

119TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To require the Secretary of Housing and Urban Development to establish  
a Freedom to Build designation for certain localities.

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IN THE SENATE OF THE UNITED STATES

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\_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

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## **A BILL**

To require the Secretary of Housing and Urban Development  
to establish a Freedom to Build designation for certain  
localities.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Freedom to Build  
5 Act”.

6 **SEC. 2. FREEDOM TO BUILD DESIGNATION.**

7 (a) ESTABLISHMENT.—

8 (1) IN GENERAL.—Not later than 18 months  
9 after the date of enactment of this Act, the Sec-  
10 retary of Housing and Urban Development shall es-

1        establish a “Freedom to Build” designation for eligible  
2        localities that voluntarily qualify under subsection  
3        (b) or subsection (c).

4            (2) LIST.—The Secretary of Housing and  
5        Urban Development shall maintain and publish on a  
6        publicly accessible website a list of all localities that  
7        have received a Freedom to Build designation, up-  
8        dated not less frequently than annually.

9            (3) DURATION.—A Freedom to Build designa-  
10       tion shall be effective for a 5-year period beginning  
11       on the date on which the designation is made and  
12       shall be renewable upon a demonstration of contin-  
13       ued qualification under subsection (b) or subsection  
14       (c).

15           (4) RULE OF CONSTRUCTION.—Nothing in this  
16       subsection shall be construed to require any locality  
17       to apply for or obtain a Freedom to Build designa-  
18       tion.

19        (b) QUALIFICATION BY REFORM ADOPTION.—

20            (1) IN GENERAL.—A locality may qualify for a  
21       Freedom to Build designation by certifying to the  
22       Secretary of Housing and Urban Development that  
23       the locality has adopted not fewer than the minimum  
24       number of reforms specified by the Secretary under

1 paragraph (3) from each of the 3 categories de-  
2 scribed in paragraph (2).

3 (2) CATEGORIES OF REFORM.—The Secretary  
4 of Housing and Urban Development shall, through  
5 notice-and-comment rulemaking, identify specific re-  
6 forms within each of the following categories:

7 (A) UNLEASHING CONSTRUCTION INNOVA-  
8 TION.—Reforms that remove regulatory bar-  
9 riers to the use of modern construction tech-  
10 nologies, materials, and methods, including  
11 modular, pre-fabricated, panelized, and other  
12 off-site construction techniques, by aligning  
13 local requirements with nationally recognized  
14 standards and prohibiting differential treatment  
15 based on mode of construction. Such reforms  
16 may include—

17 (i) aligning local codes governing off-  
18 site construction with nationally recognized  
19 standards, including standards published  
20 by the International Code Council;

21 (ii) permitting emerging construction  
22 materials and methods without differential  
23 treatment based on whether or how a  
24 dwelling is fabricated;

1 (iii) prohibiting local amendments to  
2 the model building code that add cost be-  
3 yond what the nationally recognized code  
4 requires, unless the locality demonstrates a  
5 specific safety basis for such amendment.

6 (B) FAST-TRACKING THE APPROVAL PROC-  
7 ESS.—Reforms that reduce the time, cost, and  
8 uncertainty of the development approval process  
9 and provide builders with meaningful recourse  
10 when the process fails. Such reforms may in-  
11 clude—

12 (i) by-right approval for projects that  
13 conform to applicable zoning and building  
14 codes, without discretionary review;

15 (ii) binding maximum timelines for  
16 permit decisions and inspections, with clear  
17 remedies for the applicant, which may in-  
18 clude deemed approval or immediate ad-  
19 ministrative appeal, when deadlines are not  
20 met;

21 (iii) full public disclosure of all per-  
22 mits, approvals, inspections, and associated  
23 fees that may be required, and prohibition  
24 of undisclosed requirements or mid-process  
25 cost increases;

- 1 (iv) limiting the impact fees and off-  
2 site charges to costs with a reasonable  
3 nexus to the specific development project;
- 4 (v) authorizing builders to use quali-  
5 fied third-party inspectors for required in-  
6 spections and to select licensed profes-  
7 sionals of their choice for required studies;
- 8 (vi) protecting approved development  
9 plans from the retroactive application of  
10 code changes adopted after the date on  
11 which approval was granted;
- 12 (vii) limiting standing to challenge an  
13 approved development to parties who can  
14 demonstrate that the development would  
15 create a common-law nuisance or an imme-  
16 diate threat to health, safety, or welfare;
- 17 (viii) an expedited dispute resolution  
18 process for denials and delays, under which  
19 the jurisdiction bears the burden of dem-  
20 onstrating that its action is necessary to  
21 protect substantial public health, safety, or  
22 welfare interests, and under which the  
23 builder may recover costs and damages for  
24 unreasonable delay; and.

