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## MTF Bulletin

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### Affordable Homes Act Conference Preview

The House and Senate have both passed their own versions of a housing bond bill, known as the Affordable Homes Act, and now must reconcile the two versions in Conference Committee. Both bills propose more than \$5 billion in capital authorizations, significantly more than the record \$4.1 billion proposal from Governor Healey; and put forward a myriad of housing policy provisions, many of which were originally proposed by the Governor.

This Bulletin compares the fiscal and policy differences between the House and Senate bills and makes recommendations for resolution in Conference Committee.

#### Spending Authorizations

The final version of the Affordable Homes Act (AHA) will almost certainly triple the amount of authorized capital spending compared to the \$1.8 billion five-year bond bill approved in 2018. The House's AHA comes in at \$6.5 billion, while the Senate's bill is about \$1 billion lower at \$5.4 billion. If all authorizations in both bills were combined, it would total more than \$7 billion.

#### Comparison of Housing Bond Bill Authorizations

Category	Programs	2018 HBB	Gov Authorization	House Authorizations	Senate Authorizations
Public Housing	2	\$650	\$1,600	\$2,200	\$2,200
Production	10	\$500	\$1,100	\$1,550	\$1,350
HousingWorks	8	\$325	\$955	\$970	\$1,190
Vulnerable Populations	6	\$280	\$385	\$455	\$385
Other	6	\$45	\$80	\$1,327	\$309
<b>Total</b>	<b>32</b>	<b>\$1,800</b>	<b>\$4,120</b>	<b>\$6,502</b>	<b>\$5,434</b>

*\$ in millions*

Despite the expansion in size of the House and Senate versions, both bills primarily adhere to Governor Healey's authorization template. Every one of the 19 authorizations proposed by the Governor was included by the House and Senate, at least at the same level as recommended by the administration. Descriptions of the major programs in Governor Healey's bill can be found here in MTF's summary.

*Housing Authorizations by Bill*

	<b>Number of Authorizations</b>	<b>Maximum Amount</b>
Included in All	19	\$5,355
Governor Only	1	\$25
House Only	5	\$1,270
Senate Only	3	\$150
House and Senate	1	\$426

*\$ in millions*

Of the 8 authorizations unique to either the House or Senate bill, the largest is a House proposal to authorize \$1 billion for the expansion of the Massachusetts Water Resources Authority (MWRA) to the South Shore. The authorization prioritizes expansion projects with the biggest impacts on housing capacity. Under the House language, the MWRA is required to report to the administration by March 14, 2025, detailing the progress that has been made in South Shore expansion, as well as any barriers to expansion that have been identified. The MWRA conducted a feasibility study of expansion to ten South Shore communities in 2022. In that study, the MWRA estimated the cost of two different expansion projects at between \$540 million and \$1.5 billion (in 2027 dollars).

In addition to MWRA expansion, there are seven other unique authorizations included in either bill:

**House Authorizations**

- ***Commercial to residential conversion grants*** (\$150 million) – The House includes this authorization to support a grant program to help municipalities convert commercial properties into housing. The House language gives the Executive Office of Housing and Livable Communities (EOHLC) broad discretion to develop the requirements for the program, including eligible projects, costs, and grant levels.
- ***Healthy Homes program*** (\$50 million) – The House proposes establishing a Healthy Homes program within EOHLC designed to provide grants and loans to address lead paint and other livability issues in rental and other residential units. Grants or loans would be capped at \$50,000 per unit (unless the cap is waived) and 50 percent of Healthy Homes spending would be required to occur in Gateway Cities.
- ***Former state building remediation*** (\$50 million) – The House includes a \$50 million authorization to assist in the remediation of former state buildings. Of the total authorization, \$15 million is earmarked for remediation of the Medfield State Hospital site.
- ***Veteran-supported housing*** (\$20 million) – The House proposes a new EOHLC program to create and preserve supportive housing for veterans. They propose supporting the program with a \$20 million, five-year authorization. EOHLC would partner with eligible non-profits to administer the program and participating non-profits would receive up to \$20,000 per veteran served.

