



NYU  
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# Learning How States are Designing Land Use Reforms to Expand Housing Supply

October 14, 2026

NYU School of Law

# Agenda

## **Introduction and Overview**

2:30-2:40 Presentation on reforms

## **Panel Discussion**

2:40 - 3:15 pm: Moderated by Professor Vicki Been

## **Audience Q&A**

3:15- 3:28

## **Closing**

3:30 pm

# NYU Furman Series on State Land Use Reforms

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**State-Level Reforms  
to Local Land Use  
Planning: Strategies  
for Addressing  
Housing Needs**

Vicki Been, Helen Ketema,  
and Brad Greenburg

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**The Builders  
Remedy: Key  
Considerations for  
Enforcing  
Pro-Housing Policies**

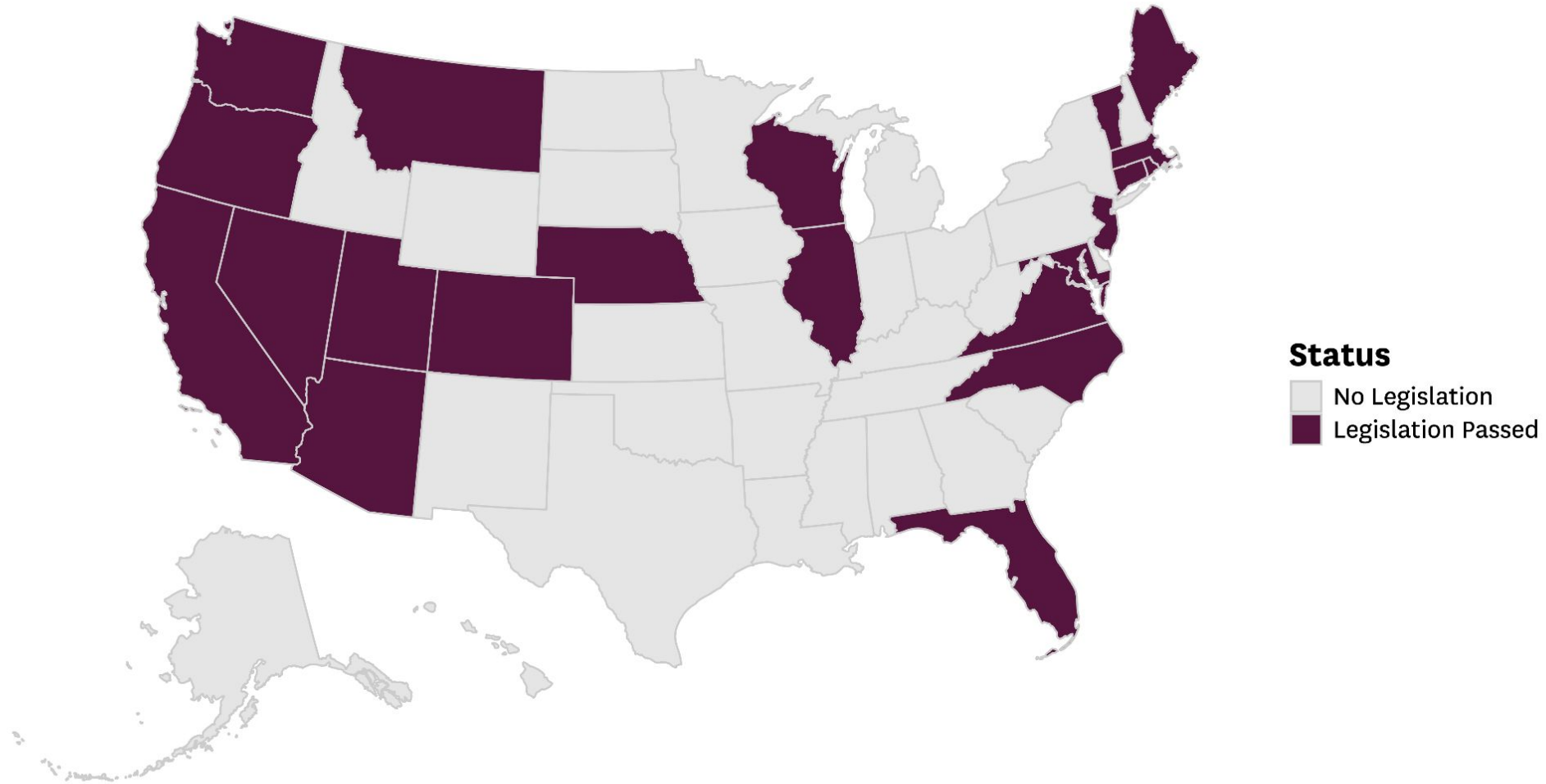
Vicki Been, John Overstreet,  
and Helen Ketema

