

Senate Substitute 2 for Senate Bill 23

153rd General Assembly (2025—2026)

AN ACT TO AMEND TITLE 9, TITLE 22, AND TITLE 29 OF THE DELAWARE CODE RELATING TO HOUSING SUPPLY AND HOUSING AFFORDABILITY

Primary Sponsor: Huxtable

Additional Sponsor(s): Rep. K. Johnson

Co-Sponsors: Sen. Hofner, Lockman, Sokola, Sturgeon, Townsend; Reps. Berry, Bolden, Chukwuocha, Cooke, Griffith, Hensley, Lambert, Ortega, Michael Smith

This Act aims to increase this State's supply of housing. Despite rapid development, Delaware is facing a significant and growing shortage of affordable housing. Senate Joint Resolution No. 8 of the 1st session of the 153rd General Assembly created a pilot program designed to encourage local zoning reform efforts that would help increase affordable housing. While several local jurisdictions have taken advantage of the assistance offered by Senate Joint Resolution 8, the scope of the problem is statewide, and it will take more than isolated local reform to scale up housing production, particularly affordable housing production, to the degree necessary to meet this State's needs. This Act seeks to address those needs by increasing access to housing for all income levels while allowing local jurisdictions the flexibility to develop their own strategies for doing so. This Act is a second Senate substitute for Senate Bill No. 23 and differs from the first Senate substitute for Senate Bill No. 23 as follows: (1) Senate Substitute No. 2 refines the process that occurs if a County fails to rezone in accordance with its comprehensive plan within 12 months. Like Senate Substitute No. 1, it provides that if rezoning does not occur as required, a property owner's application must be approved if the requested zoning classification is consistent with future land use map or map series and implementing provisions of the comprehensive plan. Senate Substitute No. 2 adds that denial can only occur if the County makes written findings that the requested zoning classification is inconsistent with the future land use map or map series or implementing provisions of the comprehensive plan, or that the application fails to satisfy procedural or submission requirements. If neither of these apply, the application must be approved within 120 days, unless the applicant agrees in writing to an extension. Previously, the application had to be approved within 90 days. (2) Senate Bill No. 23 required a minimum of 4 mandatory elements of an affordable housing plan. Senate Substitute No. 1 increased the number of required elements of the affordable housing plan from 4 to 5 by moving an element from optional to mandatory. That element was that an affordable housing plan for a jurisdiction with greater than 10,000 population must include the identification of 1 or more zoning designations that allow and are suitable for residential uses where emergency shelters, group homes, recovery homes, or other supportive housing are allowed as a permitted use without a conditional use or other discretionary permit required. Senate Substitute No. 2 removes this as a mandatory element and changes the newly optional element to read, "the amendment of land use regulations to allow transitional housing, emergency housing shelters, group homes, recovery homes, or other supportive housing as a permitted use in at least 1 residential zone." It also removes the 10,000 population cap, making the element an option for all local jurisdictions, regardless of population size. (3) Senate Bill No. 23 and Senate Substitute No. 1 for Senate Bill No. 23 required the Director of the Delaware State Housing Authority to approve all affordable housing plans. Senate Substitute No. 2 shifts the role of Delaware State Housing Authority to a more collaborative one by requiring local jurisdictions to work with the Delaware State Housing Authority to develop its plan. (4) Senate Substitute No. 2 gives local jurisdictions credit for measures they are already taking to increase affordable housing. Any elements of affordable housing plans adopted on or after July 15, 2024, count toward meeting the requirements of the plan. This avoids duplication of efforts and recognizes the meaningful affordable housing work that many local jurisdictions are already doing. (5) Senate Substitute No. 2 recognizes that some jurisdictions are very close to completing their comprehensive plans by exempting jurisdictions from some provisions of the Affordable Housing Act if they will be adopting their next

comprehensive plan before February 1, 2027. If a local jurisdiction falls into that category, it does not need to comply with the provisions of § 9222 of the Act prior to its next 5-year review of its comprehensive plan.

