

**AFFORDABLE WORKFORCE HOUSING—AN AGENDA FOR THE  
SHOW ME STATE: A REPORT FROM AN INTERACTIVE FORUM  
ON HOUSING ISSUES IN MISSOURI**

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I. INTRODUCTION

In the midst of the turmoil caused by the subprime mortgage market collapse in 2007,<sup>1</sup> concerns abound about the ability of working families with below local median incomes to meet their housing needs.<sup>2</sup> Recent reports from

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1. See, e.g., Vikas Bajaj and Louise Story, *Mortgage Crisis Spreads Past Subprime Loans*, N.Y. TIMES, Feb. 12, 2008, at A1; *Fast and Loose: How the Fed Made the Subprime Bust Worse*, THE ECONOMIST, Oct. 20-26, 2007, at 16; Christopher B. Leinberger, *The Next Slum?*, THE ATLANTIC, Mar. 2008, at 70; *Only Human: A Special Report on Central Banks and the World Economy*, THE ECONOMIST, Oct. 20-26, 2007, at 1 (dedicating twenty pages in its October 20-26, 2007 edition to a special report, examination of the subprime market); Michael M. Phillips, Serena Ng & John D. McKinnon, *Battle Lines Form Over Mortgage Plan*, WALL ST. J., Dec. 7, 2007, at A1; Nelson D. Schwartz & Vikas Bajaj, *Credit Time Bomb Ticked, but Few Heard*, N.Y. TIMES, Aug. 19, 2007, at A1; Gregory Zuckerman, *How Street Hit Lender*, WALL ST. J., Mar. 29, 2007, at A1.

2. See, e.g., Peter S. Goodman, *Homeowners Feel the Pinch of Lost Equity*, N.Y. TIMES, Nov. 8, 2007, at A1; Nelson D. Schwartz, *Can the Mortgage Crisis Swallow a Town?*, N.Y. TIMES, Sept. 2, 2007, at BU1; David Streitfeld, *Some Needing Mortgage Aid Won't Get It*, N.Y.

the Center for Housing Policy<sup>3</sup> and the Joint Center for Housing Studies at Harvard University<sup>4</sup> dramatize the difficulties these families have in obtaining affordable housing, whether they be owners or renters.<sup>5</sup> A recent study of workforce housing needs in the sixteen-county St. Louis metropolitan area estimated that close to twenty-five percent of the almost 1.1 million households in the region were paying more than thirty percent of their incomes for housing,<sup>6</sup> the point at which housing affordability problems attract policymakers' attention.<sup>7</sup> With nearly three quarters of a million people reported to be homeless on any given night and almost fifteen percent of the nation's households "severely cost-burdened,"<sup>8</sup> affordable workforce housing belongs on the national, state, and local policy agendas.

On October 12, 2007, a group of stakeholders from the Missouri side of the St. Louis metropolitan area—bankers, developers, elected and appointed public officials, employers, investors, neighborhood groups, planners, and realtors—came together in an interactive Forum on Affordable Workforce Housing organized by RegionWise, an applied research agency focusing on quality of life issues in the St. Louis area and affiliated with the Public Policy Studies Department at Saint Louis University, and FOCUS St. Louis, a civic organization seeking to engage citizens in public policy matters.<sup>9</sup> The primary goal of the forum was to develop recommendations for state and local policies

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TIMES, Dec. 7, 2007, at A21; SHELTERFORCE, Issue 150, Summer 2007 (a quarterly magazine published by the National Housing Institute, featuring four articles in its Summer 2007 edition on the impact of the subprime mortgage market collapse on housing affordability).

3. CTR. FOR HOUS. POL., HOUSING LANDSCAPE FOR AMERICA'S WORKING FAMILIES (2007).

4. JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING (2007) [hereinafter JOINT CTR. FOR HOUS. STUD.].

5. CTR. FOR HOUS. POL., *supra* note 3, at 1 (reporting a sharp increase (87%) in working families paying more than 50% of their income for housing, and an even greater increase (103%) in renters with the same burden). *See also*, JOINT CTR. FOR HOUS. STUD. *supra* note 4, at 1, 25 (reporting that over 37 million American households had affordability problems, spending more than 30% of their income on housing in 2005, and 17 million of that cohort spent over 50% of their income on housing).

6. FOCUS St. Louis, AFFORDABLE HOUSING FOR THE REGION'S WORKFORCE, at 5 (Aug. 2005).

7. *See e. g.*, 42 U.S.C. § 1437f(2)(A) (2000) (establishing the Section 8 rental assistance program). Federal rental housing assistance is based on the policy decision that affordability problems can occur if housing costs exceed 30% of monthly adjusted income; *see also* Danilo Pelletiere, Getting to the Heart of Housing's Fundamental Question: How Much Can a Family Afford? (2008) (policy paper for the National Low Income Housing Coalition arguing that the 30% guideline should be supplemented with other criteria and guidelines).

8. JOINT CTR. FOR HOUS. STUD., *supra* note 4, at 25.

9. FOCUS St. Louis, Welcome to FOCUS St. Louis, <http://www.focus-stl.org/> (last visited Feb. 8, 2008) ("Our Mission . . . To create a thriving, cooperative region by engaging citizens to participate in active leadership roles and to influence positive community change.").

designed to support the development and preservation of affordable workforce housing. A recent article in the Real Estate Law Journal exploring state-approved initiatives available to municipalities concerned with local housing needs provided pertinent background information.<sup>10</sup> Discussion was organized around four topics: (1) resource allocation at the state level; (2) local government land use planning, regulation and incentives; (3) site assembly and development; and (4) preserving existing affordable housing.

While the workforce housing issue has been a concern of think tanks,<sup>11</sup> policy advocates,<sup>12</sup> and local groups<sup>13</sup> for a number of years, Congress only recently began to respond, driven in large part by the subprime mortgage crisis.<sup>14</sup> Comprehensive legislation (H.R. 1852, the Expanding American Homeownership Act of 2007) to overhaul the FHA mortgage insurance program passed the House by a wide margin in September 2007.<sup>15</sup> Included in the bill is the funding mechanism for a proposed National Housing Trust Fund (H.R. 2895)<sup>16</sup> that has been sought by advocates for twenty years,<sup>17</sup> which also

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10. John R. Nolon & Jessica Bacher, *Local Inclusionary Housing Programs: Meeting Housing Needs*, 36 REAL EST. L. J. 73, 73–96 (2007).

11. E.g., CTR. FOR HOUS. POL., *supra* note 3; JOINT CTR. FOR HOUS. STUD., *supra* note 4.

12. See, e.g., NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH (2006). The National Low Income Housing Coalition has been publishing an annual study for over ten years that measures the amount of income a family would require in each county, metropolitan, area, and state to pay what HUD estimates to be the Fair Market Rent for housing where the household lives without paying more than thirty percent of their income on housing.

13. See, e.g., FOCUS St. Louis, *supra* note 6; Jamie Ross, *Affordable Housing: An Opportunity to Create Inclusive Communities in the Panhandle*, FORESIGHT NEWSLETTER (1000 Friends of Florida, Tallahassee, Fl.) vol. 15, no. 2, Summer/Fall 2002, at 15 (discussing the importance of workforce housing in North Florida).

14. Kembra J. Dunham, *Mortgage Woes May Help Revive FHA*, WALL ST. J., Mar. 16, 2007, at A4.

15. Barry G. Jacobs, *House Passes FHA Bill with Higher Loan Limits, Relief for Troubled Borrowers: Senate Panel Also Acts*, 35 CURRENT DEVELOPMENTS, HOUSING AND DEV. REP. 577 (2007) [hereinafter *House Passes FHA Bill*]; H.R. 1852, 110th Cong. (as reported by H. Comm. on Banking, Housing, and Urban Affairs, Oct. 19, 2007).

16. Jacobs, *House Passes FHA Bill*, *supra* note 15; H.R. 2895, 110th Cong. (as passed by the House by a vote of 264 to 148, Oct. 10, 2007 and reported to Committee on Banking, Housing, and Urban Affairs, Oct. 15, 2007).

17. Kent Garber, *A Big Push for Affordable Housing: A Decades-old Proposal is Getting a New Lease on Life*, U.S. NEWS & WORLD REPORT, Sep. 22, 2007, available at <http://www.usnews.com/articles/news/national/2007/09/22/a-big-push-for-affordable-housing.html>; see also Center for Community Change, Housing Trust Fund Project, <http://www.communitychange.org/> (follow “What We Do” link; then follow “Housing Trust Funds” link) (last visited March 7, 2008). The Center for Community Change launched this project in 1986 with Mary Brooks as director.

passed the House in October.<sup>18</sup> FHA reform legislation (S. 2338) passed the Senate in December 2007 but that bill did not contain funding for the proposed trust fund. Conference proceedings had not yet begun as this article went to press.<sup>19</sup>

Between the time of the first proposed national affordable housing trust fund in 1987 and passage of HR 1852 by the House in 2007, the federal government more or less left the business of affordable housing production assistance<sup>20</sup> and turned it over to the states and local governments. While the Low Income Housing Tax Credit (LIHTC) program,<sup>21</sup> enacted in 1986,<sup>22</sup> has become the major source of federal financial support for affordable housing production, administration of the program has been delegated to the states<sup>23</sup> under supervision of the Internal Revenue Service.<sup>24</sup>

States responded to the policy change in important, but also limited, ways. Within the relatively short period from the late 1960s to the early 1980s, every state established a state housing finance agency whose major initial authority was to sell tax-exempt revenue bonds and use the proceeds to stimulate affordable housing production and mortgage loans for low and moderate

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18. *National Housing Trust Fund: Victory: House Passes National Affordable Housing Trust Fund Act*, MEMO TO MEMBERS (Nat'l Low Income Housing Coalition, Washington, D.C.), October 12, 2007, at 1.

19. *National Housing Trust Fund: Administration Officials and House Republicans Urge Action On FHA Bill*, MEMO TO MEMBERS (Nat'l Low Income Housing Coalition, Washington, D.C.), February 15, 2008, at 1.

20. Of course, the public housing program, created by Congress in 1937 and codified at 42 U.S.C. §§ 1401–1436 (2000), remains the only government program providing direct financial assistance for the production of housing for low income households, but even that program has changed direction. In 1998, Congress restructured the program to place greater emphasis on asset and property management and to encourage local public housing authorities to recast urban public housing developments into mixed-income communities through public-private partnerships with profit-motivated developers and community associations. Quality Housing and Work Responsibility Act of 1998 (QHWRA), Pub. L. No. 105-276, 112 Stat. 2518 (1998). For a review of the impact of QHWRA on public housing authorities, see Rachel Garshick Kleit and Stephen B. Page, *Public Housing Authorities Under Devolution*, 74 J. AMERICAN PLAN. ASS'N, 34, 37–42 (2008).

