



Breaking Ground: An Examination of Effective State Housing Reforms in 2023

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In an article published six months ago, one of us flagged a “housing revolution brewing” among state legislatures in 2023.¹ With over 200 bills related to housing supply introduced so far, there has certainly been no lack of would-be revolutionaries. And in four states—Montana, Rhode Island, Vermont, and Washington—these efforts have clearly succeeded on a large scale. Elsewhere, results have been mixed. High-profile reform efforts sputtered in Arizona, Colorado, and New York. More quietly, significant reforms have been passed in several other states (see figure 1).

With half the year spent, most states have concluded their legislative sessions, allowing us a moment for retrospection. With help from colleagues, we read and tracked about 200 state-level bills that touched on housing supply policies, from accessory dwelling unit (ADU) regulations to minimum lot sizes to permit process streamlining. Our analysis was limited in two notable ways: we did not track bills related to housing finance, such as affordable housing funding and tax policy, and we set aside California entirely. The Golden State has developed a complex, unique housing legislation landscape, and many other organizations and observers are ably tracking California housing policy.²

While the small size of our dataset makes it hard for us to draw firm conclusions, we have observed a few themes in the data:

1. Four states passed ambitious “housing packages,” significantly revising (if not fully revolutionizing) their housing supply regimes.
2. In three additional states where housing omnibus bills were introduced, the bills faced high-profile public debate and vigorous opposition. In these states, the major package ultimately failed.

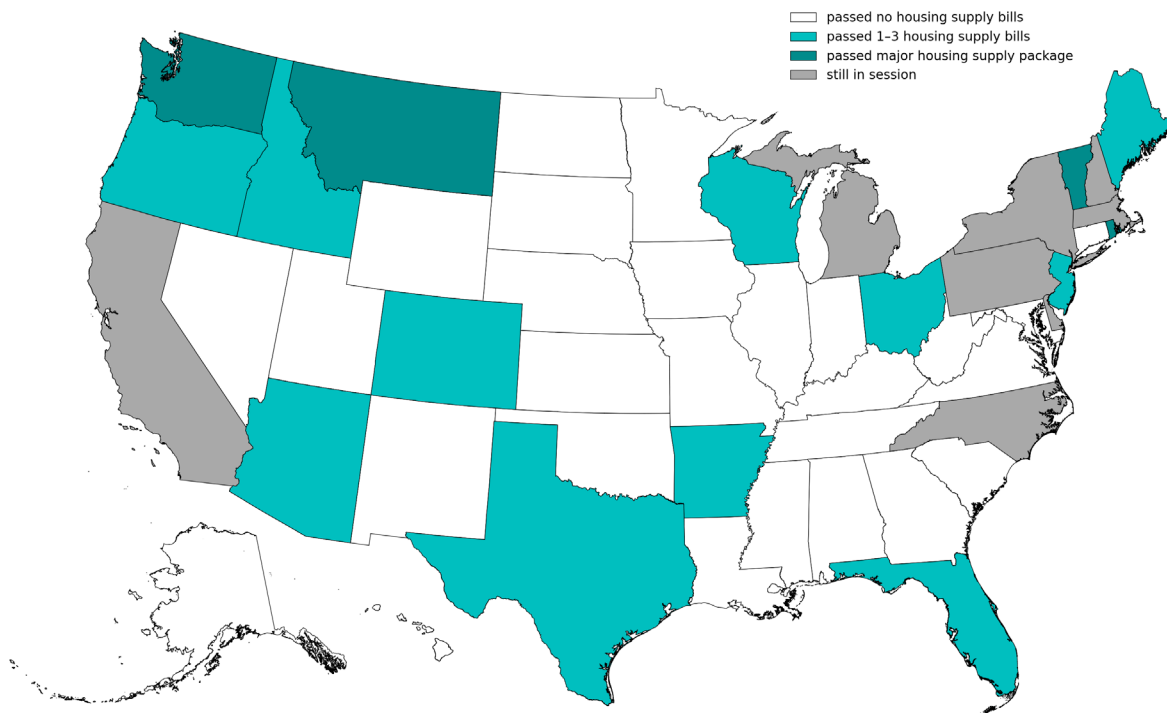
3. The most common legislative successes were permit streamlining and allowing residential uses in commercial zones.
4. Political alignment on housing supply remains chaotic: in different states considering similar legislation, the same party ended up opposing it in one state and supporting it in another. (This can be said of both major parties.)

THE MONTANA MIRACLE

Montana has become the first red state to enact sweeping housing legislation to confront a cost crisis. The COVID-19 pandemic accelerated the already rapid pace of in-migration and housing cost increase in Montana. To organize support for significant regulatory reforms, Governor Greg Gianforte convened a broad-based housing task force that met for a few months in late 2022 and delivered recommendations for strong actions.³ The task force germinated working relationships among legislators, think tankers, and housing advocates from across the political spectrum and helped the diverse group coalesce around a broad set of ideas.