(6) Senate Substitute No. 2 creates a new section addressing by-right residential uses and mixed-use uses with a majority residential component. The language around by-right review and approval previously included in the mandatory elements of an affordable housing plan section is replaced with a reference to the newly created section. Under that section, a residential development application or a mixed-use application with a majority residential component for a use that is permitted by-right under the zoning ordinance of a county or local jurisdiction will be reviewed through an administrative review and approval process, provided the application complies with objective standards, as defined in this Act. A local jurisdiction may still require review or approval by a planning commission, planning board, or other administrative body as long as the review is limited to determining compliance with objective standards.

(7) Senate Bill No. 23 and Senate Substitute No. 1 for Senate Bill No. 23 stated that the Governor's review and certification of comprehensive plans would focus in part on consistency with State development policies. Senate Substitute No. 2 modifies this slightly to require plans to "demonstrate consideration of State development policies." The goal of this change is to avoid limiting local jurisdictions to simply mirroring the contents of State development policies like State Spending Strategies, while still requiring that they consider such policies in developing their comprehensive plans.

(8) Senate Substitute No. 2 adds definitions for "homeownership unit," "rental unit," and "by-right" to Title 29.

(9) Senate Bill No. 23 and Senate Substitute No. 1 referred to mixed-use developments in one of the elements that may be included in an affordable housing plan. Senate Substitute No. 2 clarifies that such mixed-use developments must have a majority residential component.

(10) Senate Substitute No. 2 adds to the list of 10 (now 11) options available to local jurisdictions to meet their obligation to increase and diversify affordable housing. This new option allows a local jurisdiction to implement a strategy that is not listed among the original 10 elements, from which local jurisdictions must select 5, but that the Delaware State Housing Authority approves as meeting the goals of that section of this Act.

(11) Senate Bill No. 23 and both substitutes require counties to amend their official zoning maps within 12 months of the adoption of or revision to their comprehensive plans. If a county does not do so, a rezoning application filed by a property owner must be approved if the requested zoning classification is consistent with the comprehensive plan, unless the county makes certain findings. If an application is submitted under this provision, a county must make a completeness determination within a certain time period, or the application is deemed complete. In Senate Bill No. 23 and Senate Substitute No. 1, that period was 10 days. Senate Substitute No. 2 increases it to 21 days. Like the first substitute for Senate Bill No. 23, Senate Substitute No. 2 differs from Senate Bill No. 23 as follows:

- (1) Both substitutes remove a provision that would have given County comprehensive plans the force of law. Current law, where only the land use map or map series component of the comprehensive plan has the force of law, remains in place.
- (2) Both substitutes reduce the amount of time a County has to rezone to conform land use with its comprehensive plan from 18 to 12 months.
- (3) Senate Bill No. 23 gave local jurisdictions 20 days to complete revisions to comprehensive plans that were returned by the Governor for further revision. Both substitutes increase that period to 45 days and add additional details regarding the revision and certification process.
- (4) Both substitutes reduce the requirements for the affordable housing plan under newly created Subchapter III of Chapter 92 of Title 29 to reflect the fact that local jurisdictions already include some of the information required under Senate Bill No. 23 in their comprehensive plans.
- (5) Senate Substitute No. 1 and Senate Substitute No. 2 both remove some of the reporting requirements included in Senate Bill 23 to simplify the process for local jurisdictions. Reporting is still mandatory, and the Delaware State Housing Authority and the Office of State Planning Coordination are still required to publish reported information on the Housing Authority website on an annual basis so that the public can see how local jurisdictions are meeting their obligations under this Act.
- (6) Both substitutes remove technical corrections that appeared in Senate Bill No. 23. Those corrections had been intended to make current code consistent with the standards of the Delaware Legislative Drafting Manual, but the substitutes remove them to avoid confusion over which changes are technical, and which are substantive. Under § 1 of Article IX of the Delaware Constitution, this Act requires a two-thirds majority vote because the amendments it makes to Title 22 of the Delaware Code would indirectly amend the charter of one or more incorporated municipalities.

153nd GENERAL ASSEMBLY

House: 29 In Favor; 11 Oppose; 1 Not Voting

Senate: 14 In Favor; 6 Oppose; 1 Absentee

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