21. See generally, I.R.C. §42 (2000).

22. Tax Reform Act of 1986, Pub. L. No. 99-514, § 253, 100 Stat. 2085, 2189–2208 (codified as amended at I.R.C. § 42 (2000)).

23. See generally, 26 U.S.C. § 42(m) (2000).

24. *Id.* at § 42(l)(3). Section 42(m) requires states to develop “qualified allocation plans” (QAP) that establish criteria for allocating the state’s share of LIHTCs to developer applicants. See, e.g. Mo. Hous. DEV. COMM’N, *LOW-INCOME HOUSING TAX CREDIT PROGRAM* (2008), available at [http://www.mhdc.com/rental\\_production/index.htm](http://www.mhdc.com/rental_production/index.htm); N. CAROLINA HOUS. FIN. AGENCY, *FINAL 2007 QUALIFIED ALLOCATION PLAN*, available at <http://www.nchfa.com/index.aspx>.

income homebuyers.<sup>25</sup> As with the LIHTC, state housing revenue bonds provide an indirect subsidy to affordable housing through the federal income tax deduction available to the purchasers of the bonds<sup>26</sup> and, like the LIHTC, are administered by the states under supervision from the Internal Revenue Service rather than the Department of Housing and Urban Development.<sup>27</sup> A number of states added support for state and local housing trust funds in the wake of the curtailment of federal housing programs in the 1980s and 1990s<sup>28</sup> and established companion state LIHTC programs.<sup>29</sup> Some states added direct state funding of affordable housing production through general obligation bond issues and appropriation of general revenues.<sup>30</sup>

As affordable workforce housing became a public concern in the early years of the twenty-first-century,<sup>31</sup> state and local leaders, both public and private, sought to persuade Congress to return to direct financial support for affordable housing development and preservation by enacting national affordable housing trust fund legislation along with subprime mortgage response proposals.<sup>32</sup> Efforts also were made to persuade state and local legislatures to provide additional resources and initiatives for meeting affordable workforce housing needs.<sup>33</sup> In this setting, the St. Louis Affordable Workforce Housing Forum was organized with the goal of developing a set of policy recommendations for state and local leaders in Missouri. No formal votes were taken, but a general consensus on the need for policy development at both the state and local levels was expressed at the closing plenary session.

While fairly detailed sets of recommendations were generated by discussion groups for each of these four topics, the most frequently recurring themes and priority recommendations included:

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25. New York created the first agency, the New York State Housing Finance Agency, in 1960 through the New York State Housing Finance Agency Act. *See* N.Y. PRIV. HOUS. FIN. LAWS § 40 *et seq.* (McKinney 2002). For a directory of all the state housing finance agencies, see 21 [Reference File] HOUS. & DEV. REP., (West) app. 21B at 21-60–21-66 (Nov. 2007). For a review of agency programs and accomplishments, see NATIONAL COUNCIL OF STATE HOUSING AGENCIES, STATE HFA FACT BOOK (2005) (described as a “comprehensive survey of HFA program activity,” *Id.*, at v).

26. I.R.C. § 103 (2000) (deductibility of interest on state and local bonds).

27. *See generally* I.R.C. §§ 141–50.

28. Nat’l Low Income Housing Coalition, *supra* note 18.

29. *See, e.g.*, MO. REV. STAT. §§ 135.350–359 (2000) (Missouri low-income housing credit); *see also* 2007 State Tax Credit Information, Novogradac & Co., *Low Income Housing Tax Credit: State LIHTCs*, [http://www.novoco.com/low\\_income\\_housing/lihtc/state\\_lihtc.php](http://www.novoco.com/low_income_housing/lihtc/state_lihtc.php) (last visited Feb. 10, 2007) (providing a listing of state low-income housing tax credit programs).

30. *See infra* notes 133–164 and accompanying text.

31. *See supra* note 4.

32. *See supra* notes 11–19 and accompanying text.

33. *See infra* notes 133–164 and accompanying text.

- establishing an objective rating and ranking system for the allocation of state housing resources, including the LIHTC and private activity bonds;
- enacting legislation providing direction and technical assistance to counties for development of county workforce housing plans; and
- enacting legislation directing local governments to remove land use regulations unnecessarily restricting the development of affordable workforce housing.

Other recommendations included:

- expanding the reach of the state LIHTC by making state housing tax credits transferable;
- increasing the resources of the state housing trust fund;
- undertaking a serious research effort to identify (1) restrictive regulatory techniques that discourage or prohibit affordable workforce housing development and (2) successful efforts in other communities to encourage affordable workforce housing development that lend themselves to replication in Missouri; and
- launching a community education campaign to articulate the true economic and social impacts of affordable workforce housing on existing neighborhoods.

Additionally, discussion began on the advisability of seeking legislation to authorize use of general obligation bonding authority and general revenue funds to increase the pool of financial resources for affordable workforce housing development. California, Massachusetts and Minnesota have funded affordable housing programs in this way in recent years.<sup>34</sup> Interest also was expressed for establishing an office in the state Department of Economic Development to coordinate research and technical assistance programs and develop a state affordable housing plan, something other states have done.<sup>35</sup>

This Article discusses the recommendations in the topical order of their presentation at the Forum. Part II reviews the state housing resource allocation question, highlighting concerns about a perceived lack of objective standards and recommends general criteria for an allocation system. Part III examines recommendations respecting local government land use planning, regulations and incentives, and the proposal to engage in significant research and public education concerning the impact of land use regulations on the availability of affordable workforce housing. Part IV considers site assembly and

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34. See *infra* notes 141–164 and accompanying text.

35. Nolon & Bacher, *supra* note 10, at 93 (citing the Illinois Local Planning and Technical Assistance Act of 2002, 20 ILL. COMP. STAT. ANN. 662/5 (2006)).

development concerns and recommends creating a statewide database of properties available for development as well as state-led effort to link affordable workforce housing efforts to economic development and transportation planning. Part V examines the issue of preservation of existing affordable housing and recommends that greater attention be given to that need. Finally, Part VI reviews activities in other states and notes an increased willingness to view affordable workforce housing as a capital resource deserving of consideration for an appropriate allocation of state general revenue and general obligation bond resources.

## II. HOUSING RESOURCE ALLOCATION AT THE STATE LEVEL

### A. *Objective Standards and Transparent Allocation Process*

As noted above,<sup>36</sup> the major housing subsidies administered by the state of Missouri, primarily through the Missouri Housing Development Commission (MHDC),<sup>37</sup> are the federal and state LIHTC programs, the state housing revenue bond program (also known as a private activity bond program),<sup>38</sup> and the state housing trust fund.<sup>39</sup> Forum participants focusing on state resource allocation were concerned that the current allocation system did not appear to be based on publicly-stated objective criteria. For example, MHDC publishes an annual LIHTC Qualified Allocation Plan (QAP)<sup>40</sup> and Notice of Funding Availability (NOFA)<sup>41</sup> with a common due date for the proposals.<sup>42</sup> Decisions are announced several months later<sup>43</sup> after staff and commission members review applications. The 2008 QAP lists eight “specific goals” to implement a general goal of using the tax credits “to the maximum extent possible” to support rental housing for “low and very low-income households”<sup>44</sup> along with approximately ten pages of “criteria that must be met in order for the application to be considered for the competitive review stage.”<sup>45</sup> But, neither

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36. *See supra* notes 25–30 and accompanying text.

37. *See generally* MO. REV. STAT. §§ 215.010-355 (2000).

38. *See e.g.*, I.R.C. § 141 (2000) (private activity bonds); I.R.C. § 142(d) (qualified residential rental projects); I.R.C. § 143 (mortgage revenue bonds); I.R.C. § 144(c) (qualified redevelopment bonds).

39. *See infra* notes 69–73 and accompanying text.

40. MO. HOUS. DEV. COMM’N, *supra* note 24.

41. MO. HOUS. DEV. COMM’N, NOTICE OF FUNDING AVAILABILITY FY 2008, <http://www.mhdc.com/nofa/> (last visited Feb. 10, 2008).

42. *Id.* Due date for FY 2008 proposals was August 1, 2007.

43. The 2008 QAP states that conditional reservations “will be granted / issued no later than the week of January 7, 2008,” following the December meeting of the Commission. MO. HOUS. DEV. COMM’N, *supra* note 24, at 2.

44. *See id.* at 1.

45. *Id.* at 3–13.

the 2008 QAP nor the 2008 NOFA list any objective criteria for decision-making at the competitive review stage – for choosing proposal A over proposal B, assuming both proposals meet the established criteria and are in the competitive review stage.

A number of states employ a numerical scoring system in making awards of housing tax credits and multifamily housing bond allocations. The draft 2008-2009 QAP prepared by the Illinois Housing Development Authority (IHDA)<sup>46</sup> establishes a numerical point system for awarding Illinois' share of federal low-income housing tax credits. In accordance with the statewide affordable housing policy,<sup>47</sup> a series of set-asides are identified for particular types of housing: public housing (\$5 million, \$3 million of which is available for public housing authorities with 1,500 or more units in their inventory),<sup>48</sup> independent elderly and supportive living (\$3.5 million),<sup>49</sup> nonprofit (at least 15% of the credit ceiling for nonprofit projects),<sup>50</sup> small projects (\$1.5 million),<sup>51</sup> preservation (\$2 million),<sup>52</sup> and supportive housing (\$2 million).<sup>53</sup> A ninety-point scoring system covering seventeen separate aspects of a proposed project is established as the basis for awarding funds.<sup>54</sup> Tiebreakers, in their order of use, are: (1) project serving tenants with the "lower maximum income regardless of [project] size;" (2) project with the "higher percentage of [l]ow [i]ncome units at the lowest income level;" (3) project located in area with fewest allocations in past three years;" (4) project in a qualified census tract that "contributes to a concerted community revitalization plan; and, "[i]f a

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46. IL. HOUS. DEV. AUTH., 2008 & 2009 QUALIFIED ALLOCATION PLAN, *available at* <http://www.ihda.org/admin/Upload/Files//229b90b4-4236-4c79-9d38-c05e15de60cc.PDF>.

47. Illinois Comprehensive Planning Act, 310 ILL. COMP. STAT 110/1–110/99 (2006) (as added by P.A. 94-965); ILLINOIS' 2007 ANN. COMPREHENSIVE HOUS. PLAN, AFFORDABLE HOUS. DIMENSIONS: COMPREHENSIVE PLAN FOR 2007, *available at* <http://www.ihda.org/admin/Upload/Files//3094e719-e275-4710-8b97-47a06bdf2c14.pdf>.

48. COMPREHENSIVE PLAN, *supra* note 47, at 28.

49. *Id.* at 29

50. *Id.*

51. *Id.* at 31

52. *Id.*

53. *Id.* at 33.