**Senate Authorizations:**

- **Rural and small-town housing** (\$50 million) – The Senate proposes a \$50 million authorization for grants, subsidies, or credit enhancements to support the development and rehabilitation of residential housing in rural areas. Projects in communities with populations of 7,000 or less, and with a population density of 500 people or fewer per square mile would be eligible. Housing supported by the grant would have to be affordable for families with incomes of 110 percent of the area median income (AMI) or less.
- **Midsized & suburban town housing** (\$50 million) – The Senate also includes a similar program targeted for communities with populations under 40,000. The program would have the same 110 percent AMI affordability requirement.
- **Seasonal community housing** (\$50 million) – Finally, the Senate includes a similar authorization for housing development in seasonal communities. The program is intended to support housing for year-round residents; and EOHLC is tasked with establishing an affordability standard for projects supported by the program.

The House and Senate bills also differ from the Governor with their inclusion of hundreds of housing capital program earmarks. The Senate bill includes 153 earmarks totaling \$228.8 million, while the House includes 165 earmarks worth \$197 million in authorizations.

***House and Senate Increases over Governor AHA***

<b>Category/item</b>	<b>Gov. AHA</b>	<b>House AHA</b>	<b>Senate AHA</b>
<b>Production</b>			
<i>Momentum Fund</i>	\$50	\$250	\$50
<i>Middle Income</i>	\$100	\$200	\$200
<b>HousingWorks</b>			
<i>MBTA Communities</i>	\$35	\$50	\$60
<i>HousingWorks Infrastructure</i>	\$175	\$175	\$375
<b>Public Housing</b>			
<i>Public Housing Improvement</i>	\$1,500	\$2,000	\$2,000
<i>Public Housing Demonstration</i>	\$100	\$200	\$200
<b>Increases over Governor</b>		<b>\$915</b>	<b>\$925</b>

*\$ in millions*

Finally, the House and Senate also increase several authorizations over the original level proposed by the administration. Most notably, the House and Senate both significantly increase support for public housing authorities, while the House also boosts funding for the Momentum Fund and the Senate provides an additional \$200 million for HousingWorks.

## Fiscal Context

As MTF noted in our original summary of the Affordable Homes Act, the \$4.1 billion bill proposed by the Governor more than doubled the size of the 2018 Housing Bond Bill (\$1.8 billion) and more than tripled the \$1.2 billion in actual housing infrastructure spending included in state’s Capital Investment Plans during that time. Since the Governor filed her bill, we have not only seen the House and Senate versions, but we also have a better sense of the Healey-Driscoll administration’s plan for capital spending on housing in FY 2025.

On June 13<sup>th</sup>, the administration filed its FY 2025 Capital Investment Plan (CIP), which governs infrastructure spending in the coming year. The plan increases investment in housing by \$91 million, close to 30 percent. However, even with this sizable increase, the proposed spending level still falls far short of the level necessary to meet the annualized authorizations of the Affordable Homes Act.

### *Annualized Housing Capital Spend and Authorizations*

	<b>FY 2024 CIP</b>	<b>FY 2025 CIP</b>	<b>Gov AHA</b>	<b>House AHA</b>	<b>Senate AHA</b>
Housing Capital Spending	\$308	\$399	\$824	\$1,300	\$1,087

*\$ in millions*

If housing investment continues to increase by \$91 million over the next four years, the five-year total for housing investment would be \$2.9 billion, more than double what has been spent over the prior five years, but still significantly less than the amounts authorized in the various Affordable Homes Act proposals.

The disconnect between the amount of capital spending dedicated to housing that will be authorized in the final Affordable Homes Act – likely more than \$6 billion – and the amount that will actually be spent over the next five years is not a fiscal problem for the state. It is standard practice for the state to authorize much more in borrowing than will actually occur, and doing so does not negatively impact the state’s credit outlook or underlying financial condition.

Further, erring on the side of larger authorizations allows the administration important flexibility to maximize spending for the programs that will best fit future circumstances, which can be difficult to predict. For example, the Momentum Fund is designed to provide an adaptable source of funding that can be applied to unlock large-scale housing development programs, but its use will be dependent on if and when those projects occur. Flexibility is an important asset in capital planning.

However, policymakers and stakeholders must understand that at least half of the capital spending amount authorized in the Affordable Homes Act will not translate into actual housing investments, and the strategy for addressing our housing crisis must be realistic about the financial resources

that can be deployed to help the problem. The state’s strategy to combat our housing challenges cannot be based on false assumptions about the role that state public finance is likely to play.

### **Policy Proposals**

The Affordable Homes Act is not just notable for the ambition of its capital spending authorizations, but also for the range of housing policy proposals included. All three versions of the bill include over 100 policy sections, and while there is much overlap in these policy initiatives, there are also major policy differences between the House and Senate bills that will need to be resolved.

