Massachusetts Taxpayers Foundation

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MTF Summary of Governor Healey's *Affordable Homes Act*

On October 18th, the Healey administration unveiled a $4.1 billion housing bond bill, titled the *Affordable Homes Act*, which combined a new five-year capital funding plan with a variety of policy proposals intended to spur production and accelerate rehabilitation of housing stock, reduce state and local barriers to development, and assist residents in attaining stable housing.

This Brief will break down each of the major components of the bill. Specifically, it will:

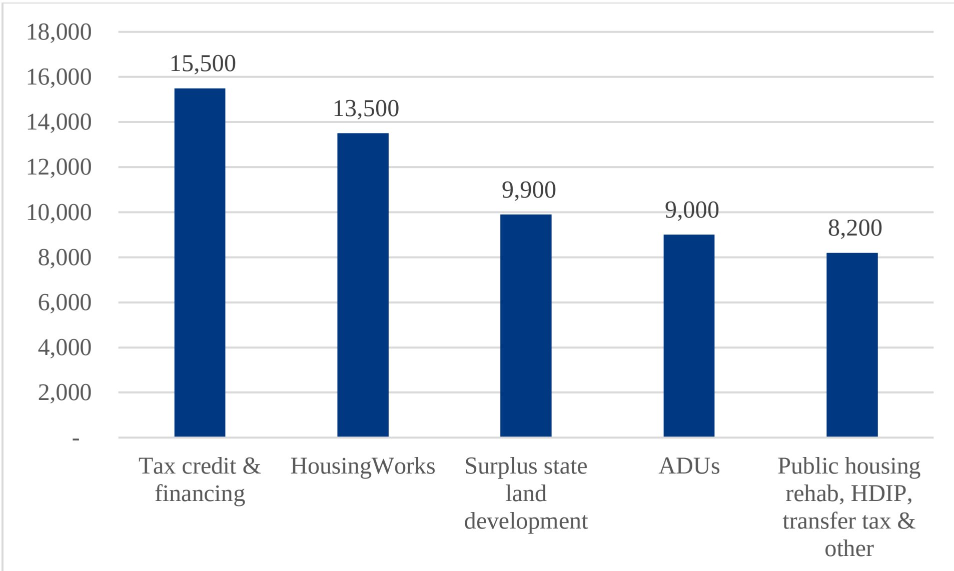
1. Assess how the proposed investment level compares to prior housing bond bills and how the authorizations fit within our capital budget.
2. Summarize what major policy proposals do and their role in affecting housing production.
3. Look at state and local tax proposals put forward in the bill and examine how these policies are likely to impact housing production as well as the state's economy.

Big Picture

Massachusetts has a housing crisis. Whether looking at average home price, rent, inventory of homes for sale, or any other metric; lack of attainable housing is a critical threat to the state's economic future. According to the Future of Work Report commissioned by the Baker administration in 2021, the state will face a housing gap of up to 200,000 units by 2030. The Healey administration believes that more than half of that gap (115,000 units) will be met without additional state action, but that the *Affordable Homes Act*, accompanied by recent Executive Orders and tax changes are pivotal to reaching 200,000 units.

The *Affordable Homes Act* is the centerpiece of a strategy to spur the creation, rehabilitation, or upkeep of more than 50,000 units through a multi-pronged strategy of increased capital spending, major changes to state and local housing policy, and reforms to the tax code, including tax credits and tax increases. The specific figures are as follows:

Figure 1. Housing Unit Assumptions Underlying Affordable Homes Act



Capital Authorizations

At its core, the *Affordable Homes Act* is a housing bond bill – a piece of legislation that is put forward every five years to govern housing investments over the next five-year period. The state's last housing bond bill, *An Act Financing the Production and Preservation of Housing for Low and Moderate Income Residents*, was signed into law in May of 2018. The *Affordable Homes Act*, which includes 19 separate housing capital authorizations totaling $4.12 billion, is the first step in creating the state's housing blueprint for the next five years.

Big Picture Spending Themes

The Healey administration has organized capital authorizations in the *Affordable Homes Act* into four general categories, as shown in the table below.

