



## A More In-Depth Overview of AB 334 and AB 331

### ENABLING MORE AND BALANCED OPTIONS FOR OUR LOCAL GOVERNMENTS

Our local jurisdictions need all possible tools enabled so that they may develop the best possible strategy to address housing affordability in their communities with their housing stakeholders at the table as part of the solution.

**AB334 will enable (not mandate) two additional affordable housing development tools that give local jurisdictions a balanced and comprehensive suite of tools to choose from; right now, many of the tools available cost local governments in money or property value contributed. This proposed legislation will amend NRS 278.250.**

#### It does NOT

- **Contain any mandates**
- **Allow any level of fee to be established – fees are capped**
- **Allow any ‘one-off’ fee enactments – any fee must be part of a comprehensive affordable housing policy and must be justified by economic analysis**

#### It does

- Allow local jurisdictions or regions to choose to enact fees in lieu of inclusionary zoning or a linkage fee on residential, commercial, and/or industrial development to assist in creating affordable housing needed as a result of those developments
- Cap any linkage fees at a low level such that imposition of a fee will not impede future development
- Give developers choices, fees in-lieu of inclusionary zoning policy requirements may be implemented by local governments
- Allow local jurisdictions or regions to accrue revenue to a restricted fund for affordable housing to give jurisdictions locally or regionally controlled funds to leverage with other funding sources to preserve existing affordable housing or develop additional affordable housing

**AB331 is focused on Nevada jurisdictions over 100,000 and enables them to potentially incorporate these new tools into their Affordable Housing Plans, while also asking them to establish 5-year goals for preserving or producing affordable housing units. The fee caps from AB 334 will be incorporated here as well.** Housing preservation or development is a complex and expensive process that requires a five year time horizon to succeed. For those jurisdictions that do a quality job with establishing and pursuing targets, the bill encourages the Nevada Housing Division to respond to their efforts with allocations from NHD’s resources. This proposed legislation will amend NRS 278.235.

## More About These Tools

### What is Inclusionary Zoning and In-Lieu Fees? ([NHC One Pager on In Lieu Fees HERE](#))

Inclusionary zoning (IZ) is a policy objective to create mixed income neighborhoods; it was authorized in NRS in 1999. It is a type of zoning pursuant to which a governing body requires or provides incentives to a developer who builds residential dwellings to build a certain percentage of those dwellings as affordable housing. No jurisdiction in Nevada to date has included IZ in their zoning codes. One reason is that it conflicts with many developers' business model of (fairly) uniform housing type subdivision development.

Many jurisdictions in the US have, in addition to authorizing IZ and (some) requiring mixed income housing within developments, provided an alternative to developers which is to pay a fee into an affordable housing fund in lieu of providing the mixed income housing. Enacting such a fee and the level of such a fee would have to be tied directly to the cost of achieving the mixed income objective; such fees contribute, only, to such costs; they do not bear the entirety of the cost.

### What are Linkage Fees? ([NHC One Pager on Linkage Fees HERE](#))

Linkage fees are an option for local governments to build their financial resources to address the affordable housing needs caused by new development – residential, commercial, and industrial.

New development – residential, commercial, and industrial – creates new jobs that may or may not be at a wage that can afford market rate housing. Additionally, this development also has a multiplier effect that creates additional jobs, many of which are in lower-paying service industries like grocery stores, coffee shops, restaurants, and other retail or home /personal services companies.

Linkage fees are broad-based and low rate to not impede future development. They are generally charged on a per square foot basis of new construction and rates vary from less than \$1 per square foot to upwards of \$10 per square foot. Linkage fees are set after a detailed and comprehensive economic analysis is completed to ensure a balance between the funding necessary to address the affordable housing need generated by the development or the businesses and the financial feasibility of continued new development. Linkage fees have been tested in court and found to be legally justified. However, in order to enable Nevada's jurisdictions and developers to test these tools in a controlled manner, the bill caps linkage fees that may be charged in statute at a very low level. **To underscore, this is a cap; jurisdictions may charge a fee at any level below the cap, if they choose to implement fees.** Certain development sectors are completely exempt from fees, as shown below.

#### Development Sectors and Maximum Fees

Development Sector	Cap on Linkage Fee
Industrial	\$5.00
Commercial	\$3.00
Multi-family	\$1.50

Single Family Residential >4000 square feet		\$1.50
Single Family Residential 1500-3999 sq ft		\$0.75
Institutional – education, religious		exempt
Multi-family of 10 units or fewer		exempt
Owner-occupied small business <5,000 sq ft		exempt
Single Family Residential < 1500 sq ft		exempt

More and more cities across the country are turning to linkage fees to support the demands that accompany their high growth. The City of Austin recently noted in their efforts to address their huge affordable housing needs, that linkage fees are easier to administer than density bonus programs (which were also recognized as not effective) and provide developers with certainty.

### What is Nevada doing to create and fund affordable housing now?

NRS 278.235 requires jurisdictions of 100,000 population or greater to include an affordable housing element in each Master Plan update. Currently, it identified 12 measures, or ‘tools’ that jurisdictions can use, and requires them to include 5 of the tools in their annual reports to the Nevada Housing Division.

