states require both comprehensive plans and housing elements; unfortunately, those housing elements may not address low-income housing. However, a mandatory fair-share approach may be equitable and successful, as it would require municipalities to use their housing elements to plan for low-income and market-rate housing production. This approach would also require that states evaluate subsequent housing production. To increase low-income housing inventory, a state’s housing mandate must harness market-rate housing to low-income housing production, as noted by HUD (*AFFH Rule Guidebook* 2015, 124–25, 129–30). Planners recognize that many communities desire quality housing since many households engage with the private sector to secure such housing. The private sector, in its pursuit of profit, will always cater to market-rate demand. This approach, based on inclusionary principles, would use private capital to correct a market failure, rather than relying solely on a government solution. The implementation of these principles will require reforming state housing policy to ensure that households from all incomes in a community have decent homes. Thus, I suggest the following state reforms to increase low-income housing production.

A Proposal for Reforming State Housing Policies

Goals. The Housing Act of 1937 called for eliminating unsafe housing, eradicating slums, reducing unemployment, and stimulating business activity. The Housing Act of 1949 called for a “decent home and suitable living environment for every American family” (*Housing Act of 1949*). California recognizes that housing is a vital statewide goal and enlists the participation of government and the private sector. California also declares that low-income housing requires the cooperation of all levels of government. States should declare that all governments have a responsibility to use their vested powers to address the housing needs of all economic segments. Unlike the 1937 Housing Act, the goal of state housing policy should be equitable housing production not job creation.

Governance. A single agency must govern state housing policy. The empirical research suggests that every municipality must

have an adopted housing element or affordable housing plan. Updates should occur every five years, with state and regional agencies providing housing projections based on each municipality's general plan, zoning, and housing production capacity. Updates should also occur by region so that state and regional agencies can ascertain housing market performance. As in California, Florida, and Illinois, state agencies should provide annual reports on municipal compliance to the housing policy. Lastly, state policies and procedures must be clearly written and simple enough for senior and assistant planners to manage housing element creation and revision.

Compliance. State agencies, with regional agency input, should evaluate housing elements for compliance with state policy. The definition of compliance must include an assessment of the housing element and housing production. Before a state agency approves a housing element for years six through ten, the state agency should assess the municipality's housing production for years one through five. For municipalities with deficient low-income housing production, their housing policies and programs should be modified to include multifamily housing as a "by right" land use, as found in California (*Housing Element Law* 1967, Section 65589.4). Adherence to five-year updates would allow other interested parties (e.g., other agencies, housing advocates, and residents) to mitigate exclusionary behavior. If a municipality wishes to be a region's favored quarter, then it must make and prevail in its argument (Babcock 1966, 149).

Forecasting. Any forecast should be limited to no more than five years and require municipalities to provide an annual assessment of housing activity (e.g., construction, rehabilitation, preservation, and demolition). Under California's climate change law, housing elements are now effective for eight years. This time frame is too long, since forecasts and projections may lose accuracy over extended periods (Myers 2002; Myers, Pitkin, and Park 2002). In addition, the definition of low-income housing may need to shift, depending on the state's housing prices. In Illinois, low-income households earn 0–80 percent of HUD's AMI. In California, low-income households earn 0–120 percent of HUD's AMI.

Florida, California, and Illinois differ in their allocation strategies. Florida specifies a quantity of cost-burdened owners and renters. California's multiyear allocations roughly specify that 60 percent of new housing should be low income and 40 percent should be market rate. Illinois specifies that of 10 percent of municipal housing inventory must be low income. Of these approaches, Illinois' metric is the easiest for politicians and advocates to understand and for planners and builders to implement. However, few studies have evaluated housing allocations and housing units due to a lack of accurate housing data.

Penalties. To encourage municipal participation, laws must contain both carrots (i.e., funding, technical assistance) and sticks (i.e., penalties). A penalty also means that a state agency has

decided on an acceptable metric for determining program success (e.g., greater than 50 percent, 75 percent, or 90 percent of the housing forecast or allocation). Florida may withhold funds for capital projects, revenue sharing, and/or CDBG. In Illinois, developers denied a permit might appeal to a housing court. In California, the state takes a lawsuit approach in which a low-income householder must prove that he or she is negatively impacted by municipality's housing policies. Another option is that states could suspend the issuance of building permits in noncompliant municipalities. Under permit suspension, a municipality's financial, insurance, and real estate actors would create pressure for corrective municipal action. This author also proposes suspension of property and sales taxes disbursement until demonstrations of progress on low-income housing production.

