



## LWVM Affordable Housing Study: Part 4

### Financial Incentives to Build Affordable Housing – Chapters 40R and 40S

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Previous articles in this series have covered the need for affordable housing, zoning laws, and Chapter 40B. This article describes Chapters 40R and 40S.

The Massachusetts Legislature passed 40R in 2004 and 40S in 2005 to implement smart growth principles to reduce urban sprawl and stimulate the production of affordable housing.<sup>1</sup> They are intended to work with Chapter 40B, not replace it.

Enacted in 1969, 40B has increased the production of affordable housing, but as of 2006, only 47 of the state's 351 communities had reached the goal of 10% affordable housing. Principally, communities resist 40B because they see it as usurping local control and increasing service costs through higher-density developments. Chapters 40R and 40S intend to soften community resistance by providing financial incentives. The goal is to establish 33,000 new housing units over the next 10 years.

#### Chapter 40R

Smart growth, a recent state housing policy priority, refers to mixed-use development that, among other characteristics:

- has access to public transportation
- is in city or town centers with pedestrian access to schools and stores, and/or
- on underutilized industrial, commercial or institutional land and buildings

In short, smart growth is about growing where there is existing infrastructure.

Chapter 40R provides financial incentives to communities that establish a state-approved Smart Growth Zoning District (SGZD). Density is a key factor in smart growth, and communities that have adopted SGZDs are required to allow for denser residential development, often in contrast to local zoning requirements. SGZDs allow for denser residential development as follows:

- 8 houses per acre for single-family homes
- 12 units per acre for two- and three-family residences
- 20 units per acre for condominiums and apartment complexes

- 20% of housing developed in the zone must be affordable and deed restricted for 30 years

Upon state and local approval of a SGZD, a community will receive a one-time payment of between \$10,000 and \$600,000, depending on the number of housing units planned. The state will disburse an additional \$3,000 per housing unit when a building permit is issued. A Smart Growth Housing Trust Fund, capitalized through the sale of surplus state assets, is the revenue source to cover much of this cost.

#### Chapter 40S

To address the potential increase in school costs resulting from housing units built under 40R, the Legislature created Chapter 40S to reimburse communities for all net new education costs.

If 33,000 new units are built in the next 10 years, the density bonuses under 40R will cost the state an estimated \$14 million annually; the estimated 40S school supplement cost will be \$35 million annually.<sup>2</sup>

#### Concerns about the Laws

As of December 2006, eight communities – Chelsea, Dartmouth, Lunenburg, Norwood, North Reading, Plymouth, Lakeville and Natick – had adopted Chapter 40R districts.<sup>3</sup> However, some communities are still concerned with the provision in Chapter 40R that once housing in an SGZD is approved, development must be allowed as-of-right, thereby diluting local planning and zoning control.

There are also concerns that the state may not be able to sustain long-term funding for 40R and 40S. Proponents of affordable housing note that the sale of surplus state assets is neither predictable nor dependable and these assets will eventually all be sold, and they are advocating for a more reliable and stable source of financial support for these programs.

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<sup>1</sup>Text of Chapter 40R can be found online at: [www.mass.gov/legis/laws/mgl/gl-40r-toc.htm](http://www.mass.gov/legis/laws/mgl/gl-40r-toc.htm); Chapter 40S at [www.mass.gov/legis/laws/seslaw05/sl050141.htm](http://www.mass.gov/legis/laws/seslaw05/sl050141.htm).

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<sup>2</sup> Rollins, Darcy, "An Overview of Chapters 40R and 40S." New England Public Policy Center at the Federal Reserve Bank of Boston. February 2006. [www.bos.frb.org/economic/neppc/briefs/2006/briefs061.pdf](http://www.bos.frb.org/economic/neppc/briefs/2006/briefs061.pdf)

<sup>3</sup> "Quarterly Summary of Progress as of December 31, 2006." Commonwealth Housing Task Force. [www.tbf.org/tbfgen1.asp?id=3551](http://www.tbf.org/tbfgen1.asp?id=3551)

Due to space constraints, sources for this article are online at [www.lwvma.org/affordablehousing.shtml](http://www.lwvma.org/affordablehousing.shtml).