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**Delays, Discretion,  
and Denials: State  
Legislative Reforms  
to Local Land Use  
Processes**

Vicki Been and Jacob  
Waggoner

# States that Adopted or Amended Requirements for How Local Plans Address Housing Needs



Source: NYU Furman Center Land Use Reform Tracker (2017-2025)

# State Planning Frameworks: Four Models of Recent Reforms

## Mandatory Local Planning

Each local government determines how much housing they need to permit with no mandated state targets.

## Needs-Based Assessment Methodology

Regional or state-level system to calculate housing needs without imposing production targets.

## Adoption of “Pro-Housing” Zoning Changes

Municipalities are required to adopt a specified number of “pro-housing” zoning changes from a state-approved list.

## Housing Production Targets

Determine regional housing allocations that provide strict growth targets, and a failure to meet targets is reinforced by state preemption, penalties or a “builder's remedy”.

# Tailored Target Frameworks

## California

Target determined by the state based on multiple criteria for each region, then allocated to localities and broken out by income. Localities update their housing element accordingly.

## New Jersey

Local governments determine their target for low and moderate-income housing based on state methodology, then update their housing element and fair share plan accordingly.

## Oregon

Statewide housing needs analysis is conducted, targets allocated directly to local governments who must update their plans and housing production strategy.

## Washington

Department of Commerce produces countywide housing needs, targets are then allocated down to local governments who must update their housing element.

# Uniform Target Frameworks

States which apply a standard baseline requiring 10% of the local housing stock to be affordable.

## **Connecticut**

New requirements for municipal or regional housing growth plans. State agency identifies regional housing needs, then municipalities are recommended a target.

## **Illinois**

Statutory requirements for affordable housing plans for municipalities below the 10% threshold.

## **Massachusetts**

Requires 10% affordable housing stock; additional state planning requirements for local