Density. For municipalities located in urban, suburban, and rural locations, states must establish a minimum overall density for these jurisdictions. These defaults can ensure that municipalities allow a mix of housing choices. California, Illinois, and Minnesota require municipalities to identify sites/densities for future low-income housing. California also designates default densities that reflect each municipality's spatial location (e.g., urban—thirty dwelling units per acre, suburban—twenty dwelling units per acre, or rural—ten dwelling units per acre) if a municipality forgoes a sites/density analysis. To ensure that future density is consistent with an adopted general plan, each state should require horizontal consistency between the general plan's land use and housing elements and vertical consistency between the general plan and zoning code.

A planning technique that increases density is the density bonus, which allows developers to increase the density of any housing project when the project includes units set aside for low-income housing (10–20 percent). Fiscally, the bonus units should provide an internal cross-subsidy to finance low-income housing units. In 1979 and 2006, California and Florida, respectively, adopted bonus density laws. This planning technique is "politically appealing because it requires no financial subsidies from local or state governments and allows private developers to act in their own self-interest" (Johnston et al. 1989, 49).

Finance. While states cannot print money, they can adopt linkage fees to subsidize low-income housing. Florida supports an affordable housing trust fund with real estate stamp taxes. Currently, Illinois and California allow municipalities to adopt inclusionary housing programs; however, states could adopt a statewide mandatory inclusionary housing program to increase and finance low-income housing production (built on-site, off-site, or developers pay an in-lieu fee; Wheaton 2008). A statewide program would reduce the fragmented implementation of municipal inclusionary housing (Calavita and Grimes 1998; Schwartz and Johnston 1983). States would set a regional in-lieu fee (i.e., impact fee or growth share) and program implementation would move with the market (Burge and Ihlanfeldt 2006; Mitchell 2004). In-lieu fees, collected as onetime funds, would subsidize new and/or rehabilitate low-income

housing (Mukhija et al. 2010; Schuetz, Meltzer, and Been 2009). Any housing unit touched by such funds should be affordable for thirty to forty-five years; if sold or refinanced, then the state should reset the program clock. In addition, the state or any nonprofit should have the first right of purchase, with covenants regarding the rate of appreciation. Preservation of existing units should involve federal sources (pass-through funds from public housing authorities; Kleit and Page 2008).

Conclusion

In 1967, Congress created the housing element to address housing equity. This literature review found uneven performances

of housing elements in California, Florida, Illinois, and Minnesota because these states mandated the planning process but did not evaluate subsequent housing production or provide a consistent subsidy. To increase low-income housing production, this review argues that states can counteract “home rule” resistance in the absence of consistent federal funding. This article outlines reforms (process and outcome) so that states can usher in equitable production of low-income and market-rate housing. In truth, passage of any state low-income housing law will not be easy. However, evidence (e.g., federalism, Section 701 planning grants, and scant housing element research) suggests that planners must do more than attend to and plan for low-income housing needs.

Appendix

Table AI. Comprehensive Planning and Housing Element Requirements by State.