54. COMPREHENSIVE PLAN, *supra* note 47, at 34–52. Factors and their maximum points are as follows: project site and market evaluation (fifteen), homeownership/extended use period (one), lowest income tenants/lowest rents (seven), mixed populations (four), targeting supportive housing populations (three), enhanced accessibility for persons with mobility impairments (two), economic efficiencies (nine), project location (eleven), development team record (ten), families with children ((five), community support 3), community impact (2), minority participation (2), project design/amenities (8), surrounding site amenities (5), local nonprofit organization participation (2), application presentation (1). *Id.*

tie still results,” (5) IHDA will choose the project it believes is “more ready to proceed in a timely manner.”<sup>55</sup>

The 2007 QAP prepared by the North Carolina Housing Finance Agency establishes a numerical point system for awarding new construction tax credits and multifamily housing bond proceeds.<sup>56</sup> In addition to meeting threshold requirements, projects must receive a minimum of 200 points to be considered for funding.<sup>57</sup> Awards to qualified projects are based on point totals, “starting with those earning the highest scoring totals within each geographic set-aside and continuing in descending order through the last project that can be fully funded.”<sup>58</sup> Tiebreaker criteria, in order of priority, are: (1) projects requiring the least amount of tax credit or bond funds per unit; (2) projects serving households with children as measured by at least twenty-five percent of the units having three or four bedrooms; and 3) projects “intended for eventual tenant ownership” that have a “detached single family site plan” and a business plan describing conversion to tenant ownership at the end of the thirty-year compliance period.<sup>59</sup> The ultimate tiebreaker is “the least amount of federal (funds)” requested.<sup>60</sup>

Forum participants emphasized the importance of allocating such subsidies in accordance with publicly-stated objective criteria. Tax credits and housing bonds are crucial to the success of many affordable housing developments and the dollar amount of proposals submitted annually exceeds the available allocations by factors of three or four.<sup>61</sup> In such a climate, the lack of a transparent, objective allocation system can encourage rumors that political favoritism drives the selection process.<sup>62</sup> Five general criteria were identified

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55. *Id.*

56. NORTH CAROLINA HOUSING FINANCE AGENCY, THE 2007 LOW-INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN FOR THE STATE OF NORTH CAROLINA 8–20 (2006), available at <http://www.nchfa.com/Forms/QAP/2007/07QAPFinal.pdf>. Maximum point totals are as follows: site and market evaluation (140 points), rent affordability (forty-five points), special criteria, such as HUD program funds (five points), community revitalization plan implementation (ten points) and local government land dedication (five points) (total of twenty points) and design standards (eighty points). *Id.*

57. *Id.* at 8.

58. *Id.* at 4.

59. *Id.* at 17.

60. *Id.*

61. For example, MHDC received applications for the 9% federal LIHTC totaling \$46,391,578 in the 2008 allocation cycle, more than four times the available allocation of approximately \$11, 300,000. MISSOURI HOUS. DEV. COMM’N, 2008 MHDC FUND BALANCE/HOME/HOME-CHDO/TAX CREDIT APPLICATIONS, available at [http://www.mhdc.com/ofa/2008\\_NOFA\\_Proposals\\_Received.pdf](http://www.mhdc.com/ofa/2008_NOFA_Proposals_Received.pdf).

62. See, e.g., Nancy Cambria, *Nixon Alleges ‘Secret Bailout’ for O’Fallon Project: He Assails Members of Housing Panel*, ST. LOUIS POST-DISPATCH, Oct. 4, 2007, at B2. While forum participants expressed strong support for a scoring system, a review panel appointed by

by forum participants as needed to establish a basis for a transparent, objective allocation system: (1) proposals that correct job/housing mismatches or imbalances; (2) proposals that balance rental and homeownership; (3) proposals that target high-poverty areas; (4) proposals that provide access to public transit; and (5) proposals that respond to community plans and needs as identified by that community.

Participants emphasized the importance of giving highest priority to correcting jobs-housing mismatches or imbalances because that connects housing to economic development. Proponents of this priority recommendation argued that proposals focusing on jobs/housing concerns offer the best opportunity to move housing out of a welfare orientation, which is politically unpopular, and into an economic growth orientation that they believe will be more acceptable to local government officials and residents. Participants acknowledged that a shift to objective criteria could prove politically difficult, but stressed the value of an objective, transparent allocation process in view of the importance of the subsidies to affordable workforce housing development and the limited supply of credits and bond allocations.

#### *B. State Planning Policy Supporting Affordable Workforce Housing*

A second priority identified by this discussion group was legislation establishing a state planning policy supporting affordable workforce housing. A number of states have established state housing planning policies,<sup>63</sup> one of

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Governor Matt Blunt recommended in 2007 that MHDC not implement such a system, but instead permit flexibility in applying specific criteria. Concern was reported that a scoring system could trigger lawsuits from disappointed applicants. Associated Press, *Housing Panel Advises Changes to Law*, Columbia (Mo.) Tribune, Mar. 17, 2007, available at <http://archive.columbiatribune.com/2007/mar/20070317news012.asp>.

63. See, e.g., CAL. GOV'T CODE §§ 65580–65589.8 (West 1997 & Supp. 2008) (detailing “bottom up” approach, including housing element required in state-mandated local comprehensive plan); N.J. STAT. ANN. §§ 52:27D-301 (West 2001 & Supp. 2007) (detailing “top down” approach” through the state Council on Affordable Housing (COAH)). The COAH was established with jurisdiction to implement “fair share” affordable housing policy, and was upheld in *Hills Dev. Co. v. Township of Bernards*, 510 A.2d 621 (N.J. 1986); MASS. ANN. LAWS ch. 40B, §§ 20–23 (LexisNexis 2006) (detailing “housing appeals board” approach). The “housing appeals board” approach was also adopted in Connecticut, Illinois, and Rhode Island. See CONN. GEN. STAT. Ch. 126a, § 8-30(g) (2001 & Supp 2007); 310 ILL. COMP. STAT. 67/1 (2004); R.I. GEN. LAWS Ch. § 45-53-1 (1999 & Supp. 2007). For a discussion of housing elements in state planning statutes, with recommendations, see AMERICAN PLANNING ASSOCIATION, GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND MANAGEMENT OF CHANGE 7-120–27, 7-279–83, T. 7-5 (S. Meck ed., 2002) (describing how, of the 26 states that have modernized planning statutes, 25 “address housing as an element in local plans”).

the most recent of which being Illinois.<sup>64</sup> The Illinois Comprehensive Housing Planning Act mandates the creation of an annual comprehensive housing plan for a ten-year period ending in 2016. The plan must be consistent with state affirmative fair housing provisions<sup>65</sup> and address the housing needs of six “underserved populations”: (1) households earning less than 50% of area median income, with “particular emphasis” on households earning less than 30% of area median income; (2) low-income senior citizens; (3) low-income persons with disabilities; (4) homeless and persons “at risk of homelessness;” (5) low- and moderate-income persons “unable to afford housing near work or transportation;” and (6) low-income households whose existing housing is “in danger of becoming unaffordable or being lost.”<sup>66</sup> The 2007 Annual Comprehensive Plan is organized around three guiding “housing principles:” fostering “affordability and choice,” supporting “creation and preservation,” and supporting “leadership” that recognizes housing as “fundamental to community and economic health.”<sup>67</sup>

The statute proposed by forum participants, tentatively called the Workforce Housing Economic Development Act (WHEDA), takes a different approach and would require each county in Missouri to develop a Workforce Housing Plan (WHP) rather than requiring the creation of an overall state housing plan. While findings and recommendations of county WHPs initially would be nonbinding on state agencies that distribute housing subsidies in Missouri, all applicants for subsidies to enable the development or redevelopment of affordable housing would be required to include in their application a statement indicating how their project fits with the applicable county’s WHP.

The main component of county WHPs would be a “Demand Opportunity Analysis” (DOA). Proponents emphasized that a DOA would not be merely a “needs” analysis by another name, but rather an effort to identify market opportunities for developers without requiring them to target their projects exclusively to needy households. The DOA would map all major employment centers (with jobs in the range of \$20,000 to \$50,000 annually) in the county and all existing housing within a half-hour public transit ride of each employment center. A map would then show where workforce housing could

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64. Illinois Governor Rod Blagojevich’s Executive Order 2003-18 (September 16, 2003) established the Illinois Housing Initiative which in turn produced the first Annual Comprehensive Housing Plan for the state. 310 ILL. COMP. STAT. 110/10 (2006). In 2006, the legislature enacted the Illinois Comprehensive Housing Planning Act, which codified the Executive Order and established an annual housing planning process. *See* 310 ILL. COMP. STAT. 110/1–/99 (2006) (as added by P.A. 94-965).

65. Illinois Human Rights Act, 775 ILL. COMP. STAT. 5/1-101 (2006).

66. 310 ILL. COMP. STAT. 110/15 (2006).

67. ILLINOIS’ 2007 ANN. COMPREHENSIVE HOUS. PLAN, AFFORDABLE HOUS. DIMENSIONS, *supra* note 47, at 2.

be developed to meet any gap between the supply and demand revealed by the DOA. The DOA map would show developers where opportunities exist to develop affordable workforce housing.

The DOA should be coordinated with the comprehensive planning those counties and municipalities presently engage in, whether of their own accord or in order to qualify for a variety of federal housing and community development subsidies.<sup>68</sup> Indeed, the DOA should take into account such comprehensive planning in the development of its supply and demand analysis.

### *C. Plan Preparation Assistance*

While preparation of a WHP would be the responsibility of county public officials, county residents should be encouraged to participate in the process, along with major employers, unions, neighborhood groups, and other relevant actors. Forum participants acknowledged that preparing a WHP would be difficult for many counties lacking a planning department. To accommodate such counties, participants recommended that the proposed WHEDA legislation should authorize the Department of Economic Development to provide technical assistance funds to help those counties either develop the expertise needed to prepare a DOA or contract out that task.

Recognizing the extensive groundwork needed to pass such a proposal, participants recommended to first hold a series of statewide legislative hearings with both employers and employees. Employers would be invited to testify to the difficulty of finding employees and other problems occasioned by shortages of affordable workforce housing while employees would be invited to testify about difficulties of finding affordable housing within a reasonable distance from work. Research on actions taken by other states and on how the shortage of workforce housing restricts economic development in Missouri would provide additional help.

### *D. Increase the Housing Trust Fund and Other Incentives.*

A general consensus was expressed that providing the recommended financial support for implementing these new planning policies mandated an increase in the state Housing Trust Fund (HTF) administered by MHDC.<sup>69</sup> The HTF currently receives three dollars for every real estate-related document recorded in the public land records.<sup>70</sup> Real estate recording fees are a popular source of funds for state housing trust funds across the country in addition to real estate transfer taxes such as the one supporting the Illinois Affordable

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68. *See, e.g.*, 42 U.S.C. §§ 5304, 12705 (2000) (detailing planning requirements for receipt of federal community development block grant funds).