A coalition of political leaders and organizations, including the Frontier Institute and Shelter WF, were able to redirect the public discourse about housing. Instead of merely bemoaning the influx

Figure 1. States Where Housing Supply Bills Passed in 2023, through June 30



Source: Authors' tabulation and analysis. State boundary shapefile: IPUMS NHGIS, University of Minnesota, <https://www.nhgis.org/>.

of Californians making cash offers, these housing advocates identified zoning reform as part of the long-term solution to higher demand. The Frontier Institute’s Zoning Atlas,⁴ along with the media coverage of zoning that it drove,⁵ was a key tool for framing the housing debate around laws rather than people—focusing on making Montana affordable for everyone who wants to come, not litigating who has the right to move there.

A separate, informal working group including the Montana League of Cities and Towns had been studying housing costs prior to the governor’s formation of the task force. Facing a public consensus that change was necessary, this working group accelerated its efforts to identify ways to improve local planning and zoning procedures, ultimately crafting legislation to streamline the permitting process. The League’s positive involvement in land use reform, with its executive director largely writing the permitting reform bill, set Montana apart from other states, where organizations representing local governments have often been leading opponents of any state housing supply legislation.⁶

With the governor’s support and majorities from both political parties, the League’s multifaceted bill (S.B. 382) became law, as did six bills codifying recommendations from the governor’s task force.

- H.B. 211 streamlines the subdivision process, especially by expanding exemptions from the state’s environmental assessment requirement.
- H.B. 246 clarifies that cities can allow tiny homes.
- S.B. 245 opens commercial zones to housing development.
- S.B. 323 allows duplexes anywhere single-family homes are permitted in cities with more than 5,000 inhabitants.
- S.B. 382, in addition to formalizing planning procedures, requires each city to enact any five out of a list of 14 significant pro-housing regulatory changes.
- S.B. 407 limits the use of design review.
- S.B. 528 requires municipalities to permit ADUs without parking mandates or owner-occupancy requirements.

Success was not comprehensive, however. H.B. 337 and S.B. 379, which would have capped minimum lot sizes at 2,500 square feet where lots are served by municipal water and sewer, were both tabled in a state house committee.

THE DAM BREAKS IN WASHINGTON

Meanwhile, an equally revolutionary housing package passed in Olympia. While Oregon and California had each undertaken major state-level reforms in the past six years, state action had been a

lower priority in Washington, which had arguably less restrictive housing policies in place at the local level. The Sightline Institute’s Dan Bertolet notes several factors that led to “the dam breaking” to make 2023 “the year of housing” in Washington state, including worsening affordability and a growing, bipartisan consensus that insufficient housing supply was the root cause of high prices.⁷

Elsewhere, Bertolet lists and explains 17 housing supply bills—along with 33 housing “stability” and “subsidy” bills—that were introduced in Washington in 2023. The majority of the housing supply bills passed:⁸

- H.B. 1042 makes it easier to subdivide existing multifamily buildings to create smaller units.
- H.B. 1110 requires large cities and cities in major metropolitan areas to allow duplexes, fourplexes, or sixplexes, depending on the city’s size, the property’s proximity to transit, and the developer’s inclusion of affordable units.
- H.B. 1293 limits design review, which has been a major headache for Seattle builders, to “clear and objective” standards.
- H.B. 1337 broadly legalizes ADUs and forecloses the local regulations that have most often made building them impracticable.
- S.B. 5058 and S.B. 5258 ease barriers to condo construction, including construction defect litigation law.
- S.B. 5290 tightens permitting rules and provides for technical assistance and state grants to help local governments shift to digital systems.
- S.B. 5412 exempts most housing developments within planned “urban growth areas” from review under the onerous⁹ State Environmental Policy Act.
- S.B. 5491 directs the state building code council to work on enabling single-stair apartment buildings up to six stories.

As in Montana, some of the most ambitious bills did not reach a floor vote. Bills allowing residential lot splits, promoting transit-oriented development, and removing parking requirements near transit all failed to reach a floor vote.

A RHODE ISLAND DOZEN

Like Montana and Washington, Rhode Island responded to a serious housing cost problem by passing a large package of bills, which one of us has reviewed in greater detail elsewhere.¹⁰ But Rhode Island’s bills were more modest than Montana’s and Washington’s, lubricating the gears of the state’s existing institutions rather than enacting large-scale deregulation. House Speaker Joseph Shekarchi (D-Warwick), who championed the reforms, clearly drew on his professional expertise as a zoning attorney to identify areas for procedural streamlining.