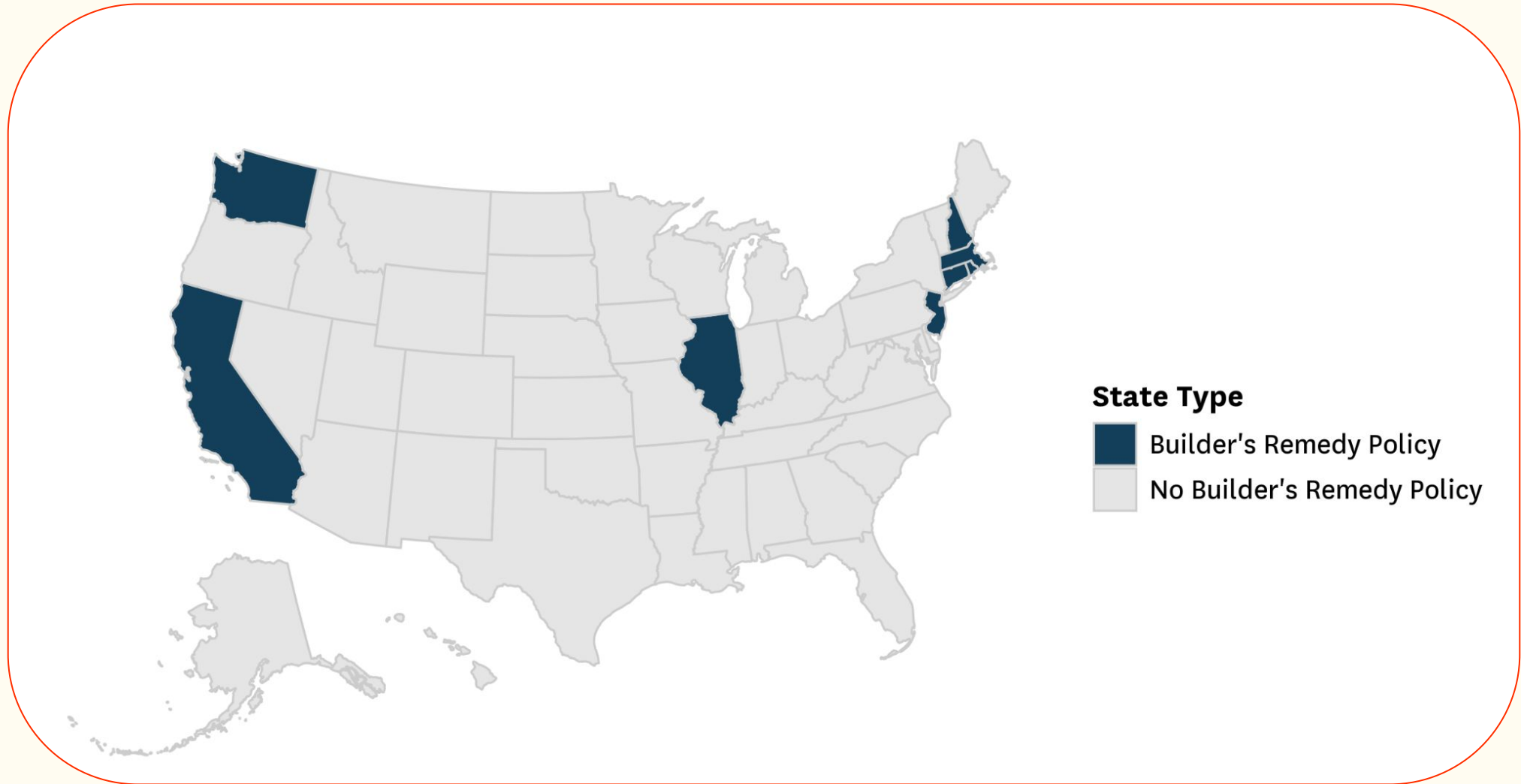
## **Rhode Island**

Localities that have not yet met this target must have a compliant land use plan that provides for progress towards meeting the goal of at least 10% of housing stock being affordable housing.

# Builder's Remedy

The builder's remedy provides individual projects a potential bypass to restrictive local land use regulations, and serves as both a potential compliance incentive and an enforcement tool against non-compliant localities.

# 8 States With Active Builder's Remedy Laws



# Three Core Components of Builder's Remedy

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## Safe Harbor Requirements

Municipalities meeting certain criteria are exempt from the remedy. For example, if a municipality reaches their housing target or maintains a compliant housing plan, a developer cannot exercise the builder's remedy.

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## Project Eligibility

Each proposed development must qualify for the builder's remedy. Generally, a project must allocate a particular share of affordable units to households with specific levels of income.

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## Review Procedure

Establishing a tiered process to (1) determine whether the first two conditions are met, (2) create a local process to permit the project, and (3) a process to escalate the project and use the remedy (for example through the courts or state administrative agencies).

# Procedural Reforms

Even where zoning allows housing, the rules governing the review and approval of a project can impose independent costs, delays, and uncertainty.

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## By-Right & Ministerial

States are requiring that municipalities shift from a discretionary approval process using subjective criteria to a by-right process with ministerial approvals using clearer, objective standards.

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## Timing & Predictability

States are imposing decision “shot-clocks” and limiting the number of forums for public input to reduce delays and to prevent requirements from changing mid-review.

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## Judicial Review

Litigation can also impose costs and delays. States are changing who may challenge decisions, burdens of proof, judicial deference, and fee rules.

# Massachusetts: Reforms to Local Zoning

## Planning & Housing Targets

- Municipal target for 10% of the local stock being income-restricted affordable housing
- Demonstrated progress + approved Housing Production Plans offer temporary safe harbor from the builder's remedy.

## Builder's Remedy: Chapter 40B

- Developer can bypass local zoning when targets are missed
- One study found that subsidized housing rose from 7.8% to 9.2% of statewide stock between 1997 and 2017

## Procedure & reforms to streamlined review

- Builder applies for a comprehensive permit through the municipal board of appeals
- Housing Appeals Committee (HAC) hears appeals on denied applications
- Requiring new districts to allow multifamily housing as-of-right near transit (MBTA Law)

## Chapter 40B Planning and Information

The following information is provided to assist planners and developers in their affordable housing efforts.