69. MO. REV. STAT. §§ 215.034–039 (2000).

70. MO. ANN. STAT. § 59.319.2–3 (West 2007).

Housing Trust Fund.<sup>71</sup> However, Missouri's three dollar fee is at the lower end of the fee scale.<sup>72</sup> Real estate transfer taxes will raise considerably more money than will real estate recording fees, but are far more controversial.<sup>73</sup> Additional discussion of possible state financial support for affordable housing is presented in Section VI *infra*.

### III. LOCAL GOVERNMENT LAND USE PLANNING, REGULATION AND INCENTIVES

Recommendations from the group discussing the impact of local government planning, regulations, and incentives on the availability of affordable workforce housing were in many ways similar to the recommendations presented by the group that addressed state resource allocation issues. Common recommendations included state workforce housing planning legislation, a research and education effort, and providing additional financial resources and incentives through the state housing trust fund and tax credit programs. In addition, the local government group recommended state legislation encouraging local governments to remove unnecessary restrictions on the development and location of affordable workforce housing.

#### A. *Add Workforce Housing Element to Comprehensive Planning Enabling Statutes*

Forum participants stressed the importance of emphasizing the planning element in developing an affordable workforce housing program. Recommended legislation would amend current Missouri statutes authorizing comprehensive planning by counties<sup>74</sup> and municipalities.<sup>75</sup> The legislation

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71. 310 ILL. COMP STAT. 65/5 (2006) (Affordable Housing Trust Fund); 35 ILL. COMP. STAT. 200/31-10 (2006) (describing how one half of the proceeds from a tax of 50 cents per \$500 value on the "privilege of transferring title" goes to the AHTF).

72. Kentucky, for example, imposes a \$12 recording fee, \$6 of which goes to the affordable housing trust fund. KY. REV. STAT. ANN. §§ 64.012(b) (recording fee), 198A.710 (affordable housing trust fund) (West 2008). Ohio imposes a housing trust fund fee equal to the base fee for recording a variety of documents, ranging from \$1 per page to \$50 for filing a zoning resolution. OHIO REV. CODE ANN, §§ 317.32, 317.36 (West 2008). Washington State imposes a \$10 surcharge on recording fees of real property documents, forty percent of which goes to the state housing trust fund and sixty percent remains in the county of origin, to support housing for persons of very low income. WASH. REV. CODE ANN. § 36.22.178 (West 2003). Washington state imposes another \$10 surcharge to provide housing and services to homeless persons. WASH. REV. CODE ANN. § 36.22.179 (West 2003).

73. For example, the real estate transfer tax in Illinois, *supra* note 71, provided over \$34 million in 2007 to the Illinois Affordable Housing Trust Fund. ILLINOIS'S 2007 ANN. COMPREHENSIVE HOUS. PLAN, *supra* note 47, at 15.

74. MO. ANN. STAT. §§ 64.001-975 (West 2007). Senate Bill 729, a comprehensive revision of the county planning enabling statutes advocated by the Missouri Chapter of the

would require counties and municipalities preparing comprehensive plans to identify and locate any instances of an imbalance between affordable workforce housing and jobs. Local governments suffering such imbalances would be required to include plans for remedying the imbalance and to submit periodic reports to the state Department of Economic Development or other designated state agency on their progress in decreasing the gap between affordable workforce housing and jobs.

The local planning discussion group recommended that this requirement apply only to communities that have written “master, general or comprehensive” plans. Typically, communities with these types of plans tend to be in urban areas. As noted earlier, an important part of the affordable workforce housing planning proposal is the recommendation that state financial incentives and technical assistance be offered local governments to engage in this planning effort.<sup>76</sup> Communities without a written plan, primarily those in rural Missouri, would be encouraged to support local affordable workforce housing but would not be required to prepare a formal written land use plan until the time development pressures warranted such a plan.

Included in this proposal is a recommendation that municipalities have the option to opt-out of the affordable housing assessment requirements. Some participants were concerned that allowing municipalities to opt-out of the assessments was too soft of a policy, with no sanctions for communities that refused to address their workforce housing problems. However, others countered that a delicate balance must be struck between the political feasibility of such legislation and attempting to solve all affordable workforce housing issues.

Other questions that were raised, but not resolved, include whether, even within the communities currently engaging in comprehensive planning, the DOA should be required only of communities above a minimum population level and if the DOA should be required of communities in which little or no land was available for new housing.

#### *B. Research and Educational Campaign*

Because of the stigmas often attached to affordable workforce housing, participants expressed strong support for a serious state-wide research and educational effort to debunk workforce housing myths. Another goal of such

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American Planning Association (similar to SB 193 in the 2007 session) and being considered in the 2008 legislative session, authorizes but does not require comprehensive plans to include “[p]olicies to provide adequate housing quality and supply to meet forecasted population needs.” SB 729, 2008 Leg., 94th Gen. Ass. (Mo. 2008) (proposing new section 64.1009.2 (3)).

75. MO. ANN. STAT. §§ 89.010–491 (West 1999).

76. *See supra* Part II.

an effort would be to raise awareness both of the importance of affordable workforce housing and the necessity of overcoming unnecessary barriers to such housing, particularly in areas close to job opportunities for prospective occupants of such housing.<sup>77</sup>

### 1. Research Component

Participants recommended a three-part research program: (1) measure the economic and social impact of affordable workforce housing on communities in which such housing is located; (2) identify restrictive land use regulations and other state and local policies that unnecessarily inhibit the development of affordable workforce housing; and (3) examine approaches to, and success rates of, affordable workforce housing undertaken in metropolitan areas throughout the country.

A number of studies have sought to measure the impact of affordable housing on communities in which it is located. A review of these studies found that well designed affordable housing dispersed in “healthy and vibrant neighborhoods” and managed responsively is not likely to have negative effects and may have positive effects on neighboring property values.<sup>78</sup> Forum participants in the local land use regulation discussion group recommended conducting a new study, applicable to the entire state, to measure these impacts and to examine the economic and social benefits affordable workforce housing can be expected to bring to local communities.<sup>79</sup>

A second recommended study would seek to identify all restrictive land-use techniques being implemented in St. Louis and other metropolitan areas of Missouri. The study would determine the number of techniques being used, such as minimum dwelling unit size and minimum lot size requirements, restrictions on building materials, and zoning limitations making it difficult or impossible to develop affordable workforce housing on land subject to the

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77. FOCUS St. Louis kicked off a three-year educational effort for the St. Louis metropolitan area shortly after the Forum discussion. Margaret Gillerman, *University City Program Helps Workers Buy Houses*, ST. LOUIS POST-DISPATCH, Nov. 25, 2007, at D5 (reporting on a FOCUS St. Louis press conference announcing the educational campaign).

78. For summaries of such studies, see Mai Thi Nguyen, *Does Affordable Housing Detrimentially Affect Property Values? A Review of the Literature*, 20 J. PLAN. LIT. 15, 23–24 (2005).

79. A study prepared by a consulting firm for a loose coalition of developers, lenders and planners interested in affordable workforce housing estimated that 103 housing developments approved for tax exempt bond financing and LIHTC allocations by the MHDC between 2004 and 2006 expended almost \$1.3 billion to develop 12,900 workforce housing units across the state, creating an estimated 19,200 jobs paying an average of \$33,600 per year. DEV. CONSULTANTS, MISSOURI WORKFORCE HOUSING ASSOCIATION, CONSTRUCTION, DEVELOPMENT, AND OPERATION OF WORKFORCE HOUSING 5–6 (2007) (copy on file with authors).

restrictive techniques.<sup>80</sup> This study also would seek to determine whether restrictive land use regulations are concentrated in particular areas of the region or whether they are prevalent throughout the region. Results from the study could form the basis for policies that encourage or mandate reworking such regulations to remove unnecessary barriers to affordable workforce housing.<sup>81</sup>

The final research recommendation is to perform a comprehensive nationwide survey/study examining the approaches to and successes of workforce housing programs in other metropolitan areas. The effort could draw on recent studies by the American Planning Association and other interested groups.<sup>82</sup>

## 2. Educational Component

The educational component would reflect the results of the three previously proposed research studies. Similarly, FOCUS St. Louis launched a

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80. In a classic study of the New Jersey portion of the New York metropolitan area in the late 1960s, the authors concluded that ordinances separating single family houses from apartments and other multiple family dwelling units and imposing minimum lot and dwelling unit sizes within single family zoning districts had significant impact on the cost, and resulting affordability, of housing. Norman Williams & Thomas Norman, *Exclusionary Land Use Controls: the Case of North-Eastern New Jersey*, 22 SYRACUSE L. REV. 475 (1971). The study was a leading factor in the famous *Mt. Laurel* trilogy of cases: *S. Burlington County N.A.A.C.P. v. Twp. of Mount Laurel*, 336 A.2d 713 (N.J. 1975) (*Mount Laurel I*) (holding that exclusionary zoning violates New Jersey constitution, while imposing municipal “fair share” obligation); *S. Burlington County N.A.A.C.P. v. Twp. of Mount Laurel*, 456 A.2d 390 (N.J. 1983) (*Mount Laurel II*) (holding that every municipality has an obligation to provide some affordable housing opportunities, and authorizing “builder’s remedy”); *Hills Dev. Co. v. Bernards Twp.*, 510 A.2d 621 (N.J. 1986) (*Mount Laurel III*) (upholding New Jersey Fair Housing Act establishment of a state administrative procedure to implement the *Mount Laurel* “fair share” requirement, L. 1985, c.222, N.J. REV. STAT. § 52:27D-301(West 2001 & Supp. 2007)). For discussion of New Jersey’s experience with the *Mount Laurel* doctrine, see CHARLES HAAR, *SUBURBS UNDER SIEGE: RACE, SPACE, AND AUDACIOUS JUDGES* (1996); DAVID KIRP ET AL, *OUR TOWN: RACE, HOUSING AND THE SOUL OF SUBURBIA* (1995) (social history of *Mt. Laurel* cases); Robert Fishman, *Variety and Choice: Another Interpretation of the Mount Laurel Decisions*, 5 J. PLAN. HIST. 162 (2006).

81. The American Planning Association, in its model land use legislation, offers two alternative approaches for implementing affordable housing strategies: 1) an approach patterned after the New Jersey “fair share” approach, discussed *supra* note 62; and 2) approach featuring housing appeals boards similar to state programs in Massachusetts, Connecticut, and Rhode Island. AMERICAN PLANNING ASS’N, *GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND MANAGEMENT OF CHANGE* § 4-208 (S. Meck ed., 2002). Additionally, a housing appeals program has been established in Illinois, 310 ILL. COMP. STAT. § 67/1 (2007).