Table 1. Housing Authorizations by Category

Category	Programs	Total Authorization
Public Housing	2	$1,600
Production & Preservation	5	$1,100
HousingWorks	6	$955
Vulnerable Populations	4	$385
Other	2	$80
Total	**19**	**$4,120**

$ in millions

This amount of proposed investment is notable. It is more than double the authorization total in the state's 2018 housing bond bill; and in each major category of investment, the *Affordable Homes Act* authorizes significantly more in spending than the last version of the bill, with the biggest increases for PHAs and the various programs that fall within Housing Works.

Table 2. Affordable Homes Act v. 2018 Bond Bill

Category	2018 HBB	*Affordable Homes Act*	Increase over 2018
Public Housing	$650	$1,600	$950
Production	$500	$1,100	$600
HousingWorks	$325	$955	$630
Vulnerable Populations	$280	$385	$105
Other	$45	$80	$35
Total	**$1,800**	**$4,120**	**$2,320**

$ in millions

The scope of this proposal can also be illustrated by comparing the five year cost of the bill to the current rate of capital spending on housing. In order to make $4.12 billion in housing investments, the state would need to spend $824 million each year over the next five years. In FY 2024, the state plans to devote $308 million from its capital spending plan to housing.

A Closer Look at the Authorizations

The descriptions below highlight notable investments in each of the categories highlighted above.

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Public Housing

These authorizations will help public housing authorities in the Commonwealth repair and rehabilitate units that are currently unavailable or unsafe for habitation. Major programs include:

- **Public housing grants** ($1.5 billion) – This program will provide grants to assist with the repair and renovation of public housing units currently unavailable for residents. At any given time, around five percent of the state's public housing stock is unused and hundreds are unavailable due to safety issues. This authorization is designed to bring units back online, improve accessibility, and reduce the carbon footprint of the stock.
- **Mixed-income demonstration project** ($100 million) – This item will provide resources to PHAs looking to partner with private developers to create mixed-income housing developments on PHA property.

HousingWorks

These are authorizations that consolidate several existing housing capital support programs within the umbrella of the HousingWorks program, which was created in the legislation establishing the Executive Office of Housing and Livable Communities (EOHLC). Modeled on the state's MassWorks program, HousingWorks is administered by EOHLC. Major programs include:

- **Housing Stabilization and Investment Fund** ($425 million) – This item combines authorizations for the Housing Stabilization Fund and the Community Investment and Innovation Fund. These two programs have historically been used to provide financing necessary for the production of affordable housing or to prevent the expiration of affordable housing requirements on existing properties.
- **Sustainable and Green Housing Initiatives** ($275 million) – This item consolidates two existing programs designed to support transit oriented or climate resilient affordable housing as well as efforts to convert office or commercial space to housing. Projects funding through the program must be affordable to residents at or below 100 percent of the median income and at least 25 percent of units set aside for residents at or below 60 percent of median income. Eligible projects must fall into three categories: innovative affordable housing production; housing located near public transit or likely to reduce traffic or increase transit use; or projects that improve sustainable and climate resilient affordable housing.
- **HousingWorks Infrastructure** ($175 million) – This item provides sewer, utility and other infrastructure improvement grants to municipalities that will allow additional housing development. Transit oriented and MBTA zoning communities are prioritized for support under the item.

Production

These authorizations, administered by MassHousing, support several forms of housing production, including workforce or middle-income housing, development of distressed properties and affordable single-family units. Major programs include:

- **Affordable Housing Trust Fund** ($800 million) – Through the Affordable Housing Trust Fund, MassHousing provides financial support to rental and ownership development projects open to households at or below 100 percent of median income. To be eligible for support, a project must maintain affordability for at least 30 years.
- **Middle-Income Housing Fund** ($100 million) – This program, created in 2016, supports rental housing developments affordable a wider range of household income (60 to 120 percent of Area Median Income or AMI) than affordable housing, which is typically capped at 80 percent of AMI.
- **Commonwealth Builders Program** ($100 million) – This program, originally created with American Rescue Plan resources, supports the production of income-eligible (70 to 120 percent of Area Median Income) single family homes in Gateway Cities and communities with similar demographics.