Chapter 40B is a state statute, which enables local Zoning Boards of Appeals to approve affordable housing developments under flexible rules if at least 20-25% of the units have long-term affordability restrictions.



168 MBTA Communities submitted and/or adopted zoning to comply with the law.  
159 have been determined fully or conditionally compliant by EOHLC.

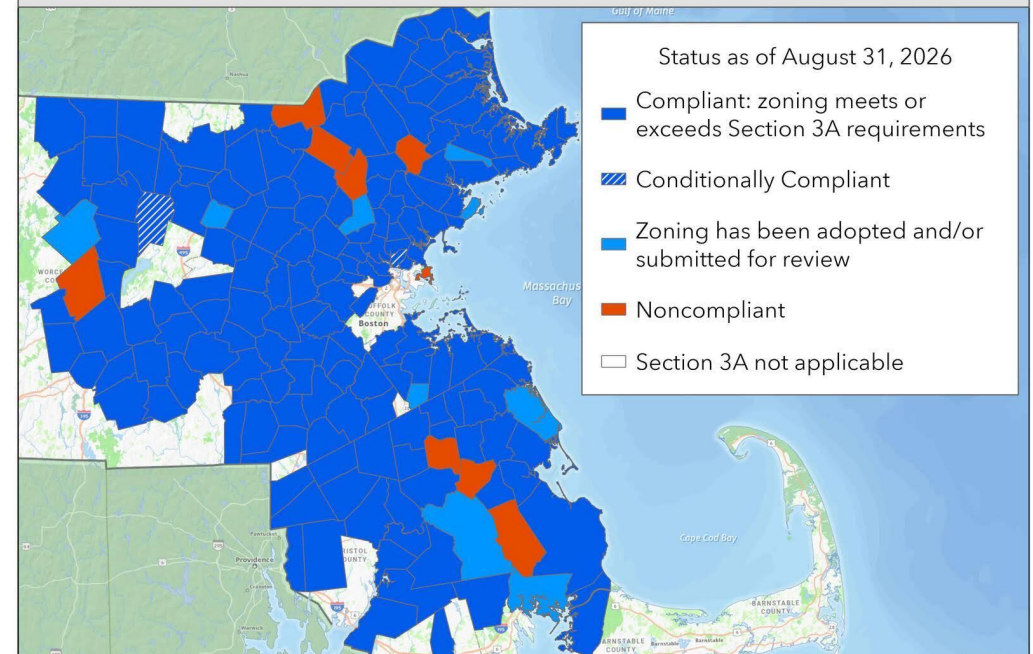


Image Source: Mass.gov

# California: Regional Housing Needs and Local Accountability

## RHNA & Housing Element

- Regional Housing Needs Allocation (RHNA): targets given to local government
- Housing Element must accommodate targets, certified by the state Department for Housing and Community Development

## Reforms to the Builder's Remedy

- Allows developers to bypass local zoning when RHNA targets are missed and the local housing element is not in compliance with state law.
- Project must set-aside 20% of units for low-incomes or 100% for moderate-incomes to qualify

## Streamlined Review

- SB 35 / SB 330 mandated ministerial, objective standards, limit public hearings and set permit shot-clocks
- Shifts legal burden to local boards to justify denials by preponderance of evidence (Housing Accountability Act)



Approved "Builder's Remedy" Project: 9441 Olympic Blvd, Beverly Hills. Image source: Ottinger Architects

# Our Panel



**Vicki Been**  
**Moderator**

Judge Edward Weinfeld  
Professor of Law at NYU  
School of Law, Affiliated  
Professor of Public Policy,  
NYU Wagner Graduate  
School of Public Services,  
and Faculty Director, NYU  
Furman Center



**Amy Dain**

Senior Fellow, Boston  
Indicators



**Anne Aurelia Fritz**

Housing Section Manager,  
Growth Management  
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**William Fulton**

Co-Director, Center for  
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UC San Diego, and Fellow,  
Terner Center for Housing  
Innovation at the  
University of California,  
Berkeley



**Katherine Payne**

Managing Director of  
Operations and Senior  
Planner, Fair Share Housing  
Center

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on State Land Use,  
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