82. See, e.g., STUART MECK, REBECCA RETZLAFF, & JAMES SCHWAB, AMERICAN PLANNING ASS’N, *REGIONAL APPROACHES TO AFFORDABLE HOUSING*, PAS Report No. 513/514 (2003); MARY ANDERSON, *BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST, OPENING THE DOOR TO INCLUSIONARY HOUSING* (2002) (copy on file with author).

public education effort in November 2007 in response to a FOCUS-sponsored workforce housing study conducted in 2005.<sup>83</sup> The three-year program is designed to encourage employers to establish employer-assisted housing programs such as down payment and closing cost assistance and to encourage community leaders and residents to accept affordable workforce housing developments into their communities.<sup>84</sup>

In addition to providing public education concerning the need for and benefits of affordable workforce housing, participants also discussed the importance of stepped-up efforts to educate consumers about the risks and benefits of the wide range of home loan alternatives offered by lenders. The sub-prime mortgage crisis that erupted in 2007 attests to the risks accompanying residential mortgage loans, particularly loans with adjustable interest rates.<sup>85</sup> A Census Bureau report concluded that subsidized down payments are more effective than lower interest rate or zero down payment loans in making homeownership more affordable.<sup>86</sup> Forum participants recommended building upon the Homeownership Preservation Foundation hotline, which provides counseling services, through local members such as Beyond Housing, a St. Louis housing organization, for persons facing foreclosure.<sup>87</sup>

*C. State Legislation Providing Incentives to Communities to Remove Restrictions on, Provide Land for, and/or Recruit Builders of Workforce Housing*

Participants also favored state legislation supporting analysis of the availability of affordable workforce housing within communities and encouraging its development where needed. One participant proposed creating an implementation formula requiring less workforce housing for areas making

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83. See generally, FOCUS St. Louis, *supra* note 6; Gillerman, *supra* note 77.

84. Press Release, FOCUS St. Louis, FOCUS St. Louis Announces the Launch of a Three-Year Workforce Housing STL Public Awareness Campaign (Oct. 19, 2007), available at <http://www.focus-stl.org/index.cfm?sect=news&page=35&news=pres&presID=94>. The FOCUS campaign is modeled after similar programs in other states. See, e.g., *supra* note 6, at 33–36 (highlighting programs in Illinois, Maine and Minnesota).

85. See, e.g., Edmund L. Andrews & Vikas Bajaj, *Lenders Agree to Freeze Rates on Some Loans*, N.Y. TIMES, Dec. 6, 2007, at A1; Laurie P. Cohen, *Citigroup Feels Heat to Modify Mortgages*, WALL ST. J., Nov. 26, 2007, at A1.

86. HOWARD A. SAVAGE, CURRENT HOUSING REPORTS: WHO COULD AFFORD TO BUY A HOME IN 2002 5–6 (July 2007), available at <http://www.census.gov/prod/2007pubs/h121-07-1.pdf>.

87. The hotline number is 889-995-HOPE. The Homeownership Preservation Foundation describes itself as “an independent nonprofit that provides HUD-approved counselors dedicated to helping homeowners.” Homeownership Preservation Foundation, Fact Sheet, available at <http://www.995hope.org> (last visited Dec. 7, 2007). See also Beyond Housing, <http://www.beyondhousing.org> (last visited Dec. 19, 2007).

efforts to attract very low income households, and requiring more workforce housing for communities solely focusing on providing areas for middle and upper income housing. Others emphasized the importance of keeping the process as simple as possible.

A possible approach is legislation modeled after the Minnesota Livable Communities Act (LCA) enacted in 1995 and administered by the Metropolitan Council of the Minneapolis-St. Paul metropolitan area.<sup>88</sup> The LCA, a program that “reflects the Legislature’s preference for a voluntary, incentive-based approach to help communities grow and to address the region’s affordable and lifestyle housing needs,” provided \$160 million in “Livable Community Funds” during its first ten years (1996–2006) for affordable housing development and preservation, cleanup of brownfields suitable for development “in areas already served by transit” and development and redevelopment “linking housing, jobs and services.”<sup>89</sup> The first step in the Twin Cities program is establishing an affordable housing planning responsibility at the regional and local levels through the preparation of housing elements within local comprehensive land-use plans<sup>90</sup> (a policy similar to the workforce housing planning element and the DOA recommended above<sup>91</sup>). The Livable Community Fund is seeded by allocations from the commercial-industrial property tax-sharing program administered by the Metropolitan Council.<sup>92</sup> Grants are awarded on a competitive basis (106 communities were eligible for program funds in 2007), but the Metropolitan Council stresses that the LCA policy emphasis “is on cooperation and incentives to achieve regional and local goals.”<sup>93</sup>

The participants again expressed concerns regarding the political challenges this type of legislation faces. One way to make this legislation more politically feasible would be to limit its application to the major metropolitan areas of the state (i.e. St. Louis, Kansas City, and Springfield), as does Minnesota.<sup>94</sup> These areas arguably have the majority of the affordable workforce housing issues and focusing the requirements on the metropolitan

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88. See generally MINN. STAT. ANN. §§ 473.252–473.255 (2007).

89. METROPOLITAN COUNCIL, LIVABLE COMMUNITIES PROGRAM, FACT SHEET, available at <http://www.metrocouncil.org/about/facts/LivableCommunitiesFacts.pdf>.

90. ADVISORY PANEL, METROPOLITAN COUNCIL STAFF, SUMMARY REPORT: DETERMINING AFFORDABLE HOUSING NEED IN THE TWIN CITIES 2011–2020 I (2006) (citing MINN. STAT. ANN. § 473.859(2)(c) (West 2007)).

91. See discussion *supra* Parts II.B, III.A.

92. See discussion *supra* Parts II.B, III.A.

93. MINN. STAT. ANN. § 473.252(3)(b)(1) (West 2007).

94. Metropolitan Council, *supra* note 90.

95. See MINN. STAT. ANN. § 473.121(2) (West 2007) (establishing the Metropolitan Council and the regional planning program, which applies only to the Minneapolis-St. Paul metropolitan area).

areas would avoid political problems with rural legislators. Also, the proposal may have a better chance of succeeding if a minimum geographic or population size was required.

*D. Encourage All Housing and Building Codes to Incorporate a “Cost/benefit” Consideration.*

Housing and building codes typically are drafted and endorsed by professional groups at the national level and then adopted by municipalities and counties with responsibilities for unincorporated areas.<sup>95</sup> Often, provisions are incorporated in these codes without consideration of their impact on the cost of housing. For example, a code requiring an all brick exterior (for aesthetics)<sup>96</sup> or a fire sprinkler for every new dwelling (for safety)<sup>97</sup> has major cost implications for developers. These costs, however, are often passed on to buyers.<sup>98</sup>

Decisions for new codes need to be made in light of their impact on housing costs. Participants in this discussion recommended performing a cost impact analyses for each land-use requirement in the code.<sup>99</sup> After completing the assessments, efforts should be made to reduce the regulation’s impact on housing costs without sacrificing important health and safety considerations. Changing the housing regulations toward promoting vinyl siding, for example, would help decrease maintenance costs. Further, participants suggested that older ordinances be updated to reflect advancements in infrastructure technologies to help reduce costs. The group noted that modern infrastructure can be cheaper to install and more economical to maintain.

*E. Enforce Existing Laws*

Some participants believed that a large number of local ordinances and state and federal laws exist that should help provide affordable work force housing. However, they expressed concern that such laws are not adequately enforced and recommended that more attention be paid to that concern.

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95. See, e.g., INTERNATIONAL CODE COUNCIL, 2006 INTERNATIONAL PROPERTY MAINTENANCE CODE (2006); INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS, UNIFORM HOUSING CODE (1991); SCOTT PARISH, UNIFORM BUILDING CODE COMPLIANCE MANUAL (1999).

96. See, e.g., VILLAGE OF MOKENA, ILL., EXTERIOR MATERIAL AND CONSTRUCTION REQUIREMENTS, available at [http://www.gobrick.com/pdfs/planning/IL\\_Mokena.pdf](http://www.gobrick.com/pdfs/planning/IL_Mokena.pdf).

97. See, e.g., MINN. R. 1309.0301.1.4 (2007). See generally MINN. R. 1300.0070 (2007) (defining IRC 2 buildings as two-family dwellings, and defining IRC 3 buildings as townhouses).

98. See AMERICAN BANKERS ASS’N ET AL., HOUSING POLICY FOR THE 21<sup>ST</sup> CENTURY 14 (2004).

99. See, e.g., Tim Iglesias, *Housing Impact Assessments: Opening New Doors for State Housing Regulation While Localism Persists*, 82 OR. L. REV. 433, 437–38 (2003).

## IV. SITE ASSEMBLY AND DEVELOPMENT

A. *Primary Issues*

Forum participants in the Site Assembly and Development group focused much of their discussion on the situation in the City of St. Louis and concluded that significant problems exist with respect to the City's site assembly and development processes for affordable workforce housing projects. While numerous vacant lots and approximately 80,000 abandoned buildings are scattered throughout the City, several barriers were identified as making acquisition and development of those sites more difficult than might be expected. Several participants believed that, in general, an extreme lack of communication and collaboration exists among the political, public, and private parties involved in housing development within the City. One factor affecting communication may be the complexity of the City's development structure, with three agencies responsible for different aspects of development: the St. Louis Development Corporation ("SLDC"),<sup>100</sup> the Planning & Urban Design Agency ("PDA")<sup>101</sup> and the Community Development Administration ("CDA").<sup>102</sup> Within the SLDC are several quasi-independent boards: the Industrial Development Authority,<sup>103</sup> the St. Louis Local Development Company,<sup>104</sup> Land Clearance for Redevelopment Authority,<sup>105</sup> the Land Reutilization Authority,<sup>106</sup> Planned Industrial Expansion Authority,<sup>107</sup> the Tax Increment Financing Commission,<sup>108</sup> and the St. Louis Port Commission.<sup>109</sup> While the large number of separate agencies may be traceable, in part, to enabling legislation requirements and while the separate governing boards give a significant number of citizens (fifty-six) an opportunity to participate in local government decision-making, the number and complexity make it difficult for

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100. SLDC describes itself as an umbrella, not-for-profit corporation formed in 1988 to foster economic development and growth in the City of St. Louis through increased business and job opportunities for city residents and companies. *See* SLDC: Mission, St. Louis Development Corporation, <http://stlouis.missouri.org/slhc/mission.html> (last visited Mar. 7, 2008).

101. ST. LOUIS, MO., CODE § 3.48 (2006).

102. *Id.* at § 3.47.

103. *See* IDA Board, St. Louis, Development Corporation, <http://stlouis.missouri.org/slhc/ida.html> (last visited Feb. 22, 2008). The enabling statute for municipal industrial development bond financing is MO. REV. STAT §§ 100.010–200 (2007).

104. *See* LDC Board, St. Louis Development Corporation, <http://stlouis.missouri.org/slhc/ldc.html> (last visited Feb. 22, 2008).

105. ST. LOUIS, MO., CODE § 3.85 (2006).

106. *Id.* at § 3.82.

107. *Id.* at § 3.84.

108. *Id.* at § 3.83.