Vulnerable Populations

This category supports housing for income eligible populations including seniors, residents with disabilities and residents transitioning out of homelessness. Supportive housing offers affordable housing that is combined with necessary social supports and services to keep eligible individuals and families sustainably housed. Programs included in the *Affordable Homes Act* support production and preservation of both rental and ownership housing and use fund projects to modify homes to maintain safe residency for disabled and elderly residents. Major authorizations include:

- **Housing Innovations Fund** ($200 million) – This program supports non-profit developers creating and maintaining rental housing for special needs populations. Eligible housing populations include veterans, seniors, those transitioning out of homelessness, and survivors of domestic violence. At least 50 percent of supported units must be set aside for residents at or below 80 percent of AMI and 25 percent of units must set aside for residents at or below 30 percent of AMI.
- **Facilities Consolidation Fund** ($70 million) – The FCF supports community-based housing for clients of the Department of Developmental Services (DDS) and the Department of Mental Health (DMH). No more than 50 percent of an eligible project's cost can be supported by the FCF.

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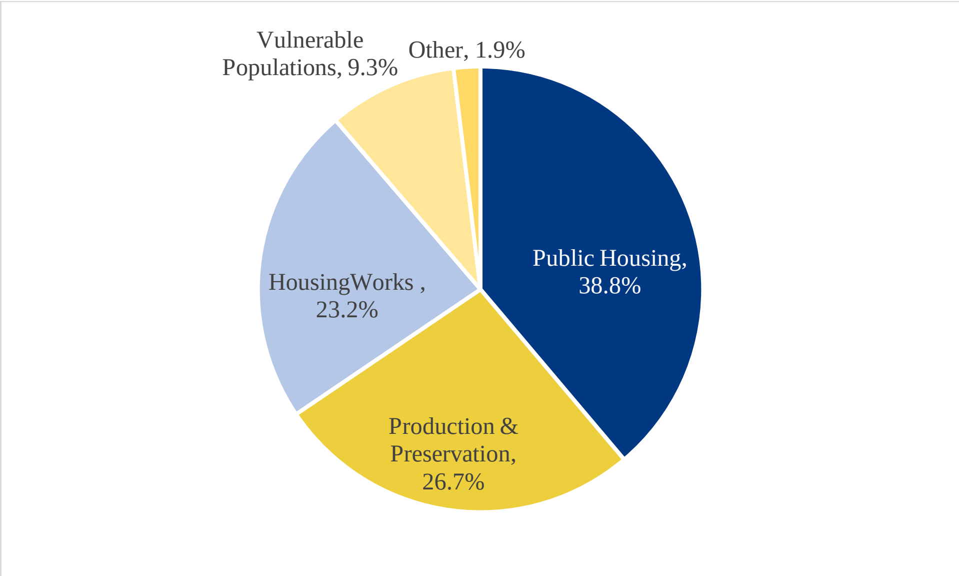
- **Home Modification Program** ($60 million) – This item provides loans and grants to modify homes to enable blind or other eligible residents to safely remain in their homes or live independently.

Other

The bill includes two authorizations to support an initiative to use surplus state land for housing ($30 million) and to fund capital improvements to day care and childcare facilities ($50 million).

Figure 2. Affordable Homes Act Authorizations by Category



Putting the Investment in Context

While the *Affordable Homes Act* includes over $4 billion in capital authorizations for housing, there are several reasons why actual housing support may fall short of that total amount. For one, actual spending usually lags behind the authorized level; and two, the authorizations in this bill are not currently supported in the state's capital spending plan.

The $1.8 billion housing bond bill signed into law in 2018 marked a record level of support at the time, but in the intervening years, actual spending has been closer to $1.2 billion, or two-thirds of the authorized level.