A pair of bills upended so-called “inclusionary zoning,” a controversial zoning requirement that has rapidly caught on among Rhode Island towns. Per S. 1051, municipalities will have to abandon inclusionary zoning ordinances or rewrite them to offer far larger density bonuses in exchange for requiring developers to subsidize below-market-rate units in every development. At the same time, S. 1037 offers developers anywhere in the state a sizable density bonus if they choose to include a large share of below-market-rate units in a development.

VERMONT’S EVERYTHING BAGEL

Vermont rolled its entire reform package into a single, ambitious bill, S. 100. The sweeping reform limits density and lot size restrictions to five or more units per acre, legalizes multi-family housing up to fourplexes in places served by sewers and duplexes elsewhere, limits parking minimums to one or one and a half spaces per unit, raises the standard for use of the onerous state-level development review process, and allows for administrative approval of plats and minor subdivisions, among other provisions.

Vermont’s sudden success was years in the making. In 2020, the legislature passed S. 237, a bill originally written to preempt a wide range of local restrictions; those preemptions were mostly dropped from the final bill, which provided for modest minimum lot size reform and ADU protections. Beginning in 2022, the *Seven Days* independent news site began a long-running series called Locked Out, which helped to define the contours of housing problems in the Green Mountain State.¹¹ In 2023, Rep. Seth Bongartz (D-Manchester) convened a large group of stakeholders for regular meetings; over several months, they hammered out a bill that all could tolerate.¹²

A key leverage point was a long-standing state statute known as Act 250, which layers state review on top of local review for larger developments. The Vermont League of Cities and Towns prioritized reforming Act 250, while environmental groups wanted to leave Act 250 in place while preempting local authority to block infill development. By including both groups in the negotiation process, Bongartz and other leaders were able to broker an acceptable compromise.

TOO BIG TO SUCCEED?

Some of the biggest headlines in housing politics this year were the disappointments. When the year began, housing supply advocates had high hopes for New York governor Kathy Hochul’s budget proposal¹³ and for Colorado governor Jared Polis’s package of housing reforms.¹⁴ The New York proposal would have required municipalities to meet housing production growth targets, and it would have made sweeping reforms to housing policy in neighborhoods served by transit. The Colorado reforms would have addressed issue areas including missing-middle housing and transit-oriented development, and would have created a fair-share planning process similar to California’s, which that state has begun using to require localities to rezone for additional hous-

ing supply. Both proposals faced opposition from Republicans and suburban Democrats, and they went nowhere.

Another sweeping housing supply bill, Arizona's S.B. 1117, was voted down in the state senate and reappeared as a package of smaller bills. Ultimately, only one modest, unrelated measure passed Arizona's divided legislature. Even taking Vermont's success in the balance, the record for "everything bagel" bills was poor.

These failures are superficially reminiscent of the earliest major bills of the YIMBY ("yes in my backyard") movement, California state senator Scott Wiener's S.B. 827 and S.B. 50. Those became lightning rods for opposition, dominating coverage and ultimately failing, while less-ambitious measures were passed—perhaps as an implicit compromise by legislators facing constituent pressure from opposing poles.¹⁵ New York and Colorado did not match the modest success achieved in California, however, because governors Hochul and Polis had not prepared strong contingency plans in case their proposals failed.¹⁶

At a deeper level, the productive failures of California's S.B. 827 and S.B. 50 have more in common with the successes in Montana, Rhode Island, and Washington. Despite large majorities in support of most pro-housing measures, the most ambitious bills failed in each state. Football star Randy Moss once defended statistically lackluster games by noting, "My role is to take the ball deep, take the top off the defense."¹⁷ Housing reformers seeking major statewide changes can similarly expect that their "deepest threat" will draw blanket coverage and open up a path for "compromises" that amount to meaningful victories.

OFFICE APOCALYPSE, MEET HOUSING SHORTAGE

In 2022 and 2023, it became clear that office vacancies would not snap back to pre-COVID rates.¹⁸ The need to rethink downtowns and liquidate underperforming commercial space found an obvious complement in the shortage of residential space. Cities have needed little prompting to encourage commercial-to-residential conversions, but at least five states have tried to accelerate the trend with bills allowing conversions in at least some instances. The most important may be Florida's S.B. 102, which allows not just the conversion of existing structures but new multifamily construction in any commercial or industrial zone, as long as a large share of the new units are restricted to moderate-income residents.¹⁹ The measure also allows new multifamily buildings in these zones to match the density of the jurisdiction's densest zone and to match the height limit of any zone within a mile.

As table 1 shows, allowing more residential uses in commercial zones was the second most popular of the categories we tracked, behind only permit streamlining, a broadly defined category that is almost always a mechanism of major housing supply reforms.

