

C O M M E N T

ENERGY EXACTIONS: SUPPLEMENTING THE LOCAL AND STATE ENERGY POLICY TOOLKIT

by Deron Lovaas

Deron Lovaas is the co-director of the Energy Efficiency for All program, and the Resilient Communities, Healthy People & Thriving Communities program at the Natural Resources Defense Counsel.

The authors make a compelling case for the use of energy exactions as a local policy tool that could complement important state policies. However, it must be designed carefully and tailored to different land uses and locations so it effectively supplements state and utility policy and does not become a barrier to housing affordability and enabler of suburban sprawl.

First—Let’s Not Exacerbate Our Affordable Housing Crisis

The authors of the paper make only passing note to a central crisis faced in the United States now: A chasm between supply and need for affordable housing. This is most compellingly described by the National Low-Income Housing Coalition in their March 2020 report *The Gap: A Shortage of Affordable Homes*:

Over 10.9 million of the nation’s 43.7 million renter households have extremely low incomes. Only 7.3 million rental homes are affordable to extremely low-income renters, assuming households should spend no more than 30% of their incomes on housing. *This supply leaves an absolute shortage of 3.6 million affordable rental homes.*¹

This figure is unacceptably high, and it excludes hundreds of thousands of homeless people as well as millions currently at risk of eviction in the wake of the economic crash of 2020.²

Stable, healthy housing is a key determinant of a thriving economy and society. There is plentiful evidence of the importance of reliable shelter as a platform for good eco-

nomic, educational, and health outcomes.³ Preservation of the existing affordable housing stock is therefore crucial. And we must also reduce barriers to construction of new affordable housing. This includes the energy cost burden for building owners and managers, which can in turn keep rents affordable. And utility costs—especially in multi-family housing—is a larger part of these buildings’ cost structures than most people realize.⁴

New public policies aimed at saving energy must not exacerbate our housing affordability crisis, meaning such policies must be designed to preserve existing and accommodate new affordable housing. However, a stringent energy code in place as well as green building requirements can increase costs and extend the time line for construction, adding to costs. An affordable housing advocacy group—Up for Growth—produced a calculator for figuring out the effects of helpful incentives versus burdensome fees and requirements on housing construction and consequent rents in housing-challenged Seattle, which is useful for understanding the challenge to policymakers considering new measures such as energy exactions.⁵

In sum, given its importance to society, affordable housing warrants special treatment when considering design of new public policies, especially fees such as an energy exaction.

1. ANDREW AURAND ET AL., THE GAP: A SHORTAGE OF AFFORDABLE HOMES, NATIONAL LOW INCOME HOUSING COALITION 2 (Mar. 2020), https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2020.pdf (emphasis added).
2. Renae Merle, *Evictions Are Likely to Skyrocket This Summer as Jobs Remain Scarce. Black Renters Will Be Hard Hit*, WASH. POST (July 6, 2020), <https://www.washingtonpost.com/business/2020/07/06/eviction-moratoriums-starwood/>.

3. See, e.g., Elizabeth J. Mueller & J. Rosie Tighe, *Making the Case for Affordable Housing: Connecting Housing With Health and Education Outcomes*, J. PLAN. LITERATURE (May 2007); KEITH WARDRIIP ET AL., THE ROLE OF AFFORDABLE HOUSING IN CREATING JOBS AND STIMULATING LOCAL ECONOMIC DEVELOPMENT: A REVIEW OF THE LITERATURE, CENTER FOR AFFORDABLE HOUSING (Jan. 2011); ALEX SCHWARTZ, HOUSING POLICY IN THE UNITED STATES (2d ed. 2010).
4. CHARLIE HARAK ET AL., PARTNERING FOR SUCCESS: AN ACTION GUIDE FOR ADVANCING UTILITY ENERGY EFFICIENCY FUNDING FOR MULTIFAMILY RENTAL HOUSING, NATIONAL HOUSING TRUST 7 (Mar. 2013), <https://assets.ctfassets.net/ntcn17ss1ow9/3yH6ZiuTeNlrjX9QS3wjza/47c14aeb86bc8b2ceef87e4b27346d61/partnering-for-success-action-guide-2013.pdf>.
5. *Seattle Housing Policy and Affordability Calculator*, UP FOR GROWTH, <https://www.upforgrowth.org/housing-calculator>.

An Illustrative Contrast: Wasteful Subsidies for Data Centers

On the other hand, some energy-consuming developments underscore the need for a new energy exaction tool, and the potentially virtuous policymaker competition mentioned as a benefit in the paper. Data centers generate few jobs and house machines not people. They consume huge amounts of energy. Yet, local and state jurisdictions offer them special favorable treatment.

Specifically, the nonprofit analytical group Good Jobs First analyzed policy benefiting these developments in a 2016 study, and found they receive enormous public subsidies, including reduced utility costs.⁶ To quote from their study:

Google, Microsoft, Facebook, Apple and Amazon Web Services alone have been awarded more than \$2 billion in subsidies. The average cost of their 11 “megadeals” profiled here is astronomical: \$1.95 million per job. At that price, taxpayers will always lose, because a worker will never pay \$1.95 million more in state and local taxes than public services she and her dependents consume.⁷

Their study describes substantial subsidy policies for data centers in 27 states. Such subsidies should obviously be eliminated.

And more relevant to the topic at hand, one can picture development’s societal benefits on a continuum with data centers at one end and affordable housing at the other. If energy exactions are used as effectively as a tool by local governments, they should be designed on a sliding scale. It might even be possible—i.e., revenue-neutral with the cost internalization advantages described in the article—to design them so developments offering multiple societal benefits are cross-subsidized by exactions charged to those with fewer such benefits.

Second—Let’s Not Exacerbate Suburban Sprawl

Ideally, affordable housing is energy efficient, powered by renewables, and *location-efficient*.