Table 3. Housing Authorization v. Housing Budget, FY 2019 – FY 2023

Year	Amount Authorized	Amount in Capital Spending Plan	Share of Authorized
FY 2019	$360	$238	66.0%
FY 2020	$360	$238	66.0%
FY 2021	$360	$238	66.0%
FY 2022	$360	$256	71.1%
FY 2023	$360	$261	72.5%
Total	**$1,800**	**$1,230**	**68.3%**

$ in millions

Between FY 2019 and FY 2023, the amount of housing spending included in the capital budget fell far below the amount necessary to meet the $1.8 billion authorization called for in the bill. In fact, the $1.2 billion in housing spending in the capital budget likely overestimates actual spending, as projects are often unable to spend up to their budgeted amount in a given year.

The experience of the last housing bond bill will only be exacerbated by the sheer scope of the ambition in the *Affordable Homes Act*. The $4.12 billion over five years put forward in the bill, as proposed, will all need to be supported within the state's annual bond cap – which is $2.905 billion in FY 2024. This creates a significant mismatch between current levels of housing investment and the amount necessary to fulfill the goals of the bill.

Table 4 – Current Housing Investment v. Amount Proposed in Affordable Homes Act

	Authorization Level	Share of Capital Plan
FY 2024	$308	10.6%
Amount necessary for AHA	$824	27.2%

For housing investments to close the gap between the current rate of spending and the total authorizations proposed in the *Affordable Homes Act* there are only a few options. First, new state bond cap spending could be dedicated to housing investments. However, growth in the state's bond cap is constrained by the state's Debt Affordability Policy, which limits growth to not more than

$125 million per year.[1] Even if housing were to lay claim to all new bond cap spending over the next five years, total housing spending would fall well short of the $4.12 billion.

Table 5. Housing Capital Spending with 100% of Bond Cap Growth

	Housing with all new spending	Bond Cap
FY 2024	$308	$2,905
FY 2025	$433	$3,030
FY 2026	$558	$3,155
FY 2027	$683	$3,280
FY 2028	$808	$3,405
Total	**$2,790**	

$ in millions

The second option to increase housing spending is to divert resources from other areas within the capital budget, but the advisability of that approach is questionable. Like housing, the other major areas of the capital spending plan (transportation, environment, state building upkeep) have needs that outpace current allocation levels.

The state could also reassess the current growth cap on capital spending. The $125 million annual increase cap is an administrative limit that has been in place since 2009 and has not been adjusted for inflation or revenue growth. For FY 2025, the Debt Affordability Committee has recommended that the cap grow by $212.2 million, which includes an $87.2 million adjustment to account for growth in construction costs. The Healey administration will determine the actual increase when they release their FY 2025 capital spending plan.

Construction and facilities costs have undoubtedly grown since 2009; and from that standpoint, an adjustment in spending growth makes sense. However, Massachusetts already ranks second among states in debt per capita and ongoing operating budget pressures. Maintaining longstanding fiscal policies that limit the extent to which debt service spending will grow in future years should remain a priority.

Lastly, it's possible that the Healey administration pursues options outside of the state bond cap to get closer to a $4 billion five-year investment plan. For example, MassHousing has the ability to sell tax exempt bonds to support housing programs. However, creativity will be necessary as there are federal limitations on the amount of tax-exempt bonds allotted by the state.

[1] The state's Debt Affordability Committee recommended that for FY 2025, the $125 million bond cap increase be augmented by a $87.2 million increase to account for construction cost growth.

Policy Proposals

The *Affordable Homes Act* includes a variety of policy proposals, major and minor, designed to increase development incentives and remove barriers to housing production. In total, the bill includes 110 policy sections – nearly triple the 30 policy sections proposed by Governor Baker in the last housing bond bill. The major policy proposals fall into several broad categories:

- Addressing local barriers to housing
- Improving state level coordination of housing policy
- Supporting vulnerable populations

Local Barriers to Housing

The bill includes several provisions designed to make it easier to produce housing in communities by changing or overriding local zoning authority:

- **Accessory dwelling units (ADUs)** – The bill would allow accessory dwelling units, defined as no more than 900 square feet or not more than half the floor area of the principal dwelling, to be built by-right in areas zoned for single family units. This right to build ADUs would extend to all communities, regardless of local zoning policy. ADUs are typically referred to as in-law apartments – small, self-contained residences often attached to larger homes. The administration estimates that up to 10K ADUs could be created by eliminating local authority to prohibit or limit their production.
- **Inclusionary zoning** – The bill adds inclusionary zoning ordinances to the list of local zoning changes that can be adopted by a simple majority of a community's governing body, as opposed to two-thirds. Inclusionary zoning refers to policies that require a certain percentage of newly developed units be subject to affordability restrictions. The language in the bill tasks EOHLC with creating regulations to ensure that the adoption of inclusionary zoning does not end up constraining housing production.

Improving State and Local Level Coordination of Housing Policy

The bill also proposes several policies designed to hone an implementable statewide strategy. These provisions relate to both planning and removing barriers to use state assets to create housing.

- **Statewide housing plan** – The bill requires EOHLC to develop and implement a statewide housing plan, at least once every five years. Modeled after the state's five-year economic development plans, these housing plans shall include:
  - Data on housing supply and demand.
  - Data on affordability and affordability gaps.
  - Identification of challenges and need by region.

    - Recommended strategies to address housing gaps and regional challenges.
- **Disposition of surplus state land** – The bill also proposes a new process for disposing of state assets if the land is to be used for affordable housing. Currently, the decision to sell a state asset usually originates with the agency that owns the land, but the revenue from the sale typically goes to the General Fund. This cumbersome process provides no real motivation for agencies to consider non-public uses for their property. The streamlined process laid out by the bill works as follows:
    - The Executive Office of Administration and Finance and EOHLC are empowered to identify land of any state department they deem unnecessary for current or planned use and notify the owning agency;
    - If the owner of the property does not justify the continued ownership of the property in writing within 30 days, the property will be declared surplus;
    - The Department of Capital Asset Management and Maintenance will then work with the agency to make the property ready for disposal for housing purposes, this includes amending existing use restrictions;
    - Once a property is authorized for sale, the local community shall be notified that the parcel is available for housing;
    - DCAMM shall assess the value of the parcel, which can be:
        - Sold to a municipality or developer for housing uses for the assessed price,
        - Conveyed for nominal consideration if the land will be used for affordable housing, or
        - Auctioned either by the state or in partnership with the community.
- **Seasonal Community Designation** – The bill creates a seven-person Seasonal Community Coordinating Council and tasks the group with establishing a process to designate ‘seasonal communities.’ The Council will also make recommendations to EOHLC for new programs to support seasonal communities or ways to adjust existing programs to provide priority to designated communities.
- **Regional Housing Authorities and Regional Capital Assistance Teams** – The bill would make it easier for housing authorities to combine and work in collaboration:
    - The bill eliminates the requirement for home rule legislation to be passed in order to regionalize housing authorities. Under the new plan, regionalization could proceed with the approval of affected housing authorities and EOHLC. The bill would also expand the reach of Regional Capital Assistance Teams (RCAT), which provide technical support to smaller housing authorities around the state. Under the new proposal RCAT services would be available to larger housing authorities who pay for assistance.

Vulnerable People and Populations

The policy sections of the *Affordable Homes Act* also include protections to renters and housing authority tenants as well as new ways to incentivize supportive housing.

- **Eviction sealing** – The bill would allow tenants to request the courts to seal eviction records:
    - In cases of no-fault eviction;
    - Three years after eviction solely for non-payment of rent; or
    - Seven years after other fault eviction, provided that no other eviction action has been filed in the most recent three years.

  In addition, the bill prohibits credit rating agencies from using information from a sealed eviction record.
- **Public housing resident protections** – The bill clarifies that public housing residents retain their tenancy protection rights in cases where their housing is part of a redevelopment project. The section also requires that, in cases of a redevelopment agreement between a housing authority and a private entity, the agreement must state how tenant protections will be monitored and enforced, how the project will avoid tenant displacement, and ensure that tenants have a meaningful opportunity to provide input in the new project.
- **Supportive Housing Pool** – The bill creates a new Supportive Housing Pool Fund which will help to fill financing gaps and improve the efficiency of bundling public and private financing for supportive housing projects, including resources to provide essential support services for clients.