#### *Policy Sections*

	2018 HBB	Governor	House	Senate
Policy Sections	34	110	156	160

In order to understand the major policy proposals before the Conference Committee, this analysis is organized as follows:

- Major administration proposals
  - Those not included in either the House or Senate bills
  - Those included in one or both legislative versions
- House policy initiatives
- Senate policy initiatives

### **Administration Housing Policy Proposals**

The Healey-Driscoll administration included more than 100 housing policy sections, including new proposals to authorize a local transfer tax on real estate, create a more streamlined process for disposing of state-owned land to build housing, and allow accessory dwelling units in all communities irrespective of local zoning. In general, the administration’s sections are included in the House and Senate versions of the bill – only about ten sections (including effective dates) were dropped from both bills. However, there are two proposals included by the Governor of note that will not be in the final bill:

- ***Local option transfer tax*** – Neither the House nor the Senate included the proposal to allow cities and towns to levy a real estate transfer tax of up to two percent on properties valued at \$1 million or more. As MTF noted in our original summary, this proposal would exacerbate existing cost pressures in real estate and did not make sense for adoption.
- ***Housing authority procurement*** – The administration proposed language making clear that, among other things, private development on land formerly owned by a public housing authority, is not subject to public housing authority development and procurement statutes. This section was not included by the House or the Senate.

## House Housing Policy Proposals

The House's Affordable Homes Act includes approximately 40 unique sections. There are also several major differences within sections shared with the Senate. Major House housing proposals include:

- ***Office to residential conversion tax credit*** (Sections 5, 14, 19, 117, 118, and 122) – The House creates a five-year office to residential conversion tax credit, to be administered by EOHLC. Under the proposal:
  - EOHLC would have the authority to certify proposed projects to convert commercial real estate to multi-unit residential or mixed-use (which must include residential). In order to be certified, at least 80 percent of the residential units must be market-rate and the commercial property must be at least five years old.
  - EOHLC will grant certification to projects (prior to construction) that are eligible if EOHLC determines that the project will increase housing, improve economic development, or promote neighborhood stabilization.
  - Certified projects are eligible for a transferable tax credit of up to ten percent of the development cost of the residential units in the project. The actual amount of the credit will be based on the need for residential units in the community, the share of market-rate units in the project, and the other housing and community benefits likely to accrue through the project. EOHLC has the authority to cap tax credits for a project at a dollar amount.
- ***Municipal office of residential conversion grant program*** – As noted above, the House also creates an office for residential conversion grant programs for municipalities. Under the program, administered by EOHLC, municipalities can apply for competitive grants to support the development costs of office-to-residential conversion programs. EOHLC will prioritize projects based on the scope of the need for the project, the number of market-rate residential units to be produced as well as other factors like proximity to transit. The House authorizes \$150 million for the program, but actual spending would be at the discretion of the administration.
- ***Historic tax credit*** (14A & 14B, 17A & 17B, 121A) – The House bill extends the state's historic tax credit and doubles the cap from \$55 million to \$110 million. The program, which has existed since 2004, provides up to 20 percent of qualified costs for eligible projects. It does not exclusively support the production or preservation of housing, but those are two priority areas for approved projects, and housing production and preservation make up a significant share of the projects approved each year.
- ***Tenant right of first refusal*** (Section 36D) – The House adopted, through amendment, a section that would allow municipalities to adopt tenant right of first refusal ordinance for

rental properties put up for sale. The provision, which would not apply to owner-occupied rental properties, would provide tenant associations that meet minimum qualifications with 15 days to offer to buy a property prior to the property being offered to other buyers. In addition, the association would have 160 days from the purchase and sale to secure financing and close on the property.

- ***Building accessibility*** (sections 3A through 3S and 109A) – The House adopted, through amendment, language changing, and expanding accessibility standards relating to public buildings, parking requirements, shared residential spaces, and requirements that apply to major renovations of older residential buildings. The changes include:
  - Updating terminology to reference persons with disabilities;
  - Expanding private parking requirements, including dedicated disability-accessible parking for areas where the public as a right of access as an invitee or licensee;
  - Requiring all public use and common use areas in multiple dwelling units with an elevator to meet accessibility standards; and
    - The language does not apply to buildings constructed before 3/13/1991, unless a relevant unit or the building has undergone a gut renovation.
  - Requiring the Architectural Access Board to develop rules mandating that five percent of units in residential construction projects of 20 units or more meet accessibility standards.
    - This requirement can be adjusted in areas of the state that exceed five percent accessibility or do not require the five percent standard for other documented reasons.