State	Statute	Comprehensive Plan Required? ^a	Housing Element Required?
AL	Alabama Code, Title 11, Chapter 52, Section 8	Yes	No
AK	Alaska Statutes, Title 29, Chapter 40, Section 30	Yes	No
AZ	Arizona Revised Statutes, Title 9, Chapter 4, Section 461.05	Yes	Yes
AR	Arkansas Code, Title 14, Chapter 56, Sub Chapter 414	No	No
CA	California Government Code, Section 65300	Yes	Yes
CO	Colorado Revised Statutes, Title 31, Article 23, Section 206	Semi ^b	No
CT	General Statutes of Connecticut, Title 8, Chapter 169c	No	No
DE	Delaware Code, Title 22, Chapter 7, Section 702	Yes	No
FL	Florida Statutes, Title 11, Chapter 163, Section 3167	Yes	Yes
GA	Georgia Code, Title 36, Chapter 70; Georgia Rules and Regulations, Department 110, Section 12-1	Semi	Yes
HI	Hawaii Revised Statutes, Title 13, Chapter 226	County only	No
ID	Idaho Statutes, Title 67, Chapter 65, Section 6508	Yes	Yes
IL	Illinois Compiled Statutes, Chapter 65, Section 5, Article 11, Division 12	No	No
IN	Indiana Code, Title 36, Article 7, Chapter 4, Sections 205 and 503	Yes	No
IA	Iowa Code, Title 9, Chapter 414, Section 3; Iowa Code, Title 1, Chapter 18b	Yes	No
KS	Kansas Statutes, Chapter 12, Article 7, Section 43	No	No
KY	Kentucky Revised Statutes, Chapter 100, Sections 183 and 187	Semi	Optional
LA	Louisiana Revised Statutes, Title 33, Sections 106 - 108	Semi	No
ME	Maine Revised Statutes, Title 30-A, Chapter 187, Section 4323	Semi	No
MD	Code of Maryland (Statutes), Land Use (GLU) §3-201	Yes	Optional
MA	Massachusetts General Laws, Part 1, Title 7, Chapter 41, Section 81D	Yes	Yes
MI	Michigan Statutes, Chapter 125, Section 3801	Semi	No
MN	Minnesota Statutes, Chapter 473, Sections 858 and 859	Yes	Yes
MS	Mississippi Statutes, Title 17, Chapter 1, Sections 1 and 11	Yes	Optional
MO	Missouri Revised Statutes, Title VII, Chapter 89, Section 340	Yes	No
MT	Montana Code Annotated, Title 76, Chapter 1, Part 600	Yes	Yes
NE	Nebraska Revised Statutes, Chapter 15, Section 1102	Yes	No
NV	Nevada Revised Statutes, Title 21, Chapter 278, Section 150	Yes	Yes
NH	New Hampshire Revised Statutes, Title 64, Chapter 674, Section 2	Yes	Yes
NJ	New Jersey Statutes, Title 40, Chapter 55D, Section 38	Yes	Yes
NM	New Mexico Statutes, Chapter 3, Article 19, Section 9	Yes	No
NY	New York Statutes Town Law, Article 16, Section 272a; New York Statutes General Municipal Law, Article 12-B 239-b (county), 239-i (regional); New York Statutes General City Law, Article 3, Section 28-A	No	No
NC	North Carolina General Statutes, Chapter 160A-383 (zoning), Chapter 113A-102 (coastal)	Semi	Yes (county level)
ND	North Dakota Century Code, Title 40, Chapter 48, Section 2	No	No

(continued)

Table A1. (continued)

State	Statute	Comprehensive Plan Required? ^a	Housing Element Required?
OH	Ohio Revised Codes, Title 7, Section 713.01	Semi	No
OK	Oklahoma Statutes, Title 11, Chapter 45, Section 103	Semi	No
OR	Oregon Revised Statutes, Chapter 197, Section 175	Yes	Yes
PA	Act No. 247 of 1968, Pennsylvania Municipalities Planning Code, Section 301	County only	Yes
RI	Rhode Island Statutes, Title 45, Chapter 22, Section 2	Yes	Yes
SC	South Carolina, Title 6, Chapter 29, Section 510	Yes	Yes
SD	South Dakota Statutes, Title 11, Chapter 4, Section 3; South Dakota Statutes, Title 11, Chapter 6, Section 2	Yes	No
TN	Tennessee Code Annotated, Title 13, Chapter 3, Section 301 (regional); Tennessee Code Annotated, Title 13, Chapter 4, Section 201 (municipal)	Yes	No
TX	Texas Statutes, Local Government Code, Title 7, Chapter 213, Section 2	No	No
UT	Utah Code, Title 10, Chapter 9a, Part 4, Sections 401–403	Yes	Yes
VT	Vermont Statutes, Title 24, Chapter 117, Sections 4381–4832	No	Yes
VA	Code of Virginia, Title 15.2, Chapter 22, Section 2203	Yes	Yes
WA	Revised Code of Washington, Title 36, Chapter 36, Section 70A (growth management plan); Revised Code of Washington, Title 35A, Chapter 35A, Section 63 (comprehensive plan-city); Revised Code of Washington, Title 36, Chapter 36, Section 70 (comprehensive plan-county)	Semi	Comp plan—yes; growth plan—no
WV	West Virginia Code, Chapter 8A, Article 3	Semi	Yes
WI	Wisconsin Statutes, Chapter 66, Section 1001	Semi	Yes
WY	Wyoming Statutes, Title 15, Chapter 1, Article 5, Sections 501 and 503	Semi	No

Note: In 2002, Meck edited the American Planning Association's report on implementing smart growth. This table updates Meck's research because many states have revised their planning statutes. Source: Meck (2002, table 7-5; permission pending).