Tax Proposals

Finally, the bill includes four state and local tax provisions intended to incentivize development, maintain rental stock, and provide resources for local affordable housing projects. While three of the tax changes offer new benefits to developers and property owners, the most notable proposal, a local option real estate transfer tax, would allow for significant tax increases on many real estate transactions.

- **Real estate transfer tax** – The bill allows municipalities to adopt a real estate transaction surtax covering residential, commercial, and other real property transfers that meet a minimum cost threshold. Under the proposal:
    - Municipalities or regional affordable housing commissions with majority approval of their legislative bodies could levy a real estate transfer tax of between 0.5 and 2 percent on the purchase price of property over a certain threshold. The tax would be paid by the seller.

        - MBTA communities must be in compliance with the MBTA community law to impose a transfer tax.
    - The minimum taxable threshold would be the greater of $1 million or the median single family home price in the relevant county.
        - Taxing entities could establish a higher taxable threshold.
    - The bill exempts thirteen types of transaction from the tax, including:
        - Transfers from a public agency
        - Distributions to beneficiaries of a trust
        - Transfers between family members
        - Bankruptcy transfers
        - Transfers made to partition land
        - Transfer to a charitable or religious organization
        - Transfers of a property with three or more residential units, with at least 25 percent (or one unit in the case of a three-unit property) are subject to affordable housing restrictions
    - All proceeds from the transfer tax would be deposited in a local affordable housing trust fund.
        - Transfer tax resources can be used to adapt, preserve or create affordable housing, provide assistance for housing authorities, or other uses approved by EOHLC.
- **Homeownership Production Tax Credit** – The bill creates a new tax credit for developers of qualified developments. Eligible developments must be at least 10 residential units, of which some are subject to affordability restrictions. The credit is capped at 35 percent of qualified expenditures or 80 percent of the median new home price. The total cost of the credit, until 2030, will be the sum of $10 million and the amount of unused credits from the prior year. In 2030, the $10 million base amount will expire.
- **Community Investment Tax Credit Change** – The bill eliminates the 2025 sunset of the state's Community Investment Tax Credit and increases the statewide cap on donations eligible for credit from $12 million to $15 million. Under the credit, donations to Community Development Corporations of $1,000 are more are eligible for a 50% credit, provided the total credit cap has not been met.
- **Seasonal Community Property Tax Exemption** – The bill allows designated seasonal communities to exempt year-round rental units from property tax. The exemption, which is intended to increase the amount of residential rental stock, would only apply to units at or below 150 percent of fair market rent in the region.

Putting it All Together

The *Affordable Homes Act* is the largest, most far-reaching housing bill put forward in more than two decades. The scope of the proposal applies to both the level of authorized capital spending and the number and potential impact of the policies proposed.

The bill has many strengths, but they can be organized into four major themes:

- **The ambition is scaled to the need** – the bill is built as part of a strategy to close a housing gap of about 90,000. The buildup for how the bill's provisions will create or maintain more than 50,000 units to reach that goal is more aspirational than realistic in some cases, the exercise of building the policy to meet the need is critical and a strength of the bill.
- **It creates a strategic framework** – as basic as it sounds, the state does not currently have a plan that identifies housing needs and puts forward strategies to meet production and other goals. This bill proposes requiring a statewide housing plan, to be updated every five years. While a plan is not sufficient to solve housing challenges, it is necessary and prioritizing the creation of a housing strategy makes sense.
- **All communities have to be part of the solution** – the bill's requirement that ADUs be allowed in all communities sends an important signal that all communities must play a part in increasing housing production and, while local control is important, it cannot be a permanent roadblock to the most basic tools available to expand housing stock in a measured way.
- **New ideas are welcome** – both on the policy and authorization front, this bill reflects new thinking for how to confront a challenge that has not been solved by the status quo. Examples of new thinking include:
    - Making office conversions eligible for financing under the $275 million Sustainable and Green Housing Initiatives authorization; and
    - Creating a supportive housing pool fund, which will help to cover capital, operating, and service costs of projects that otherwise might now have the right mix of financing to succeed.
    - Creating a streamlined process to use underutilized state assets for housing development; and
    - Establishing a new Momentum Fund, which is designed to provide a way for private and public funds to be combined to provide a flexible source of revolving funds to support large multi-family developments.