1 (C) DEFENDING PROPERTY RIGHTS AND  
2 FAMILY FREEDOM.—Reforms that eliminate  
3 government mandates that restrict what may be  
4 built, how it may be built, who may build it,  
5 what energy sources it may use, or what owners  
6 and tenants may do with their property, where  
7 such mandates exceed what is demonstrably re-  
8 quired for prevention of physical injury. Such  
9 reforms may include—

10 (i) prohibiting rent control or rent  
11 stabilization on dwelling units, which may  
12 exempt existing dwellings, for which a cer-  
13 tificate of occupancy is first issued after  
14 the date of designation;

15 (ii) protecting the ability of property  
16 owners to promptly address nonpayment,  
17 lease violations, fraud, and unauthorized  
18 occupancy;

19 (iii) prohibiting mandatory below-mar-  
20 ket set-asides in new development unless  
21 the requirement is fully offset by a density  
22 bonus, fee waiver, or equivalent incentive  
23 voluntarily accepted by the builder;

24 (iv) prohibiting wage, residency, or  
25 workforce-composition mandates on hous-

1 ing development projects beyond those im-  
2 posed by generally applicable State law;

3 (v) requiring that local building code  
4 provisions be consistent with evidence-  
5 based standards promulgated by the Sec-  
6 retary of Commerce, the Secretary of Agri-  
7 culture, the Secretary of Housing and  
8 Urban Development, the National Institute  
9 of Standards and Technology, or any other  
10 Federal agency, and eliminating non-safe-  
11 ty-related local additions;

12 (vi) authorizing builders to comply  
13 with a Federally recognized energy rating  
14 index as an alternative to prescriptive en-  
15 ergy efficiency codes, and prohibiting man-  
16 dates for electric-vehicle charging infra-  
17 structure or on-site renewable energy gen-  
18 eration;

19 (vii) prohibiting local ordinances that  
20 ban or effectively eliminate the choice of a  
21 property owner of a residential energy  
22 source;

23 (viii) authorizing builders to design to  
24 any version of the applicable building or  
25 energy code adopted within a reasonable

1 period, as determined by the Secretary of  
2 Housing and Urban Development, at the  
3 time of plan submission, rather than only  
4 the most recently adopted edition;

5 (ix) limiting regulatory layering, in-  
6 cluding prohibiting State requirements  
7 that add to project costs beyond applicable  
8 Federal requirements, and prohibiting local  
9 requirements that add to project costs be-  
10 yond applicable State requirements, unless  
11 justified by documented jurisdiction-spe-  
12 cific health or safety characteristics;

13 (x) prohibiting growth moratoria, con-  
14 struction caps, or geographic containment  
15 boundaries that restrict where new housing  
16 may be built;

17 (xi) prohibiting rules or policies that  
18 penalize or increase the cost of a housing  
19 development on the basis that it is pri-  
20 marily accessible by automobile.

21 (3) MINIMUM THRESHOLDS.—The Secretary of  
22 Housing and Urban Development shall, through no-  
23 tice-and-comment rulemaking, establish the min-  
24 imum number of reforms from each category de-  
25 scribed in paragraph (2) that a locality must adopt

1 to qualify for a Freedom to Build designation. The  
2 minimum number shall be not fewer than 3 reforms  
3 from each category.

4 (c) QUALIFICATION BY HOUSING SUPPLY OUT-  
5 COMES.—

6 (1) IN GENERAL.—As an alternative to quali-  
7 fication under subsection (b), a locality may qualify  
8 for a Freedom to Build designation by dem-  
9 onstrating sustained housing supply growth meeting  
10 an affordability-adjusted target established by the  
11 Secretary of Housing and Urban Development under  
12 this subsection.

13 (2) AFFORDABILITY-ADJUSTED TARGET.—The  
14 Secretary of Housing and Urban Development shall,  
15 through notice-and-comment rulemaking, establish a  
16 formula for determining the supply growth target  
17 applicable to each locality. The formula shall—

18 (A) set a higher supply growth target for  
19 localities in housing markets in which housing  
20 costs are high and rising, and a lower target,  
21 which may be zero, for localities in housing  
22 markets in which housing costs are affordable  
23 and stable;

24 (B) account for both the level of housing  
25 costs, such as the ratio of median home price

1 to median household income, and the trajectory  
2 of housing costs, such as the rate of home price  
3 or rent appreciation;

4 (C) measure housing costs at the level of  
5 the metropolitan statistical area or the housing  
6 market area defined by the Secretary, rather  
7 than at the level of the individual locality, to  
8 prevent a locality from avoiding a supply  
9 growth target applicable to its region;

10 (D) measure supply growth relative to the  
11 affordability-adjusted target rather than by raw  
12 production volume; and

13 (E) permit the supply growth target to be  
14 met by an individual locality or through docu-  
15 mented participation by the locality in a re-  
16 gional housing production compact with one or  
17 more other localities.