^aComprehensive, general, or master plan.

^bSemi, means that a plan is which conditionally required if the municipality intends to implement zoning or maintains a planning commission.

Table A2. Total Cumulative Appropriations for 701 Comprehensive Planning Assistance by Recipient, 1954–1979.

Rank	State or Territory	Amount
1	California	69,995,135
2	New York	65,718,450
3	Texas	48,151,561
4	Pennsylvania	44,031,129
5	Ohio	40,678,587
6	Illinois	37,401,430
7	Michigan	35,945,705
8	Florida	29,453,653
9	Massachusetts	28,306,845
10	North Carolina	24,362,447
11	Georgia	23,538,228
12	Missouri	23,102,966
13	New Jersey	21,820,144
14	Wisconsin	20,517,762
15	Maryland	19,540,448
16	Tennessee	19,523,494
17	Minnesota	19,338,889
18	Alabama	18,673,861
19	Washington	18,354,576
20	Kentucky	17,985,337
21	Indiana	17,412,781
22	Connecticut	17,121,344
23	Louisiana	16,379,585
24	Virginia	16,025,749
25	Oregon	15,782,544
26	Colorado	15,366,525
27	Oklahoma	14,996,417

(continued)

Table A2. (continued)

Rank	State or Territory	Amount
28	South Carolina	14,341,141
29	Arkansas	13,144,590
30	Mississippi	12,865,500
31	Iowa	12,673,858
32	District of Columbia	12,081,828
33	Puerto Rico	10,866,324
34	Kansas	10,674,583
35	West Virginia	9,358,023
36	Arizona	9,077,201
37	New Mexico	8,547,331
38	Nebraska	7,582,917
39	Utah	6,948,516
40	Montana	6,857,809
41	Maine	6,302,268
42	South Dakota	5,759,121
43	Alaska	5,568,677
44	Rhode Island	5,524,534
45	Idaho	5,095,109
46	Vermont	5,048,154
47	New Hampshire	4,964,535
48	Hawaii	4,670,860
49	Delaware	4,048,951
50	North Dakota	3,980,384
51	Nevada	3,111,868
52	Wyoming	2,315,899
53	Virgin Islands	1,287,081
54	Guam	441,490
55	Samoa	386,195
56	Pacific Trust	223,380
57	Northern Mariana	80,000
	Subtotal	933,353,719
	Studies, research, and demonstrations	16,898,309
	Urban systems engineering	5,060,593
	Subtotal	21,958,902
	Grand total	955,312,621

Source: Cumulative Net Grant Reservations by State (1979).

Authors' Note

The findings and conclusions are those of the author and do not necessarily represent those of the sponsors.

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Notes

1. Overcrowding means that there is more than one person per bedroom. This concept originated in the federal Housing Act of 1937, which emphasized housing construction (Schwartz 2010).
2. As defined by Lowry and Grigsby, “filtering” is an economic process whereby low-income households satisfy their housing needs by residing in older and sometimes deteriorating residences “as a result of decline in market price, i.e. in sales price or rent value” (Grigsby 1963; Lowry 1960, 362). This process also requires two concurrent conditions: (1) upwardly mobile households are moving and (2) a housing supply that exceeds housing demand (Collins, Crowe, and Carliner 2002, 175–77).
3. The US Census Bureau defines a “subfamily” as a family with or without children that resides in a household in which the head of