A list of the tools (abbreviated from statutory language) is below – together with an identification of whether it actually costs the local government money to implement the tool. NHC’s observations as noted below are that most of these existing tools cost the local governments, whereas with the two proposed bills, AB 334 and AB 331, amending Chapter 278 by enabling two fee-based tools, these statutory changes would allow local governments to accrue funds to invest in affordable housing, offsetting the tools that enable them to give funds. **All those in red below cost money or the loss of money/value to the local government.**

- (a) At the expense of the city or county, **subsidizing in whole or in part impact fees and fees for the issuance of building permits**
- (b) **Selling land owned by the city or county to developers for the development of affordable housing at not more than 10 percent of the appraised value** of the land, any such savings, subsidy or reduction in price be passed on to the purchaser of housing
- (c) **Donating land owned by the city or county** to a nonprofit organization to be used for affordable housing.
- (d) Leasing land by the city or county to be used for affordable housing.
- (e) Requesting to purchase land owned by the Federal Government (BLM) at a discounted price
- (f) Establishing a trust fund for affordable housing that must be used for the acquisition, construction or rehabilitation of affordable housing.
- (g) Establishing a process that expedites the approval of plans and specifications relating to maintaining and developing affordable housing.

(h) **Providing money, support** or density bonuses for affordable housing developments that are financed with low-income housing tax credits, private activity bonds

(i) **Providing financial incentives** or density bonuses to promote appropriate transit-oriented housing developments that would include an affordable housing component.

(j) Offering density bonuses or other incentives to encourage the development of affordable housing.

(k) **Providing direct financial assistance** to qualified applicants for the purchase or rental of affordable housing.

(l) **Providing money for supportive services** necessary to enable persons with supportive housing needs to reside in affordable housing

### Leveraging Federal Funds

These additional two options would also benefit the local governments and position them to maximize the opportunities to leverage federal funds.

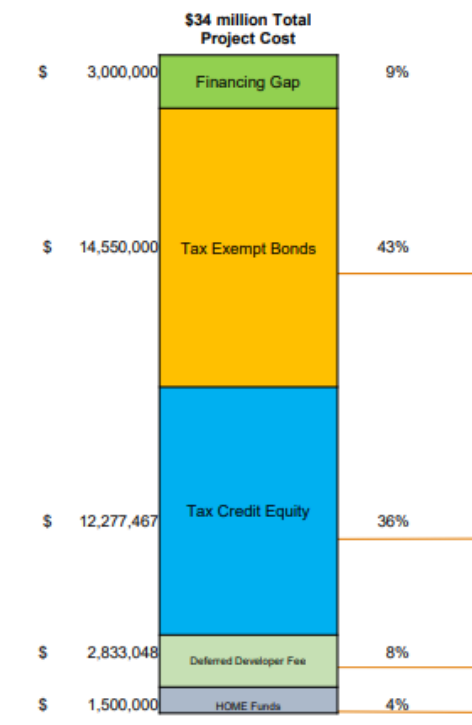
To fund affordable housing Nevada has relied upon Federal programs and tax credits to fund the number of affordable housing (AH) units that exist today. These include AH projects owned by public housing authorities, those owned by for profit and nonprofit developers and corporations using HUD and USDA programs, or federal tax credits and other subsidies, and some owned by religious/charitable organizations.

The primary non-Federal source of funding is the real estate transfer tax of .10 on every \$500 dollars of (market) value, [NRS 375.020](#). This is placed in the State Affordable Housing Trust Fund and acts as important leverage to other sources of equity and debt. This tax has generated over the past years:

Year	\$ Generated	Year	\$ Generated
FY19	\$7,848,882	FY12	\$3,757,557
FY18	\$8,031,600	FY11	\$4,004,431
FY17	\$6,521,578	FY10	\$4,146,253
FY16	\$5,887,710	FY09	\$5,120,933
FY15	\$4,987,803	FY08	\$6,671,834
FY14	\$4,664,239	FY07	\$9,350,280
FY13	\$4,271,403		

These funds are used to be the required State match to Federal HOME dollars, in a variety of other ways for unique housing needs, opportunities, and pilot projects, and importantly to provide an equity layer to the “capital stack” used to finance larger scale projects, as shown to the right, as the Financing Gap, from a project creating 200 units affordable at 60% AMI.

In 2019, the Nevada Legislature passed SB448 to create a pilot program State Transferable Tax Credit for Affordable Housing to provide up to \$40M over four years to act as another source of funds to fill gaps. 4% tax credits are plentiful, Nevada’s Private Activity Bond Allocation is an available source of tax-exempt bonds. The more equity that can be derived from the State Affordable Housing Trust Fund (funded by the real estate transfer tax) or other sources of equity/subsidy, the more units that can be created and/or subsidy provided to make units affordable to Nevadan’s at extremely low income. Legislation will be brought this session to address extending the pilot program which has been impacted by the COVID pandemic.



The 2019 session also saw passage of SB103, which allows jurisdictions to waive sewer impact fees for affordable housing projects. The City of Reno has established the local ordinance to enable this after holding stakeholder conversations to help inform the program structure. This is a prime example of the opportunity for developers and local governments to partner on behalf of creating affordable housing.