FPI
Fiscal Policy Institute

540 Broadway
Albany, NY 12207
Tel: 917-565-0715
press@fiscalpolicy.org

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The Senate's Housing Proposal: An Important Milestone Toward Comprehensive Housing Policy

Introduction

In this year's housing debate, the New York State Senate put forward a set of housing proposals that attempts to comprehensively address the housing supply and affordability issues that currently plague the State. This set of proposals addresses all three pillars of robust housing policy:

- **Increased Supply**: the sufficient supply of market rate of housing, which must involve eliminating restrictive zoning regulations and might also include incentives or direct investment to stimulate new construction,

- **Tenant Protections:** the protection of existing tenants from market pressures and predatory acts by landlords, and

- **Social Housing:** publicly financing and constructing below-market housing to low- and middle-income households.

The Senate's fiscal year 2025 budget proposal makes substantial progress toward a comprehensive, ambitious housing package. The policies included address the overall supply of housing using a combination of tax incentives for housing, changes to zoning regulations that will allow for more housing construction, and direct spending on new housing development. The Senate also allocates funds for legal services to support tenants and low-income homeowners. Finally, the Senate proposes the creation of the New York Housing Opportunity Corporation (NYHOC) to purchase and develop new affordable housing in the state.

Increasing housing supply: Tax incentives, land use reforms, and direct spending proposed — but not enough to make a dent

The Senate puts forward a range of policies that would increase the supply of new housing across the income distribution. These housing supply measures can be categorized into three types: tax incentives to developers, land-use reform (i.e. eliminating restrictive zoning regulations), and direct State spending on development.

I. Tax incentive programs

Tax incentive programs generally give housing developers tax breaks for creating new housing that includes affordable units, where such developments would not be feasible without financial support from the state.

In its one-house proposal, the Senate responded to multiple tax incentives proposed in the Executive budget proposal. First, the Senate signaled openness to negotiations around the executive budget's ANNY proposal (a replacement of 421-a, which expired in 2022), making its adoption contingent on enacting greater tenant protections.

Second, the Senate modified a proposed executive budget tax incentive for commercial-to-residential conversions in New York City. The Senate proposed increasing the share of income-restricted units required from 20 percent, as proposed by the executive budget, to 25 percent. Further, the Senate proposal defines a 19-year tax benefit for program beneficiaries, while the executive budget left program benefits undefined, to be set by State's housing agency, the Division of Homes and Community Renewal (HCR) after the law is enacted. The Senate's proposed tax benefit modifies a version of the bill proposed in last year's executive budget. FPI estimated that proposal would cost New York City $110 million annually.[i] The more generous benefits proposed by the Senate could cost the City $180 million per year. Finally, the Senate proposed a new tax incentive, the 421-p program, that would provide a tax benefit for the development of newly built or converted multifamily housing in cities outside of New York City. The program's features, including its affordability targets, would be set at the regional level by New York's housing agency, the Division of Homes and Community Renewal (HCR). Cities would need to opt in for the program to take effect.

II. Land use reform

The Senate proposes a bill that would spur the creation of accessory dwelling units (ADUs) — separate housing units built on the same lot as existing housing, such as in-law units built adjacent to a single-family home. The proposal would (1) provide an incentive to localities to change their land use regulations to permit ADUs and (2) create a lending program and tax abatement for ADUs built by low- and moderate-income homeowners that would be offered at below-market rent.

The Senate modifies an executive proposal to eliminate a height cap on New York City residential buildings — a policy that could increase residential density, especially in commercial-to-residential conversions, by proposing a requirement that buildings that exceed the current cap be approved through the City's onerous land use review process and subject to mandatory inclusionary housing, which requires a share of units are income-restricted. Finally, the Senate accepts an executive proposal designed to promote land use reform at the local level by conditioning existing State grants to localities on the implementation zoning reforms.

III. Direct state spending

Other Senate proposals to boost housing supply include a $40 million pilot to subsidize the creation of one- and two-family homes in five upstate cities and creating a $50 million acquisition fund for community land trusts.

Tenant protections: Additional funding for voucher program and a nod towards "Good Cause"

The Senate plan includes a broad range of tenant protection measures. The Senate would create and provide $250 million to the Housing Access Voucher Program (HAVP), which would provide housing vouchers to families that are homeless or facing eviction. Notably, while the Senate does not propose a

Good Cause Eviction bill, it indicates that a form of good cause eviction must be part of any comprehensive housing package. Good Cause Eviction legislation, as currently written, would restrict the allowable reasons for eviction or refusal to renew a lease to those that are deemed “good cause” (e.g., non-compliance with lease terms or failure to pay rent) and would limit allowable annual rent increases for all rental units statewide to 3 percent or one-and-a-half times the rate of inflation, whichever is higher. The Senate also proposes establishing and providing $115 million to an Office of Civil Representation, which would provide legal services to households facing eviction. Vulnerable households would also receive support from the Senate’s proposed Homeowner Protection Program, a $40 million program to provide housing counseling and legal services to vulnerable homeowners. Finally, the Senate proposes removing a requirement that recipients of emergency assistance for rent arrears repay that assistance.