109. *See* Port Authority, St. Louis Development Corporation, <http://stlouis.missouri.org/slhc/port.html> (last visited Mar. 7, 2008).

the average citizen or relatively small developer, for-profit or not-for-profit, to understand the approval and regulatory process.<sup>110</sup>

Another complicating factor is the common practice where individual members of the City's elected Board of Aldermen directly intervene in the development process in their respective wards. This practice can be traced, in part, to the City's long-time practice of allocating Community Development Block Grant (CDBG) funds in relatively small amounts<sup>111</sup> to neighborhood organizations in the respective aldermanic wards, the total of which becomes significant because of the large number (twenty-eight) of aldermen.<sup>112</sup> Participants noted that the City also allocates \$75,000 annually per ward for home repair and maintenance assistance. However, the allocations are inefficient because some wards do not have the need and are underutilizing and stockpiling the funds while other wards have up to eight-year waiting periods to receive any money.

At the same time, participants reported that the City gives very little direction or plans to developers, particularly not-for-profit, neighborhood-based organizations. Some participants expressed the belief that private investors who wield political influence have more control over development<sup>113</sup> than do residents and neighborhood organizations because of City policies favoring large scale developments that tend to trigger gentrification questions and attendant displacement issues.<sup>114</sup> Participants recommended greater

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110. For example, an interdisciplinary team of Saint Louis University and Washington University graduate and professional students (architecture, business, law, planning, public policy and social work) studying a neighborhood development project commented that the city's "institutional arrangements and 'replication' likely hinder[] rather than promote, redevelopment." Old North St. Louis & the Mullanphy House 55, in partial fulfillment of requirements for the Urban/Housing Issues Symposium, Fall Semester, 2007 (copy on file with author).

111. Tim Novak & Phil Linsalata, *Program Gave City Officials, Residents A Say In Spending*, ST. LOUIS POST-DISPATCH, Dec. 8, 1991, at A12.

112. The City's Program Year Action Plan 2008 anticipates receiving \$20,545,705 in CDBG funds during 2008. CITY OF ST. LOUIS COMMUNITY DEV. ADMIN., 2008 ANNUAL ACTION PLAN, at 1, available at <http://stlouis.missouri.org/government/ConsPlan/plan08/2008ActionPlan.pdf>. A significant amount, \$2,260,114, is allocated to twenty-three community based development organizations (CBDO's), a legacy of a time in the 1980s and early 1990s when a substantial portion of the city's CDBG allocation was distributed equally to the city's twenty-eight aldermanic wards. *Id.* at 17. For a discussion of the allocation issue, see Peter Salsich, *Saving Our Cities: What Role Should the Federal Government Play?* 36 URB. LAW. 475, 487-89 (2004).

113. See, e.g., Joseph Kenny, *Let's Work Together, Churches Tell Developer*, ST. LOUIS REV., Nov. 2, 2007, at 1; Jake Wagman, *Developer Pays City to "Treat" Eyesores*, ST. LOUIS POST-DISPATCH, July 30, 2007, at A1.

114. See, e.g., Kathie Newman & Elvin K. Wyly, *The Right to Stay Put, Revisited: Gentrification to Displacement in New York City*, 43 URB. STUD., 23-57 (Jan. 2006) (reviewing displacement studies and analyzing displacement in New York City from 1989-2002). The authors conclude that "[t]he goal of home-ownership and revitalization of mixed income/mixed

transparency in land development and redevelopment decisions to help affected communities understand what is being planned for the land within their neighborhoods and to help interested developers learn what sites are available for development.

*B. Recommendations for Missouri*

1. Creating a statewide database of properties available for development

A recurring theme at the forum was the need for a statewide database listing available properties for development along with their estimated acquisition prices. The database could also be used to display successful examples of affordable workforce housing projects, as well as summaries of local affordable workforce housing plans. The database project could be organized on a statewide basis or as a series of local databases, with a team of university researchers responsible for preparing and updating the database under a contract with the DED or MHDC. Such a database would enable interested developers to view successful developments while considering available sites. Forum participants expressed the belief that a comprehensive database would be extremely useful to developers, community leaders, and citizens and would contribute to making the development process simpler and more transparent.

2. Establish statewide housing programs to assist in a more holistic approach

One of the most common suggestions was to establish a statewide housing office or department within the Department of Economic Development to tie affordable housing to economic concerns such as employment. Participants stressed the need to view affordable workforce housing as a matter of state concern linked to other state concerns such as job creation, transportation and education. While the Missouri Housing Development Commission has statutory authority, expertise and funding sources for affordable housing, it functions primarily as a bank<sup>115</sup> The current decentralized structure makes it difficult to see the policy connections between housing and economic development and impairs the ability of state and local leaders to respond in a coordinated fashion to jobs/ housing mismatches.

A state housing office or department could coordinate the planning and technical assistance recommendations noted above.<sup>116</sup> The main goal would be

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race neighborhoods will not produce the beneficial changes policy-makers seek if protections for low-income residents are not also included." *Id.* at 52.

115. MO. HOUS. DEV. COMM'N, STRENGTHENING COMMUNITIES AND THE LIVES OF MISSOURIANS, 2004 ANNUAL REPORT, 2 (2004).

116. *See supra* notes 63–82 and accompanying text.

to create a fair share plan to enable key elements of civil infrastructure (teachers, police officers, fire fighters, social workers, etc.) to have affordable housing in the municipalities they serve. This office could also take the lead in implementing the recommended research and educational initiatives.

### 3. Connect affordable workforce housing to employers

A main problem identified during the forum was that affordable workforce housing was often not located within a reasonable proximity to the occupants' place of employment. Affordable housing does not follow job availability. One possible solution is to locate affordable workforce housing near public transportation. The state should better fund the public transportation options in the urban areas. For instance, better funding of Metrolink in St. Louis, either in the form of subsidies, tax breaks, or direct funding,<sup>117</sup> could lead to expansion and greater utility of public transportation for the workforce.

The state could coordinate economic development, affordable housing development, and public transportation development in a way that would advance the interests of all these areas. The state has constitutional authority, for example, to plan and develop mass transit systems, so long as "funds other than those designated or dedicated for highway purposes" are used to fund such systems.<sup>118</sup> The state could also require communities receiving state funding for streets and roads to create plans for linking affordable workforce housing to local and regional road systems.<sup>119</sup> The goal is for workforce housing developments to be located in strong communities with access to necessary public infrastructure. State policy should strive to maximize the housing location choices for all households, rather than accepting the establishment of economically homogeneous areas.

Employer assisted housing programs also have potential as leverage for workers to be able to live closer to where they work. "Down payment assistance, reduced-interest mortgages, mortgage guarantee programs, rental subsidies, and individual development account savings plans"<sup>120</sup> to enable employees to save toward the purchase of a home are examples of employee benefits being offered by an increasing number of companies.<sup>121</sup> Key elements

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117. Phil Sutin, *Bi-State Calls Funding Crucial to More Metrolink Expansion; Consultant Begins Analyzing Route to the South*, ST. LOUIS POST-DISPATCH, Dec. 5, 2002 (West Post), at 3.

118. MO. CONST. art. IV, § 30(c).

119. *See, e.g.*, MO. CONST. Art. IV, § 30(a) (Funds apportioned to counties are dedicated to "roads, bridges and highways, and [are] subject to such other provisions and restrictions as provided by law.").

120. 20 ILL. COMP. STAT. 3805/7.28(a) (2006) (defining "employer-assisted housing project" for Illinois Affordable Housing Tax Donation Credit program).

121. Employer assisted housing is a key part of FOCUS St. Louis' Workforce Housing Campaign. Workforce Housing STL, <http://www.workforcehousingstl.org> (last visited Feb. 22, 2008).

of such programs are that the assistance is “restricted to housing near the work place, and . . . to employees whose gross income is at or below [a stated percentage] of the area median income.”<sup>122</sup> Illinois offers one interesting example of state encouragement of employer-assisted housing programs with its tax credit for donations to support such programs.<sup>123</sup>

A number of the suggestions above will require money to implement the plans. There are a variety of different avenues for increased funding for site assembly and development, a number of which are discussed in Part VI *infra*. Persuading citizens to accept increases in taxes to cover housing/transportation issues is a difficult task. But, state leadership in addressing the need for both affordable workforce housing and public transportation to be available in the same vicinity could provide the groundwork for a coordinated effort to persuade the Show Me State’s voters of the importance of both.

## V. PRESERVING EXISTING AFFORDABLE HOUSING

### A. *Primary Issues*

Participants in the Preservation discussion group noted that much of the existing affordable housing consists of three types of buildings: (1) apartments financed through the LIHTC program that have exceeded, or are close to exceeding, their fifteen-year compliance period, after which they no longer would be required to remain within the program’s rent restrictions;<sup>124</sup> (2) Section 8-assisted apartment developments<sup>125</sup> whose mortgages are nearing amortization, after which they will not be required to remain under the Section 8 rent restrictions; and (3) older structures needing a significant amount of capital improvements, for which funds generally are unavailable.

In addition to lack of funding for repairs, participants reported that the area’s inventory of existing affordable housing is being depleted or is struggling to remain in circulation. Developments whose compliance periods have expired are becoming unaffordable as area rents continue to rise. Even so, developers and investors find it difficult to exit affordable housing projects after the fifteen-year compliance period because the tax consequences are too high and transfer of property is too expensive.

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122. 20 ILL.COMP.STAT. 3805/7.28(a) (The stated percentage for the Illinois tax credit program is 120%).

123. 35 ILL. COMP. STAT. 5/214 (2006) (tax credit of 50% of the value of donations to affordable housing programs, including home ownership education offered by non profits in an employer-assisted housing program) (currently scheduled to sunset December 31, 2011); 20 ILL. COMP. STAT. 3805/7.28(e) (\$2 million in tax credits set aside for donations to employer-assisted housing projects to support home ownership education).

124. I.R.C. § 42(i)(1) (2007) (fifteen year compliance period).

125. 42 U.S.C. § 1437f.

Concerns were also expressed that very limited state funds are available for low income housing and that there is a great need to provide assistance to homeowners. Many first-time homeowners in the workforce lack the money management skills to succeed with homeownership without assistance. Foreclosures continue to rise and a Missouri homeowner's right of redemption after foreclosure<sup>126</sup> is believed to be too restrictive to enable those facing foreclosure to protect their interests in that property.

#### *B. Recommendations for Preserving Existing Affordable Housing*

##### 1. Mandatory homeownership counseling for first-time buyers

Forum participants stressed the importance of counseling, education, and training for workforce homeowners. Better knowledge leads to more informed decisions by first-time buyers and greater accountability by brokers and agents. First-time homeowners need full knowledge of the commitment to purchase a house and educational programs can assist first-time buyers in both the pre-purchase and post-purchase stages. Educated buyers also slightly mitigate the amount of risk assumed by lenders.

