

NAHB | Delaware Senate Bill (SB) No. 23: Relating to Housing Supply and Affordability | Bill Analysis

Senate Bill 23 (Delaware) is a structural housing bill that doesn't create a new subsidy program but instead rewires how Delaware's counties and municipalities plan, zone and align with state housing goals. This piece of legislation will modernize codes, increase the housing supply and require serious planning for housing affordability. The state of Delaware needs to build more than 24,000 housing units by 2030 to meet growing demand.

BACKGROUND

Delaware is experiencing one of the most significant housing shortages in its modern history, driven by decades of underbuilding, rising demand and zoning practices that have not kept pace with demographic and economic changes. According to the 2023 Delaware State Housing Authority (DSHA) Statewide Housing Needs Assessment, 50% of renters and 20%¹ of home owners are cost burdened, meaning they spend more than 30% of their income on housing. The same assessment identified a shortage of nearly 20,000 affordable units for renters earning below 50% of Area Median Income (AMI). S.B. 23 cites this directly, noting that "Delaware lacks sufficient affordable housing...with an estimated shortage of nearly 20,000 affordable units to meet the needs of renters with incomes of less than 50% of the Area Median Income."

This shortage is not limited to low income households. DSHA's long range projections show that Delaware will need 24,400 additional housing units by 2030 to keep up with population and household growth. Over the past decade, however, housing production has not matched demand. Between 2010 and 2020, Delaware's population grew by more than 10%, one of the fastest rates in the Northeast, while housing construction lagged, especially in multifamily and moderately priced starter homes.

In 2023, the Delaware General Assembly created the Affordable Housing Production Task Force, which concluded in its April 2025 final report that local zoning reform is "essential to increasing housing supply and diversity," and recommended a statewide legislative framework to support these changes. The state also launched a technical assistance pilot through Senate Joint Resolution No. 8, helping local governments modernize their zoning codes. While several

¹ <https://www.destatehousing.com/wp-content/uploads/2024/02/2023-housing-needs-executive.pdf>

jurisdictions participated, the bill notes that voluntary participation alone is insufficient to address the statewide housing gap.

This Bill:

- S.B. 23 increases housing supply by:
- Requiring zoning to allow more housing
- Making zoning updates faster and automatic
- Forcing local governments to plan for affordable housing
- Using state funding as leverage to prevent anti housing policies
- Making comprehensive plans legally binding
- Reducing procedural barriers to rezoning
- Creating a statewide, coordinated housing strategy

These structural changes don't build homes directly — but they remove the zoning and planning barriers that currently prevent thousands of homes from being built.

ARGUMENTS of SUPPORT

S.B. 23 responds directly to Delaware's documented housing affordability crisis with clear, data-driven reforms. According to the 2023 DSHA Statewide Housing Needs Assessment, 50% of renters and 20% of homeowners are cost-burdened, spending at least 30% of their income on housing, while the state faces a shortage of nearly 20,000 affordable units for households earning below 50% of AMI.² The bill acknowledges that existing voluntary and fragmented local zoning reforms have not been sufficient to meet this scale of need. By requiring counties and municipalities to adopt enforceable affordable housing plans as part of their comprehensive plans and giving those plans the force of law, the bill ensures that planning for housing supply translates into measurable outcomes, not just policy statements. This statewide framework aligns land-use regulation with documented demand, directly targeting the structural underproduction of housing that has driven up rents and home prices across Delaware.

This piece of legislation increases housing supply by modernizing zoning and development approval processes that currently constrain production. The bill requires jurisdictions to plan for at least 20% of their housing stock to be affordable, while explicitly authorizing higher

² [Executive Summary Landscape_Final](#)

residential densities, by-right approval for multifamily housing, duplexes, triplexes, accessory dwelling units and adaptive reuse of commercial buildings for housing. Research and best practices consistently show that allowing a wider range of housing types and reducing discretionary reviews lowers per-unit development costs and accelerates production timelines, key factors in expanding supply. By shortening administrative rezoning timelines from 18 to 12 months and replacing discretionary approvals with by-right review for compliant projects, S.B. 23 removes procedural barriers that delay housing delivery. Taken together, these reforms enable faster, more predictable housing development, helping Delaware scale production across income levels and stabilize housing costs while still allowing local governments flexibility in how they meet statewide goals.

ARGUMENTS of OPPOSITION

S.B. 23 significantly weakens local land use authority by imposing state-mandated housing requirements and giving comprehensive plans, including affordable housing plans, the force of law. Counties and municipalities are required to meet a minimum 20% affordable housing threshold and implement specified zoning changes within 12 months, regardless of local infrastructure capacity, environmental constraints or market conditions.

This bill places significant unfunded mandates on local governments, requiring extensive planning, zoning rewrites, housing inventories and annual reporting without providing dedicated state funding to cover administrative or infrastructure costs. Smaller jurisdictions may lack staff capacity to comply with the bill's technical requirements, increasing reliance on consultants and raising local taxpayer costs.

There are also legal concerns that by-right approvals and limits on discretionary review could increase litigation risk, especially in cases involving traffic impacts, environmental review or neighborhood compatibility. While zoning reform is widely discussed as a tool to support housing supply, critics note that zoning changes alone do not guarantee construction, especially when high interest rates, labor shortages and rising material costs remain key barriers to development.

SIMILAR LEGISLATION/COURT CASES:

Similar Legislation:



| State and Local Government Affairs Department

- Massachusetts: MBTA Communities Act (2021)
- Oregon: HB 2001 (2019) “Middle Housing” Law
- New Jersey: Mount Laurel Doctrine (1975–Present)

Court Rulings:

- Attorney General v. Town of Milton (MA Sup. Judicial Court, Jan. 2025): upheld the law as constitutional and enforceable
- Town of Duxbury et al. v. Commonwealth (MA Superior Court, June 2025): rejected claims that the law was an “unfunded mandate.”

POTENTIAL SUPPORT:

Housing Alliance Delaware (HAD); Home Builders Association of Delaware; Delaware Affordable Housing Coalition (DAHCC); H.O.M.E.S. Campaign; Habitat for Humanity affiliates

POTENTIAL OPPOSITION:

Cities/Towns; HOA Coalitions; Land Conservation & Environmental Advocacy Groups; NIMBY; Groups that traditionally are anti-mandate.