Establishing the scope of the problem, creating a statewide strategy, ensuring that all regions of the state are a part of the solution, and using new techniques create a strong foundation for tackling our housing challenges.

However, there are several elements of the bill that are concerning:

- **An increased transfer tax will only exacerbate real estate cost and supply issues in many areas of the state –** the goal of the transfer tax, to increase investment in affordable housing, makes sense, but the method proposed works against that goal. By definition, this attempt to reduce the cost of housing will begin by increasing the housing costs for a huge share of residential properties in Massachusetts. The median home sale price in many communities is effectively at the $1 million threshold proposed in the bill. This means that about half of all homes in those communities would be impacted by the tax today – let alone over the coming years as costs continue to rise. Just as problematic, the tax will increase the relative cost of major commercial real estate development compared to other areas, reducing incentives for investment from national and international funders.

  Finally, it is important to note that any revenue from a transfer tax would not support the $4.12 billion in housing investments proposed in the bill, but would go to municipal and regional housing trust funds, with no required timeline for when resources would actually be used.

- **The scope of the bill does not fit into current capital plans** – as noted above, to meet the ambitious level of capital spending called for in the bill, housing spending would need to more than double, which cannot be accommodated in the current capital spending plan. As this bill moves through the process, there needs to be greater clarity as to how these investments can be sustainably supported.
- **Reducing barriers to inclusionary zoning can have counterproductive results** – the proposal to reduce the threshold for cities and towns to adopt inclusionary zoning policies is designed to increase production of affordable housing, but that outcome is not always the result. In some cases, requirements for certain thresholds of affordable units are used to make it more difficult to build multi-family developments. This summer, San Francisco actually reduced required affordable housing thresholds, because the original levels were increasingly seen as a barrier to new production. Policymakers must be careful to ensure that well-intentioned requirements do not, intentionally or accidentally, add new hurdles to new housing. The MBTA Communities law offers some examples of regulatory controls that could be used to reduce unintended consequences of inclusionary zoning, but it is too early to know if these controls will be effective.

What's Next

Because the *Affordable Homes Act* authorizes borrowing and capital spending, it goes through a lengthier committee process than other bills. The Governor's bill was referred to the Joint Committee on Housing, where it will be heard. Some version of this bill is almost certain to be reported out favorably from that committee where it will next go to the Joint Committee on Bonding, Capital Expenditure and State Assets. After advancing from the Bonding Committee, the bill will likely go to the House Committee on Ways and Means, prior to action from that branch.

As the legislature considers this bill, they will assess its affordability and consider adding, amending, or eliminating policy proposals put forward in the original bill. As they do so, four considerations are key:

- **Timeliness** – prompt action on a Housing Bond Bill will start new programs more quickly, send the right message of prioritization, and avoid getting the bill hung up in the end of session logjam, which can make it more difficult to pass thoughtful policy.
- **Balancing ambition with a fiscal plan** – the state needs to increase investment in housing, but to ensure that those investments occur, there has to be a clear and achievable plan for how investments in the bill can be supported in the existing capital plan and through other capital options.
- **State and local policy changes** – proposals to streamline sale of state assets and requirements for communities to allow ADUs are two examples of state and local policy changes that make sense and should be retained in the final bill.
- **Don't add to the cost crunch** – as noted above, A broad based real estate transfer tax increase at a $1 million threshold is not an effective strategy to reduce real estate costs.

Housing access is one of the biggest threats facing Massachusetts, and it's a threat that impacts residents today and our economic future in the years ahead. The Healey administration's *Affordable Homes Act* puts forward an ambitious capital and policy plan to take this threat head on. Over the coming months, it will kickstart an important policy discussion on how the state can use a combination of sustainable investments and smart policies to increase housing production and access.