The House bill establishes a commission to assess and make recommendations on housing accessibility for persons with disabilities and seniors. The commission is directed to assess existing accessibility standards and make recommendations designed to improve the ability of persons with disabilities and the elderly to live in a safe, dignified, and healthy environment. The 11-person commission is required to submit its findings and recommendations by June 30, 2025.

- ***Contractor apprenticeship requirement*** (Section 109C) – Requires any contractor or subcontractor participating in a project funded through the public housing authorizations in the bill to participate in apprenticeship programs as set forth in two sections of general law. The requirement would only apply to trades or occupations with registered apprenticeship programs approved by the Executive Office of Labor and Workforce Development.

## Senate Housing Policy Proposals

- ***Inclusionary zoning*** (Section 13) – The Senate bill, like the administration’s original bill, includes a provision that would allow for a community to adopt inclusionary zoning through a simple majority vote, as opposed to two-thirds. However, the Senate version requires that any inclusionary zoning policy adopted by a majority vote cap the affordability requirement at 13 percent of units and that the ordinance includes a density bonus, which allows developments to increase the number of units or space typically allowed for a project.
- ***40R and SBA Housing Incentives*** (Sections 21 and 32) – The Senate bill doubles state reimbursements for housing units built in Smart Growth districts. Municipalities receive a flat 40R reimbursement depending on the number of units built (capped at \$600K), as well as \$3,000 for each unit constructed. The Senate doubles both payment amounts.

The Senate bill also provides municipalities that have adopted 40R Smart Growth districts with at least one additional percentage point of reimbursement for school construction and renovation projects supported through the state’s Massachusetts School Building Authority program.

- ***Zoning judicial review*** (Sections 16 through 18) – The Senate includes several sections to change the process for judicial review of zoning appeals decisions. The Senate proposal would:
  - Increase the bond required for plaintiffs from \$50,000 to \$250,000.
  - Require plaintiffs whose appeal is unsuccessful to reimburse damages and expenses if the action is frivolous.
  - Eliminate a requirement of bad faith or malice in order for the court to require payment if the action is frivolous.
- ***Crumbling Concrete Assistance Fund*** (section 9) – The Senate bill creates a Crumbling Concrete Assistance Fund, to be administered by EOHLC, to provide financial assistance to homeowners, property owners, and municipalities negatively affected by the presence of pyrite in a home. The fund is not capitalized in the bill, but the section authorizes the administration to apply for federal funds available for the purpose.

The bill also creates a working group to make recommendations for a comprehensive remediation program for those impacted by the presence of pyrite in a foundation.

- ***Home inspectors*** (Section 54) – The Senate includes a section directing EOHLC to create regulations ensuring that sales of residential properties are not made contingent on the waiver of a home inspection.



- ***Requirements for public project participation*** (Section 139) – The Senate bill, like the administration and the House, includes language requiring that all firms bidding for projects related to this bill meet all necessary worker classification, unemployment insurance, workers’ compensation, and tax requirements. The Senate also includes language stating that if a bidding entity has had a judgment of more than \$40,000 against it within the last three years for violations of labor, safety, or wage standards, the entity can be barred from participating. The language also prohibits contractors or subcontractors who have been debarred by a federal or state agency from being awarded funds for project work under this bill.
  
- ***40B housing appeals committee*** (Section 6) – The Senate makes several changes to the Housing Appeals Committee, within EOHLC, which hears petitions related to 40B housing projects. The language changes the term of members from one year to two years, allows former select board members or city councilors to serve on the Committee, and adds language making clear that the Committee can hear multiple petitions concurrently, provided that the hearing is attended by at least three members.
  
- ***Renter and first-time homebuyer costs*** (Sections 24, 37, and 62) – The Senate bill includes several sections related to rental and first-time homebuyer costs. The provisions:
  - Create tax-free special bank accounts to be used to pay first, last, and security deposits or closing costs in the case of a first-time homebuyer. Deposits into the accounts would be deducted from the account holder’s income provided they are not used for purposes other than eligible costs.
  - Require that rental brokers’ fees only be paid by the entity originally contracting with the broker.
  - Allow EOHLC to create regulations giving renters the option to pay a monthly fee in lieu of a security deposit.
  