Education can include what to expect during the buying process, financial planning assistance, budgeting classes, and general events that may occur within the first year or two of ownership. Classes could also address loan delinquency and ways to avoid it. Not all first-time buyers, however, will need education. Different counseling is required for workforce housing as opposed to low income housing. Education and counseling should be a requirement of participation in affordable workforce housing programs. For those buyers not in need of counseling, an incentive program could encourage continued education on most current options. Individual's credit scores could also be used as a determinative factor in deciding whether counseling is necessary. Employer-assisted housing programs, such as Illinois's discussed *supra*,<sup>127</sup> offer great potential as a locus for education and counseling programs. There is a great need for more research into the best policies of education for first-time homeowners and what has and has not been successful in other states.

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126. MO. REV. STAT. § 443.410 (2007) (permitting redemption within one year after foreclosure by trustee's sale provided all principal, interest, taxes, assessments, legal charges and sale costs are paid). Illinois has launched a Homeowner's Assistance Initiative which includes establishment of a statewide counseling network and access to a lender-organized \$200 million Homeowner Assistance Pool for refinancing existing mortgages. Office of the Governor -- News, Gov. Blagojevich announces new Homeowner's Assistance Initiative, the nation's most comprehensive statewide program to prevent foreclosures, Feb. 14, 2008, available at <http://www.ihda.org/admin/Upload/Files//431e47b8-5df0-4b7c-a136-df398cd86abb.pdf>.

127. Office of the Governor, *supra* note 126.

## 2. Increased funding for preservation of existing affordable housing

As previously noted, an increase in state funding for affordable workforce housing programs was a priority of forum participants. The need for funding increases was also emphasized in respect to preserving the existing stock of affordable workforce housing. The Preservation of Existing Affordable Housing roundtable identified several possible sources to reach these funding goals, including programs implemented in other states. Some states, for example, allocate a portion of their capital budget to increase funding for affordable housing<sup>128</sup> and a number of other states, such as Massachusetts,<sup>129</sup> appropriate funds from their general revenues.

Tax credits have proven useful in Missouri, and although some reform is needed, a larger tax credit allocation for low income housing would be especially helpful to raise additional funds for housing preservation efforts. In particular, additional amounts of equity investment could be generated if the state housing tax credit were made transferable. Historic tax credits can also be used to encourage preservation of affordable housing units. As noted above,<sup>130</sup> tax credits can also be used to encourage employer-assisted housing programs, many of which likely would emphasize acquisition of existing housing units.

## 3. Removal of political influences from housing decisions

Again, concerns about perceived political influence affecting decisions regarding allocation of state housing assistance resources were expressed. Participants at the Housing Preservation discussion table also recommended a more transparent allocation process for housing bonds and tax credits and supported the recommendation that elected officials not be in positions of leadership at MHDC.<sup>131</sup>

Proponents argued that stakeholders are entitled to know where the money is going and how it is being used. Correspondingly, the selection process for projects receiving funding needs to be made more transparent and can be done

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128. See *infra* Part VI. The National Housing Trust, Inc. reported that Iowa's 2007 Qualified Allocation Plan included a 20% set aside for the preservation of qualifying projects. NATIONAL HOUSING TRUST, STATE AND LOCAL HOUSING INITIATIVES (2007), available at [http://www.nhtinc.org/data\\_reports/IA\\_Preservation\\_2007.pdf](http://www.nhtinc.org/data_reports/IA_Preservation_2007.pdf). Wisconsin's 2008 Capital Improvement Program reportedly includes \$800,000 for HOME programs, \$1.2 million for Housing Rehabilitation Services, and \$800,000 for Homebuyer's Assistance Programs. CITY OF MADISON, WISCONSIN, 2008 CAPITAL BUDGET: CAPITAL IMPROVEMENT PROGRAM, available at <http://www.ci.madison.wi.us/comp/2008CapBud/CIP21.pdf>.

129. Massachusetts has set aside an average of \$125 million per year for affordable housing programs. CHICAGO COALITION FOR THE HOMELESS, AFFORDABLE HOUSING AND THE CAPITAL BUDGET, <http://www.chicagohomeless.org/learn/current> (last visited Dec. 20, 2007).

130. *Supra* notes 124–127.

131. See *supra* notes 36–62 and accompanying text.

via a point system with a minimum threshold in order to receive credits, as discussed earlier.<sup>132</sup> Affordable housing organizations also need to reconnect in order to work together more efficiently rather than competing for limited resources.

#### VI. AFFORDABLE WORKFORCE HOUSING AS A CAPITAL RESOURCE OF THE STATE<sup>133</sup>

Although forum participants made no formal recommendations, they discussed the idea of considering affordable workforce housing as a capital resource of the state. In recent years, a growing number of states have come to view affordable housing as worthy of significant public investment, either through allocation of general obligation bond issue funds or through appropriation of general revenue.

While the bulk of state financial support for affordable housing development has been through issuance and sale of tax-exempt revenue bonds that do not require expending state tax revenues,<sup>134</sup> general obligation bond proceeds and general revenue appropriations are potential sources of additional financial support.<sup>135</sup> Issued by state or local governments and backed by the full faith and credit of the issuer,<sup>136</sup> general obligation bonds are used to finance a variety of long-term capital investments such as roads, schools, and

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132. *See supra* notes 46–60 and accompanying text.

133. Part VI was in large part derived from research that Laura Schwarz did while a summer intern at Business and Professional People for the Public Interest (BPI), a Chicago civic organization, and is used with permission from the organization.

134. Revenue bonds are so designated because bond principal and interest payments are made with revenue received from the projects funded, e.g., rents and mortgage payments in the case of housing bonds. Tax resources of the state are not pledged to the payment of revenue bonds. *See, e.g.*, Richard H. Rosenbloom, *A Review of the Municipal Bond Market*, 62 *ECONOMIC REV.* at 10, 11 Mar./Apr. 1976, [http://richmondfed.org/publications/economic\\_research/economic\\_review/years.cfm/1976](http://richmondfed.org/publications/economic_research/economic_review/years.cfm/1976). The National Council of State Housing Agencies reports that over \$75 billion in tax-exempt revenue bonds have been issued by state housing finance agencies since New York created the first housing finance agency in 1960, resulting in the production or preservation of almost 800,000 affordable housing units. NAT'L COUNCIL OF STATE HOUS. AGENCIES, STATE HFA FACTBOOK: 2005 NCSHA ANNUAL SURVEY RESULTS 3, 131–32, 135–36 (2007).

135. *See, e.g.*, THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT 264, n. 36 (Tim Iglesias and Rochelle E. Lento, eds., 2005) (noting that California voters approved a \$2.1 billion general obligation bond issue for housing and community development in 2002 (citing CAL. DEPT. OF HOUS. & COM. DEV., LOAN AND GRANT PROGRAMS ANNUAL REPORT 1 (2003)); THE ENTER. FOUND., OVERVIEW OF HOUSING FINANCE MECHANISMS 31 (2002), *available at* <http://content.knowledgeplex.org/kp2/cache/documents/1633/163391.pdf>).

136. “Full faith and credit” means that the state or city is making “both a commitment to pay and a commitment to produce the funds to pay” (e.g., raise taxes if necessary). *Flushing National Bank v. Municipal Assistance Corp.*, 358 N.E.2d 848, 851–52 (N.Y. 1976). *See, e.g.*, DEBORAH A. DYSON, RESEARCH DEP'T, MINN. H.R., STATE BONDING AUTHORITY 5 (Oct. 2007), *available at* <http://www.house.leg.state.mn.us/hrd/pubs/stbonding.pdf>.

other public facilities.<sup>137</sup> States using general obligation bond proceeds to support affordable housing development have concluded that such housing is a “long-term asset that serves a public purpose” and is “part of [the state’s] basic infrastructure,”<sup>138</sup> similar to other capital investment needs of the state and have been able to persuade voters of that fact.<sup>139</sup> In addition to funding infrastructure for affordable housing, general obligation bonds are also occasionally used for housing trust funds or loan activities.<sup>140</sup>

The capital budget commitments of Massachusetts, New York, California, New Hampshire, Hawaii and Minnesota illustrate the approaches that other states have taken to provide long-term financing for affordable housing. While some of these methods may not be appropriate for Missouri, they illustrate the range of possible capital financing mechanisms. The experiences of these states also demonstrate the ways in which states can tailor these strategies to meet the specific needs of their citizens.

In Massachusetts, affordable housing has received strong support in the state’s five-year capital investment plan, reflecting the state’s conception of affordable housing as a long-term capital need. Massachusetts’s capital plan authorizes the creation of affordable housing stock, preservation of foreclosed and distressed properties, economic development grants, and grants to support homeownership and rental housing opportunities.<sup>141</sup> In addition to the \$85 million included in the state budget for fiscal year 2005–2006, the state has approved \$123 million in capital funds for housing and community development activities.<sup>142</sup>

Massachusetts funds its capital projects through the issuance of general obligation bonds, and appropriations from the annual operating budget pay the principal and accumulating interest.<sup>143</sup> The Legislature authorizes the issuance of bonds to fund capital projects and the Executive Office for Administration and Finance (EOAF) controls capital spending against bond authorizations.

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137. ENTER. FOUND., *supra* note 135.

138. *See, e.g.*, BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST, AFFORDABLE HOUSING BELONGS IN THE CAPITAL BUDGET (undated pamphlet on file with authors) (citing capital funding programs in California, Massachusetts, Minnesota and New York).

139. *See infra* notes 153–161. Many state constitutions require that voters approve the issuance of general obligation bonds. *See, e.g.*, MO. CONST., art. III, § 37; OKL. CONST., art. X, § 25; TEX. CONST., art. III, § 49.

140. ENTER. FOUND., *supra* note 135.

141. H.B. 4277, 184th Gen. Ct., Reg. Sess. (Mass. 2005); *See also*, COMMW. OF MASS., COMMONWEALTH CAPITAL INVESTMENT PLAN (2007), <http://www.mass.gov/bb/fy2007h1/2007capital/> [hereinafter CAPITAL INVESTMENT PLAN].

142. CITIZENS’ HOUS. AND PLANNING ASS’N, AFFORDABLE HOUSING GUIDEBOOK FOR LEGISLATORS 5 (2005), <http://www.chapa.org/pdf/Guidebook2005.pdf>.