Social housing: Pilot-sized new program to support affordable housing development

The creation of housing that is available at below-market rents to low- or middle-income renters, or social housing, is an essential complement to policies that aim to spur housing production and safeguard tenants. The Senate takes a major step toward social housing with its proposed New York Housing Opportunity Corporation (NYHOC). The Senate would appropriate $250 million in capital funding for NYHOC, a new public authority empowered to acquire property and construct new housing. The authority would be controlled by the governor, with three *ex officio* board members — the HCR commissioner, tax commissioner, and budget director, all governor appointees — four members appointed by the governor and approved by the Senate, and one each appointed by the Senate and Assembly.

Housing created by the authority would be restricted to middle income households earning no more than 165 percent of the area median income. Certain projects the authority undertakes would be exempt from environmental review, and the authority could override local land use restrictions with the approval of two-thirds of its board. Many of the authority’s projects may be built by developers; the proposal authorizes NYHOC to lease land it acquires to developers.

Beyond NYHOC, the Senate proposes a set of measures to maintain existing below-market housing. The Senate appropriates $40 million for each of two programs that would fund repairs of rent stabilized and moderate-income rental units. Finally, the Senate would appropriate $500 million in capital funding for the New York City Public Housing Authority (NYCHA) and $140 million for authorities across the state.

FPI Recommendation: A good start, but needs deeper investment, stronger rent stabilization, and greater reform to restrictive zoning

I. Strengths of the Senate plan

The Senate is right to call for a comprehensive plan to address the housing crisis that pairs housing supply policy (e.g. accepting the executive proposals to extend and replace 421-a) with tenant protections including Good Cause Eviction. These two policy aims are closely linked: while solving the housing crisis requires increasing the supply of new housing, policymakers must in parallel ensure that incumbent tenants are not made worse off.

The Senate also takes a major step forward by proposing the creation of a State authority empowered to acquire property and build mixed-income housing. The creation of social housing is essential to ensuring that ample housing is available to low- and middle-income households not served by the housing market.

Finally, the Senate proposes significant new investments in housing policy, including $640 million for public housing authorities, $250 million for NYHOC, its social housing authority, and $250 million for HAVP to provide direct support to low-income tenants at risk of losing their housing. If enacted, the Senate plan would represent a major step forward for housing policy, beginning the work of redressing a policy problem that has been long-neglected and is of central importance to New York's competitiveness and quality of life.

II. Shortcomings of the Senate plan

Under the Senate's proposed comprehensive housing package, housing supply would be addressed mainly through extensions of tax incentives, including a replacement to 421-a. The reliance on tax credits and maintenance of restrictive land-use regulations, however, will be inadequate to lower the market rate of housing and will be costly for local governments, especially New York City. Further, creating market subsidies, like HAVP, without aiming to lower the market rate of housing risks creating cost spirals that diminish the program's effectiveness.

The land use proposals the Senate does put forward, including incentivizing ADUs, are steps in the right direction, but fall short of the necessary scale of action. The Senate would limit the effect of an executive proposal to lift residential density restrictions (the FAR cap) in New York City by requiring projects to go through the City's land use review process. Because that process requires income-restricted units, no housing will be produced under the Senate plan without a replacement of the 421-a tax break. Finally, the Senate's NYHOC proposal includes an onerous process for overriding local land use restrictions, requiring a vote of two-thirds of the authority's board member. A simpler, more effective land use override is included in a separate social housing authority proposed this year.[ii]

Finally, funding NYHOC with $250 million would represent a demonstration of the social housing in New York but is not sufficient to capitalize an authority to create housing on the necessary scale. The U.S. Department of Housing and Urban Development estimates that housing construction costs for two-bedroom apartments in Downstate cities typically exceed $250,000.[iii] Thus, even if the authority builds housing on State-owned land, without acquiring new land, it may only be able to construct about 1,000 housing units — far short of the state's housing shortfall.[iv]

[i] Andrew Perry, "The cost of new property tax breaks for local governments," *Fiscal Policy Institute* (March 2023), https://fiscalpolicy.org/wp-content/uploads/2023/03/The-Cost-of-New-Property-Tax-Breaks-for-Local-Government.pdf.
[ii] https://www.nysenate.gov/legislation/bills/2023/A9088
[iii] These cost estimates exclude land acquisition and soft costs. If these costs were included, NYHOC would be able to build far fewer houses.
[iv] U.S. Department of Housing and Urban Development, "2023 Unit Total Development Cost Limits" (October 2023), https://www.hud.gov/sites/dfiles/PIH/documents/2023_Units_TDC_Limits.pdf..