- ***Commissions and task forces*** – The Senate bill creates a number of task forces and working groups related to housing:
  - Affordable housing Proposition 2 ½ exemption (Section 141) – Directs EOHLC to assess the implications of exempting affordable housing from annual Proposition 2 ½ limits.
  - Housing Shortage Pilot Programs (Section 142) – Creates a commission to recommend policies or pilot programs to address housing shortages.
  - Community Preservation Act (CPA) modernization (Section 143) – Creates a commission to make recommendations to update the CPA to incentivize its use to produce housing.

- Starter homes (Section 145) – Creates a commission to make recommendations to increase the production of starter homes.
- *Inter-basin review commission* (Section 146) – Creates a commission to assess state law governing water and wastewater transfers and make recommendations for adjustments that could increase housing production, while maintaining environmental protections.

### Putting it All Together

An insufficient supply of affordable housing is one of the biggest challenges facing our state. The most important thing that policymakers can do in the next two weeks to help address that challenge is to pass a comprehensive Affordable Homes Act that provides increased finances and new policy tools to attack the problem.

In crafting a final bill, the House and Senate conferees should do several things:

- **Keep the innovative ideas** – Both bills include some innovative proposals that should be retained in the final version:
  - *Office-to-residential tax credit and incentive programs* – The House includes two major provisions designed to encourage the reuse of unneeded office space as housing. These types of conversions are an intriguing idea to address two problems: reduced demand for office space and the housing shortage. Providing state support to increase the feasibility of these projects makes sense.
  - *40R and SBA incentives* – The Senate includes proposals to increase incentives for municipalities to zone for growth. The state should do a better job of using its programs and financial assistance to incentivize positive local decision-making. These Senate proposals are a step in the right direction.
  - *Zoning appeal judicial review* – The Senate also includes some strong proposals designed to reduce frivolous appeals to real estate development. Increasing the bond required for plaintiffs to \$250,000, making those filing frivolous claims liable for legal costs, and removing the bad faith standard in order to recoup the bond will all increase protections against frivolous appeals.
  - *The Momentum Fund* – The Conference Committee should adopt the House’s \$250 million authorization for a Momentum Fund at MassHousing (the Senate included the item at \$59 million). The new fund, which has been proposed by the Healey-Driscoll administration, is designed to provide flexible types of financing for mixed-income and workforce housing projects that would otherwise not move forward. It is not clear how many projects would be a good fit for the fund, but providing additional capacity to take on more high-impact projects will help advance production goals more quickly.

- *Expanding water and wastewater usage to spur housing* – The House authorization to expand the MWRA to South Shore communities and the Senate’s study on changing inter-basin river transfers both deserve further consideration. Financing MWRA expansion and determining which projects are most sensible are complicated questions, but the authorization allows that conversation to continue in the coming years.
- **Go big, but be realistic about what’s possible** – A large total authorization, even one that accommodates all unique authorizations proposed by the House and Senate, is not problematic in and of itself, and it will provide the administration with important flexibility to prioritize programs that best meet particular circumstances. However, the administration needs to clearly state what they actually plan to spend on housing, as opposed to what is being authorized. A clear roadmap of likely state spending is critical to developing a holistic housing strategy.
- **Beware of unintended consequences** – There are a number of proposals in both bills that have understandable rationales, but may work against increased housing production and affordability goals. For example:
  - Tenant right of first refusal could significantly delay sales of existing rental properties and reduce incentives to produce rental units.
  - Similarly, blanket requirements or restrictions on contractors attempting to work on projects funded through authorizations – like the contractor apprenticeship requirement in the House or Senate language allowing for companies with outstanding labor judgments of more than \$40,000 to be barred from any project – can artificially constrict the already limited workforce supply available to undertake major projects.
  - As MTF noted earlier, inclusionary zoning policies can often have a negative effect on housing affordability and production. The Senate language smartly caps the affordability level and allows for a density bonus, but the impact of the proposal on housing production is still unclear.

Most importantly, Conferees should act quickly to make sure a compromise bill is in place for July 31<sup>st</sup>. Getting a bill done is just the first step in implementing a more thoughtful and impactful strategy for housing production and affordability in the state, but that strategy cannot work without this bill being signed into law. Moving quickly, building on programs that work, including innovative ideas, and remaining wary of unintentionally undercutting the fundamental goals of the legislation will produce a major housing policy achievement before the end of the session.