143. COMMW. OF MASS., CAPITAL OUTLAY 2 (2007), <http://www.mass.gov/bb/fy2008h1/dnld08/CapitalOutlay08.pdf>.

EAOF and the State Treasurer's Office issue bonds against bond authorizations to pay for capital spending.<sup>144</sup> Housing programs funded in Massachusetts' current five-year capital investment plan support private-public partnerships to develop affordable housing, as well as more traditional activities such as maintenance and improvements of the state's aging public housing stock.<sup>145</sup>

Unlike Massachusetts, New York's capital budget does not fund affordable housing through general obligation bonds. Instead, the state issues bonds under broad functional categories to support particular capital programs,<sup>146</sup> a mechanism that resembles a general revenue bond. The state's capital budget includes provisions for average annual expenditures of \$117 million for affordable housing between fiscal year 2006 and fiscal year 2011–2012. The money will facilitate the construction and preservation of low-and moderate-income housing stock.<sup>147</sup>

Some of the most ambitious funding measures may be found in California, where voters have approved five housing bond measures since 1988. Most recently in 2006, the state authorized an additional \$2.85 billion affordable housing bond measure and will sell tax-exempt general obligation bonds to fund thirteen new and existing housing and development programs. The funds will assist eligible projects to build affordable and accessible housing for individuals with lower incomes, including those with developmental disabilities.<sup>148</sup> The funding is expected to generate over 118,000 homeownership and rental opportunities over the next ten years.<sup>149</sup>

Activities in New Hampshire and Hawaii illustrate the commitments that smaller states can make to capital funding for affordable housing. In 2007, New Hampshire appropriated \$1 million to the Housing Finance Authority to be "expended as matching funds for low income workforce housing which is not restricted due to age or children."<sup>150</sup> New Hampshire has a biennial capital budget for its affordable housing facilities instead of a statewide comprehensive capital plan,<sup>151</sup> meaning that this commitment comes from the state's general funds. While this is a much smaller sum than those available in

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144. *Id.*

145. CAPITAL INVESTMENT PLAN., *supra* note 141.

146. STATE OF NEW YORK, 2007–08 ENACTED BUDGET, CAPITAL PROGRAM AND FINANCING PLAN 68 (Apr. 25, 2007), *available at* <http://www.budget.state.ny.us/pubs/capProgFinPlan/CapPlanUpdate0708.pdf>.

147. *Id.* at 50.

148. S.B. 1689, 2006 Leg., 2005–2006 Sess. (Cal. 2006).

149. Press Release, Dep't of Hous. & Cmty. Dev., State of Cal., \$2.8 Billion from Proposition 1C Will Create New Affordable Homes (June 11, 2007), *available at* <http://www.hcd.ca.gov/news/release/06112007PressRelease.pdf>.

150. H.B. 0025, 2007 Gen. Ct., 159th Sess. (N.H. 2007).

151. Government Performance Project, New Hampshire, <http://www.gpponline.org/StateCategoryCriteria.aspx?id=121&relatedid=4> (last visited Mar. 6, 2008).

Massachusetts or California, New Hampshire's effort demonstrates that even small-scale capital funding commitments may target broad categories of residents in need of affordable housing.

In the same year, the Hawaiian legislature passed a bill authorizing the director of finance to issue general obligation bonds in the sum of \$25 million for affordable housing.<sup>152</sup> The funds must be used to purchase a particular rental housing complex to maintain affordability. The bill also increases the Hawaii Housing Finance and Development Corporation's revenue bond authority from \$300 million to \$400 million to provide further funding for acquisition of this rental property. By targeting a specific housing complex, Hawaii's approach offers an alternative to the broader-reaching projects of other states. It suggests that capital commitments to affordable housing need not have a broad scope to serve long-term housing needs.

Minnesota's experiences, as another midwestern state with a large rural population,<sup>153</sup> are perhaps most instructive for Missouri. In the past six years, Minnesota's lawmakers have approved \$90 million in general obligation bonds to finance the state's commitment to ending homelessness. The state disbursed \$16.2 million in 2004, with the remaining payments to be made over the course of six years.<sup>154</sup> Under the 2006 capital budget, for example, the Housing Finance Agency received \$20 million<sup>155</sup> to construct, rehabilitate, and acquire between 400 and 600 units of supportive housing for families and individuals who are homeless or at risk of homelessness.<sup>156</sup>

The state's requirements for spending general authorization bond funds reveal both the complexities of this funding source and the ways in which such limitations may be overcome. Under the Minnesota Constitution and statutes, all funds must be expended for a proper public purpose.<sup>157</sup> However, courts typically grant deference to the legislature's finding of a proper public purpose.<sup>158</sup> The Constitution likewise requires that the legislature specify the purpose and amount of the bonding,<sup>159</sup> a requirement satisfied by describing

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152. H.B. 667, 24th Leg., 2007 Sess. (Haw. 2007).

153. US DEPARTMENT OF AGRICULTURE, STATE FACT SHEETS, MINNESOTA and MISSOURI, available at <http://www.ers.usda.gov/StateFacts/>.

154. STATE OF MINN., A BUSINESS PLAN TO END LONG-TERM HOMELESSNESS IN MINNESOTA BY 2010 2 (2004), [http://www.ich.gov/slocal/plans/minnesota\\_summary.pdf](http://www.ich.gov/slocal/plans/minnesota_summary.pdf).

155. DEP'T OF FIN., STATE OF MINN., 2006 SESSION: CAPITAL BUDGET HIGHLIGHTS 2 (2006), [http://www.budget.state.mn.us/budget/capital/2006/2006\\_highlights\\_eos\\_cb.pdf](http://www.budget.state.mn.us/budget/capital/2006/2006_highlights_eos_cb.pdf).

156. HOUS. FIN. AGENCY, STATE OF MINN., STATE OF MINNESOTA 2006 CAPITAL BUDGET REQUESTS 6 (2006), <http://www.budget.state.mn.us/budget/capital/2006/final/302212.pdf>.

157. DEP'T OF FIN., STATE OF MINN., CAPITAL APPROPRIATIONS WITH OTHER LEGAL REQUIREMENTS (April 2005), <http://www.finance.state.mn.us/agencyapps/maps/opsman/policies/03section/0302-03.html>.

158. *Visina v. Freeman*, 89 N.W.2d 635, 643 (Minn. 1958); DYSON, *supra* note 136.

159. MINN. CONST. art. XI § 7.

the program or referring to an existing program established in the statutes.<sup>160</sup> Finally, bonds may only be used to finance publicly-owned projects in Minnesota,<sup>161</sup> a requirement that limits the construction of for-sale housing units.

Despite these constraints, Minnesota's use of capital funds to support affordable housing projects has won it national renown.<sup>162</sup> In 2006, for example, the Community Housing Development Corporation (CHDC) completed the 140-unit Veterans and Community Housing development in south Minneapolis to assist homeless veterans.<sup>163</sup> The organization used a portion of the \$90 million general obligation bond funding, allowing it to bypass the repayment obligations associated with private-activity bonds or 4% LIHTCs.<sup>164</sup> Given the constitutional requirements associated with general obligation bonds, the CHDC also had to locate an agency or local government willing to purchase the land and then lease it back to them. The result, however, is a 138-unit complex whose apartments rent for \$385 per month, a rate far below the market-rate in the surrounding community.

## VII. CONCLUSION

The forum was convened in order to generate recommendations for state policy and, to a lesser extent, local policy in support of affordable workforce housing. While no formal votes were taken at the forum, general consensus was noted on a number of points respecting state policies in Missouri.

Participants expressed strong support for a more transparent system of allocating current housing subsidies: low income housing tax credits; both federal and state; private activity bond authorization; and housing trust fund monies.<sup>165</sup> Calling attention to the fact that other states have put scoring systems in place,<sup>166</sup> participants recommended development of an allocation system based on objective criteria. Decisions should be based on a scoring

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160. DYSON, *supra* note 136.

161. *Id.* at 2.

162. See Liz Enochs, *Permanent Housing for the Homeless Fills a Gap in Minnesota*, Affordable Housing Finance, Aug. 2007, available at <http://www.housingfinance.com/ahf/articles/2007/aug/VETERANS0807.htm> (indicating the project as a finalist for the Readers' Choice Award for Special Needs Housing); *Veterans and Community Housing Complex Opens*, Oct. 25, US State News, Oct. 23, 2006, available at 2006 WLNR 18434081.

163. *Veterans and Community Housing*, *supra* note 162.

164. *Id.*

165. In December of 2007, MHDC staff presented to MHDC commissioners a "rating, ranking and funding matrix" used by staff to prepare an analysis of and recommendations for approving 2008 Housing Trust Fund applications. Memorandum from Mary Helen Murphy & Heather Bradley-Geary to MHDC Commissioners about Trust Fund Applications (Dec. 21, 2007) (on file with authors).

166. *Supra* notes 46–62 and accompanying text.

system that measures the responses of proposals to the criteria, and not on the identity of particular developers or the wishes of specific elected officials.<sup>167</sup> Support also was voiced for a recommendation that elected officials not assume leadership positions, such as chair or secretary, of MHDC.<sup>168</sup>

The proposed Workforce Housing Economic Development Act (WHEDA),<sup>169</sup> requiring each county in the state to develop a Workforce Housing Plan (WHP), received strong support from forum participants. Such plans would include maps locating all major employment centers within the county as well as affordable workforce housing within a thirty-minute public transit ride from such centers. Technical and financial assistance for the preparation of such maps should be provided by the DED. The maps should identify areas where opportunities exist to develop workforce housing. Applicants for housing subsidies would be required to include in their applications how their project fits with the county workforce housing plan, but state agencies distributing housing funds would not be required to follow county plans so long as they gave good faith consideration to them.

Organization of a formal statewide research and public education program regarding the importance of affordable workforce housing was supported,<sup>170</sup> as was legislation to remove unnecessary regulatory barriers to affordable housing.<sup>171</sup> Such legislations can take a variety of forms and participants recommended analysis of other states' experience in formulating specific legislative proposals.

Participants noted the potential for increasing the state's investment in affordable workforce housing through general revenue and/or general obligation bond issue allocations,<sup>172</sup> but were not prepared to endorse legislation to that effect without more study. Also on the agenda for further study were recommendations for legislation to commit the state to developing a state housing plan and to providing technical and financial support to counties as they prepare their proposed workforce housing plans.

The increasing difficulty working families have in locating affordable housing in or near the communities they serve was the major concern of the forum. While the federal government traditionally has been the primary source of housing assistance, in recent years states have become major participants in the implementation of federal housing programs and have developed important programs of their own. State policies affecting affordable housing increasingly

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167. *Supra* notes 61–62 and accompanying text.

168. Bills to this effect have been introduced in the 2008 session of the Missouri General Assembly. *See, e.g.*, SCS/SB 1056 (2008).

169. *See supra* notes 63–68 and accompanying text.

170. *See supra* notes 76–87 and accompanying text.

171. *See supra* notes 88–98 and accompanying text.

172. *See supra* notes 133–164 and accompanying text.

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are recognized as crucial avenues for responding to workforce housing needs. The finer details of legislation were, of course, not able to be articulated and debated in a one-day discussion. But forum participants were successful in setting an ambitious agenda for state and local leaders and committed themselves to work toward implementing the recommendations produced by the discussion.<sup>173</sup>

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173. FOCUS St. Louis has established a workforce housing web site, [www.workforcehousingstl.org](http://www.workforcehousingstl.org) and is a founding member of a new Workforce Housing Policy Coalition.