18 (3) DATA SOURCES.—In establishing the for-  
19 mula under paragraph (2), the Secretary of Housing  
20 and Urban Development shall use existing, publicly  
21 available data, which may include the House Price  
22 Index published by the Federal Housing Finance  
23 Agency, the American Community Survey of the Bu-  
24 reau of the Census, Fair Market Rents published by  
25 the Department of Housing and Urban Develop-

1 ment, and housing unit counts from the decennial  
2 census or the American Community Survey.

3 (d) PERIODIC REVIEW.—The Secretary of Housing  
4 and Urban Development shall review, and if appropriate  
5 update through notice-and-comment rulemaking, the spe-  
6 cific reforms identified under subsection (b)(2) and the  
7 formula established under subsection (c)(2) not less than  
8 once every 5 years after the date on which the regulations  
9 are promulgated.

10 (e) REVOCATION.—

11 (1) IN GENERAL.—The Secretary of Housing  
12 and Urban Development may revoke the Freedom to  
13 Build designation of a locality upon a finding that  
14 the locality has—

15 (A) materially reversed 1 or more quali-  
16 fying reforms adopted under subsection (b); or

17 (B) ceased to meet the supply growth tar-  
18 get under subsection (c), as applicable.

19 (2) NOTICE.—Before revoking a designation  
20 under paragraph (1), the Secretary of Housing and  
21 Urban Development shall provide the locality with  
22 written notice and a period of not less than 180  
23 days to cure the deficiency.

1 **SEC. 3. PRIORITIZATION OF FREEDOM TO BUILD DES-**  
2 **IGNATED LOCALITIES IN COMPETITIVE**  
3 **GRANTS.**

4 (a) FINDINGS.—Congress finds the following:

5 (1) Local regulatory barriers, including restric-  
6 tive zoning, burdensome permitting processes, and  
7 cost-increasing mandates, are a significant contrib-  
8 utor to housing-supply constraints and rising hous-  
9 ing costs across the United States.

10 (2) Federal investments in infrastructure,  
11 transportation, and community development gen-  
12 erate greater public benefit when the surrounding  
13 regulatory environment permits the construction of  
14 housing in response to improved accessibility and  
15 economic opportunity.

16 (3) Communities that remove regulatory bar-  
17 riers to homebuilding serve national economic, work-  
18 force development, and housing affordability objec-  
19 tives.

20 (4) Federal tax incentives for housing produc-  
21 tion and investment, including the low-income hous-  
22 ing tax credit under section 42 of the Internal Rev-  
23 enue Code of 1986, qualified opportunity zone incen-  
24 tives under section 1400Z-2 of such Code, and the  
25 new markets tax credit under section 45D of such  
26 Code, generate greater returns for taxpayers and

1 produce more housing when deployed in communities  
2 with pro-building regulatory environments.

3 (5) Federal housing, transportation, and com-  
4 munity development funds achieve greater impact  
5 when directed to communities where the regulatory  
6 environment enables those investments to produce  
7 their intended results. Directing such funds to com-  
8 munities that simultaneously maintain regulatory  
9 barriers to the construction those programs are de-  
10 signed to support diminishes the effectiveness and  
11 return on the Federal investment.

12 (6) An adequate and growing supply of housing  
13 allows demand growth from rising incomes and de-  
14 clining interest rates to result in expanded home-  
15 ownership rather than higher home prices, property  
16 taxes, and homeowner insurance premiums, thereby  
17 protecting the affordability and value of homeown-  
18 ership for current and prospective homeowners.

19 (7) The Freedom to Build designation estab-  
20 lished under section 2 provides a reliable and  
21 verifiable indicator that a community has committed  
22 to a regulatory environment supportive of housing  
23 supply growth.

24 (b) PRIORITY FOR FREEDOM TO BUILD COMMU-  
25 NITIES.—The Secretary of Housing and Urban Develop-

1 ment shall prioritize applicants that are located in or pri-  
2 marily serve communities with a current Freedom to Build  
3 designation under section 2 for any competitive grant ad-  
4 ministered by the Department of Housing and Urban De-  
5 velopment that relates to housing development, community  
6 development, or any other competitive grant relating to  
7 the construction, modification, rehabilitation, or preserva-  
8 tion of housing.

9 (c) SENSE OF CONGRESS.—It is the sense of Con-  
10 gress that Federal agencies administering competitive  
11 grant programs for infrastructure, transportation, and  
12 community development, including the Department of  
13 Transportation, the Environmental Protection Agency,  
14 and the Department of Agriculture, should consider  
15 whether an applicant is located in a locality with a current  
16 Freedom to Build designation under section 2 as a positive  
17 factor in evaluating applications for such grants where  
18 housing supply or community development is relevant to  
19 the objectives of the program.