

DISCUSSION DRAFT

[WITH EHI EDITS TO OCT. 26, 2022]

117TH CONGRESS
2D SESSION

H. R. ____

To prohibit economically exclusionary governmental housing practices comprehensively, throughout the United States, due to their discriminatory effects on minority group members and low- and moderate-income persons, their adverse effects on housing availability and affordability, on development sprawl and resulting environmental damage, on commerce among the several States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Rep. _____ introduced the following bill; which was referred to the Committee on:

A BILL

To prohibit economically exclusionary governmental housing practices comprehensively, throughout the United States, due to their discriminatory effects on minority group members and low- and moderate-income persons, their adverse effects on housing availability and affordability, on development sprawl and resulting environmental damage, on commerce among the several States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Economic Fair Housing Act of 202_”.

SEC. 2. ECONOMICALLY EXCLUSIONARY GOVERNMENTAL HOUSING PRACTICES.

(a) IN GENERAL.—The Fair Housing Act (42 U.S.C. 3601 et seq.) is amended by inserting after section 806 the following:

“SEC. 806A. EXCLUSIONARY HOUSING PRACTICES.

“(a) DEFINITIONS.—For the purposes of this section:

“(1) The term ‘close family member’ means, with respect to a person, by birth or adoption, a sibling, a parent, a child, or another direct living ancestor or living descendant, a sibling of a direct living ancestor or living descendant, or another relative who provides the person’s primary personal or economic support.

“(2) (A) The term ‘economically exclusionary governmental housing practice’ means a law, regulation, policy, practice, action, or failure to act, adopted or applied by a government official or agency, or other person acting under legal authority or color of law, that would have the effect or intent of—

“(i) restricting or substantially delaying, without sufficient justification, the production, preservation, or availability of a suitable housing opportunity for a low- or moderate-income person; or

“(ii) causing or contributing to their jurisdiction’s failure to provide its fair share of its region’s housing needs.

“(B) For purposes of this paragraph, a law, regulation, or practice, shall be deemed to have an effect or intent described in subparagraph (A) if there is an alternative law, regulation, or practice that would have less of a discriminatory effect and serve the legitimate needs of the jurisdiction involved. Economically exclusionary governmental housing practices include, without limitation, the following practices and actions, where they have economically exclusionary effects without sufficient justification:

“(i) Zoning regulations.

“(ii) Growth moratoriums, growth caps, and growth phasing schedules.

“(iii) Building and housing code requirements.

“(iv) Subdivision controls.

“(v) Development-related fees, including fees for plan review, permits and inspections, capital facilities, and development impacts.

“(vi) Exactions from developments including, without limitation, required dedication of land to the public, construction or maintenance of public infrastructure, or provision of public services.

“(vii) Unwarranted requirements and delays regarding ministerial permits.

“(viii) Housing-related restrictions by non-governmental officials authorized by law to restrict residents’ housing rights (including, without limitation, homeowners associations and their officials).

“(ix) Undue administrative burdens on affordable housing management.

“(3) The term ‘exclusionary zoning’ means a land use control regulation that excludes, or is likely to exclude, a low- or moderate-income person from dwelling in the zoned area, without sufficient justification, and includes the following:

“(A) Regulations requiring unjustifiably large lot or building sizes, building setbacks, lot widths, or parking setbacks.

“(B) Regulations prohibiting, or placing unjustifiable restrictions on, accessory apartments or multifamily housing, including rental apartments and condominiums.

“(4) The term ‘government official’ includes an official of any governmental agency at any level of government, including Federal, State, and local governments.

“(5) The term ‘major workplaces in the jurisdiction’ means the five largest places of employment in the jurisdiction, as well as any other places of employment there to which 50 or more workers commute.

“(6) The term ‘primary support system’ means, with respect to a person, the primary source of needed, material assistance to the person.

“(7) The term ‘region’ means the metropolitan statistical area, if any, and the micropolitan statistical area, if any, within which the jurisdiction is located, based on official, United States Census Bureau standards.

“(8) The term ‘subregion’ means an area from which a worker normally can commute in 30 minutes or less by automobile or public transit, whichever takes less time, between the worker’s residence and one or more major workplaces, during the height of rush hour; a subregion may include an area beyond the jurisdiction or the metropolitan and micropolitan statistical area (if any) where such major workplace is located.

“(9) The term ‘regional housing needs’ means the amounts and types of housing that would be necessary in the region and each of its subregions, in order to house suitably all the people who work, live, have a close family member living, or have their primary support system in one of those subregions, or who likely would move there in the absence of exclusionary housing practices.

“(10) The term ‘suitable housing’ means housing of the type, price, size, condition, and location that are reasonably suited to the person’s circumstances, including economic circumstances, and that meet applicable standards of health and safety.

“(11) The term ‘without sufficient justification,’ with respect to a zoning, housing, or land use restriction, means an action or failure to act that—

“(A) [ALTERNATIVE 1]* actually or predictably results in a disparate impact on low- and moderate-income persons, or creates, increases, reinforces, or perpetuates economically segregated housing patterns that are not necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant.

“(B) [ALTERNATIVE 2]* results in a disparate impact on low- and moderate-income persons, and that arbitrarily operates invidiously to discriminate on a prohibited basis; but that term does not include an action that is necessary to achieve a valid governmental or private interest, unless the evidence shows that there is an available alternative practice that has less discriminatory effects and serves the legitimate needs of the entity involved.

“(12) The term ‘works in the jurisdiction’ means that a person—

“(A) performs work other than at that person’s home, for which the person receives compensation at the monetary equivalent of the minimum wage or higher, for an average of at least 1,000 hours per year; or

“(B) is primarily occupied as a student in good standing in an institution above the grade level of high school, where the person receives in-person instruction.

“(b) IN GENERAL.—It shall be unlawful for a government official or agency, or other person acting under legal authority or color of law, to create or apply any economically exclusionary governmental housing practice.

* EHI believes that either of the alternative definitions of “without sufficient justification” would be appropriate, and that a preference for one of those alternatives depends on one’s policy orientation.

“(c) OPPORTUNITY FOR SUITABLE HOUSING.— The opportunity for suitable housing in a jurisdiction, free of economically exclusionary governmental housing practices, shall be made available as close as feasible, consistent with sound planning, to where a person protected by this section—

“(1) works, resides, has a close family member residing, or has the person’s primary support system in the jurisdiction; or

“(2) in the case of a person who is not employed in, does not have a close family member residing in, or does not have a primary support system in the jurisdiction, the opportunity for suitable housing shall be made available as close as feasible, consistent with sound planning, to the major places of employment in the jurisdiction.

“(d) NONDISCRIMINATION ON BASIS OF SOURCE OF PAYMENT.—No housing provider shall discriminate among prospective owners or renters based on their source of funds, payment, or income, from any lawful source.

(b) CONFORMING AMENDMENT.—Section 802(f) of the Fair Housing Act (42 U.S.C. 3602(f)) is amended by inserting after “806,” the following: “806A,”.