- household, who maintains the residence, is not a member of the subfamily. An example may include a residence in which the parents and the grandparents share the same residence or the parents and an adult child's family share the same residence (Fields 2003).
4. US Department of Housing and Urban Development (HUD) requires that program participants conduct an assessment of fair housing if the participant receives Community Development Block Grants (CDBG), HOME Investment Partnerships (HOME), Emergency Solutions Grants, and/or Housing Opportunities for Persons with AIDS funds. Categorically, participants are states, insular areas (i.e., American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), public housing authorities, and local government units.
 5. Home rule is the transfer of authority from the state that allows a municipality to select officers, determine its organizational structure, and regulate local matters of politics, culture, and economics (Barron 2003; Briffault 1990).
 6. For more information on HUD's CDBG program, please see *Housing Policy Debate's* special issue: CDBG at 40: Its Record and Potential (Volume 24, Issue 1). For more information on the HUD's HOME program, please see Mickelson (2015).
 7. The 2004 Illinois Affordable Housing and Planning Assistant Act mandates that municipalities create an affordable housing plan not a housing element. This review examines Illinois because the law operates similarly to the California, Florida, and Minnesota mandates.
 8. One prominent member of the commission was Dr. Anthony Downs, author of *Opening up the Suburbs: An Urban Strategy for America* (1973).
 9. In 1965, fifty-five states and territories received roughly US\$188 million in planning grants. By 1979, the receipts for planning assistance had increased to roughly US\$956 million as indicated in Appendix Table A2.
 10. In the early 1970s, there were multiple efforts to revise planning on a scale similar to the Department of Commerce Zoning Enabling Acts. From 1963 to 1975, the American Law Institute formulated the Model Land Development Code as a primer for enabling state-level reviews of projects (private and public sector) that may have had regional impacts due to location, land use, or magnitude and that required municipalities to address low-income housing needs when approving projects that may create 100 or more permanent positions (Babcock 1972; Bosselman, Raymond, and Persico 1976). In 1973, Representative Udall's National Land Use Act (HR10294) would have authorized the Department of Interior to establish an environmentally directed comprehensive planning program that would encourage states to create a state-wide comprehensive plan that would require consistency between a state plan and future development. While Udall's effort died in Congress, the former can be seen in Florida's early planning laws (The Florida Environmental Land and Water Management Act 1972; Local Government Comprehensive Planning 1975).
 11. The director and commission chair of California's Housing and Community Development testified in support of the Housing and Development Act of 1968 ("Hearings before the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency," 728).
 12. The California's Department of Housing and Community Development (CAHCD) provides annual compliance reports to the legislature (n.d.).
 13. To identify low-income housing production for his sample of 53 municipalities, Ramsey-Musolf examined 138 housing elements (2016). Of those documents, private planning firms created 80 (or 58 percent) housing elements.
 14. To determine whether the Housing Element Law had any statistical relationship to housing production, the sample reflected the following conditions: municipalities (not counties), regional governance (CAHCD, Council of Governments, and municipalities), central cities/noncentral cities, and the annual compliance assessment (no San Diego region municipalities).
 15. In Florida, municipal zoning required special approval from the legislature (e.g., Miami Beach in 1923, Coral Gables in 1925, Orlando in 1923, and Tampa in 1933), and any attempt to zone or adopt comprehensive regulations without such special authorization was void (Wright 1952, 327).
 16. The University of Florida's Shimberg Center for Housing Studies provides forecast data.
 17. The following Illinois planning laws differently define comprehensive planning: Local Resources Management Planning Act of 2002, Local Planning Technical Assistance Act of 2002, Local Legacy Act of 2004, and the Chapter 65, ILCS 5/11-12-7.
 18. A planned unit development (PUD) allows future development to deviate from the proscribed zoning regulations. In the 1960s, PUDs were hailed as flexible zoning tools for municipalities to use in regulating complex projects; however, they were frequently transformed into negotiated contracts between developers and elected officials without the input of residents (Babcock 1966, 11).
 19. Under the Housing Act of 1949, municipalities could activate redevelopment agencies in order to improve blighted areas. A redevelopment agency may sell bonds to pay for land purchases, infrastructure, and/or construction. Once completed, the redevelopment project will generate property tax revenue. This revenue, the tax increment, is spent on bond repayments and other redevelopment activities (e.g., affordable housing, administration, and maintenance).
 20. In 1994, Minnesota passed the Livable Communities Act (LCA) which funded compact infill development while prioritizing housing rehabilitation and preservation as well as mixed-income development. As a voluntary program, the LCA required that municipalities provide a one-to-one match for any council funds designated for low-income housing.

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