That last criterion could be easily overlooked, but it explains why another nonprofit, the Sightline Institute, is harshly critical of impact fees that are similar to energy exactions.⁸ Cities and other location-efficient sites (such as transit-oriented land) desperately need more affordable housing. Housing built in such sites requires less infrastructure and has a lower long-term environmental footprint given reduced transportation, housing, and utility needs.⁹

6. KASIA TARSCZYNSKA, *MONEY LOST TO THE CLOUD: HOW DATA CENTERS BENEFIT FROM STATE AND LOCAL GOVERNMENT SUBSIDIES*, GOOD JOBS FIRST (Oct. 2016).

7. *Id.* at 2.

8. Dan Bertolet, *Impact Fees: An Urban Planning Zombie in Need of Slaying*, SIGHTLINE INSTITUTE (Sept. 28, 2017), <https://www.sightline.org/2017/09/28/impact-fees-an-urban-planning-zombie-in-need-of-slaying/>.

9. See, e.g., research and reports on location efficiency on the Center for Neighborhood Technology website at <http://locationefficiency.cnt.org/>

Energy exactions must also be designed to favor location-efficient development as opposed to disadvantaging smart growth in states and metropolitan areas. This can also be achieved if the tool is designed flexibly depending on context.

Third—Choosing Smart Investments for Revenue From New Exactions Matters—A Lot

While a primary objective of energy exactions is cost internalization to better inform development and investment decisions, uses of revenue generated from the use of this tool is just as important as a consideration. This question is relatively unexplored in the article.

And yet it’s a crucial question. As described above, for example, revenue could help to offset subsidies for worthy new development such as affordable housing. Alternatively, revenue could go toward improving affordable housing, making it more energy efficient. This is exactly the mission of the project I co-direct, Energy Efficiency for All, and I can attest to the great need for funding and financing for such improvements in our existing affordable housing stock. In fact, a report we commissioned in 2015 found that for multifamily affordable housing:

[E]nergy efficiency programs in multifamily affordable housing could cut electricity usage by as much as 32 percent and natural gas by 24 percent. The study includes specific findings for Georgia, Illinois, Maryland, Michigan, Missouri, New York, Pennsylvania, and Virginia.¹⁰ (emphasis added)

Fourth—Local Jurisdictions Must Coordinate/Collaborate Closely With State Regulators and Utilities

One last crucial issue needs to be considered carefully. I note the authors hope that use of energy exactions will “Stimulate useful forms of regulatory competition between local communities and state utility regulators.” Such competition can create useful pressure on utilities and regulators, which are admittedly seldom centers of innovation or leadership.

As the authors also note, there also needs to be close cooperation between localities and states. This is especially the case vis-à-vis revenue investment decisions, especially in the 26 states with Energy Efficiency Resource Standards (EERS).¹¹ The authors’ claim that energy exactions are clearly enabled in 24 states currently. The subset of states where those two sets intersect would provide a good list of places where an energy exaction could be piloted as a new tool.

research-and-reports/.

10. Phil Mosenthal & Matt Socks (Optimal Energy), *Potential for Energy Savings in Affordable Multifamily Housing*, EEFA (May 2015).

11. As of May 2019, according to the American Council for an Energy-Efficient Economy (ACEEE), <https://www.aceee.org/sites/default/files/state-eers-0519.pdf>.

Local jurisdictions piloting it in such states would likely find more willing and able partners at the state level. EERSs are a key indicator of a state that is serious about saving energy as a policy priority. As the American Council for an Energy-Efficient Economy (ACEEE) notes after describing a broad suite of efficiency policy tools available to states, “The EERS represents the core of these policies, providing a foundation upon which the other policies may be layered to achieve the greatest savings.”¹²

State-local collaboration and coordination is important. While the authors make a compelling argument that energy exactions are a precise tool for targeting actors who impose new costs, i.e., developers of new buildings, it is important to incorporate this information explicitly into state utility planning to improve its effectiveness.

One of the most persuasive arguments for this new tool is that statewide utility regulation’s focus is diffuse and imprecise. Its overwhelming focus is on systemwide issues. This diffuse policymaking is necessary but insufficient for the 21st century as we face increasingly important and urgent issues including mounting consequences for our climate system as well as economic and racial inequities vis-à-vis system costs and benefits for consumers.¹³ Such emerging problems will require more sophisticated policy tools such as energy exactions.

Additionally, increasing state and utility investments in energy efficiency must be closely coordinated with investments from local energy exaction revenues. According to ACEEE, utility energy-efficiency portfolios alone drove \$8 billion of investment in electric and gas efficiency measures as of 2018. Building stock is with us for decades, and improvement and new construction projects are relatively rare events. Therefore, every retrofit and new construction project must leverage as many efficiency design features as possible. Energy exaction revenue uses must be braided with investments by state regulators and utility program administrators, especially in states with EERSs where such building projects are being implemented at a respectable annual clip.

Conclusion: A Promising New Tool

I find the case for this new tool compelling and persuasive. And there is room for more analysis, as well as for piloting the tool in select, promising geographies. Overall, to ensure this is an effective supplement to existing policy toolkits, energy exactions must be tailored to their context in order to avoid unintended consequences including sub-optimal state, utility, and local policymaking; decreased housing affordability; and increased suburban sprawl.

12. Laura Furrey & Sarah Black, *Energy Efficiency Resource Standards: A State Model*, ACEEE (Nov. 2019).

13. See, e.g., Dan Catchpole, *Utility Sector Can Help Advance Racial Equity*, https://www.newsdata.com/clearing_up/opinion_and_perspectives/utility-sector-can-help-advance-racial-equity/article_8dadbecc-b7f9-11ea-b84b-b3a650175bcb.html.