We were surprised that ADU reforms were relatively muted, given that ADUs have previously been a tentative first step toward broad housing supply deregulation. In addition to the bills passed in Montana and Washington, we identified small tweaks to the law governing ADUs in Idaho and Maine.

Table 1. Policies Considered and Bills Passed in 2023 for Selected Housing Policy Areas

POLICY	STATES WHERE A BILL CONCERNING THE POLICY WAS INTRODUCED	BILLS PASSED (AS OF JUNE 30)
Easier permitting for accessory dwelling units	AZ, CO, HI, ID, ME, MA, MN, MT, NH, NJ, NM, NY, NC, RI, TX, VT, VA, WA	ID: H. 166 ME: L.D. 1706 MT: S.B. 528 WA: H.B. 1337
Legalization of duplex, triplex, or fourplex housing in single-family zones	AZ, CO, MA, MN, MT, NH, NM, NY, OR, VT, WA	MT: S.B. 323 VT: S. 100 WA: H.B. 1110
Zoning for high density near transit	AZ, CO, CT, MA, NJ, NY, RI, WA	RI: S.B. 1052
Relaxation of parking minimums for most housing types	AZ, CO, ME, MD, MA, MT, NJ, NY, OK, VT, WA	MT: S.B. 245, S.B. 382 VT: S. 100
Relaxation of minimum lot size requirements	AZ, ME, MA, MT, NY, NC, RI, TX, VT, WA	MT: S.B. 382 RI: S.B. 1032 VT: S. 100
Streamlining of the permitting process	AZ, FL, ME, MA, MN, MT, NY, OR, RI, SC, TX, VT, VA, WA, WI	FL: S.B. 512 MT: H.B. 211, S.B. 407, S.B. 382 NJ: A. 573 RI: S.B. 1032, S.B. 1034, S.B. 1050, S.B. 1053 TX: H.B. 14 VT: S. 100 WA: H.B. 1293, S.B. 5412, S.B. 5290 WI: A.B. 266
“Shot clock” for permitting	AZ, AR, FL, MN, NJ, NY, NC, TX, WA	AR: H.B. 1207 TX: H.B. 3697, H.B. 3699
Relaxation of aesthetic mandates	AZ, IA, MN, MT, WA	MT: S.B. 407 WA: H.B. 1293
Mandates to plan for housing, including “fair share” schemes	AZ, CO, CT, HI, MA, MN, MT, NH, NJ, NY, OR, RI, TX	MT: S.B. 382 OR: H.B. 2889 RI: S.B. 1033
Allowing more residential uses in commercial zones	AZ, FL, MD, MN, MT, NC, OR, RI, WI	FL: S.B. 102 MT: S.B. 245 OR: H.B. 2984, H.B. 3395 RI: S.B. 1035 WI: A.B. 268

Source: Authors’ tabulation and analysis.

Note: We did not track bills introduced in California.

THE POWER OF THE MINORITY PARTY

The politics of housing supply continue to defy the crushing gravity of contemporary American partisanship. Vermont Republicans and Montana Democrats languish in permanent minority status, but each worked constructively to shape and pass major housing supply packages. Conversely, Texas Democrats and Rhode Island Republicans do not agree on much, but they each decided to prioritize preserving local regulatory control over allowing ADUs statewide.

No less polarizing a figure than Florida governor and Republican presidential candidate Ron DeSantis signed into law S.B. 102. Although we highlighted its deregulatory provisions above, the bill was mostly marketed as a \$711 million fiscal subsidy for affordable housing.²⁰ And even the deregulatory benefits are available only to developments that are 40 percent affordable, a strict requirement reminiscent of the Democratic Socialist movement in Portland, Maine.²¹ Whatever the internal logic, Governor DeSantis's approach won bipartisan support.

Elsewhere, pro-housing initiatives have usually not survived the opposition of the minority party. This was the fate of a promising ADU reform in Texas as well as of the ambitious omnibus proposals in Colorado and New York.

On the other hand, bills that passed typically did so by overwhelming margins, such as a bill limiting legal challenges to development in Wisconsin and one limiting permit approval timelines in Arkansas. Washington's H.B. 1110, which legalizes some forms of missing-middle housing in urban areas, drew the most opposition of any of that state's successful housing bills, and it was still supported by almost all Democrats and over half of Republicans. In Montana, the votes were only slightly more partisan: the only successful housing bill to be opposed by most of the Democratic caucus was H.B. 211, which limits people's ability to continue raising objections to a development proposal late in the process. Vermont's S. 100 passed 135 to 11 in the state house and 27 to 2 in the state senate, earning majorities of both parties and the signature of Republican governor Phil Scott.

We hypothesize that minority party opposition raises the stakes for politically vulnerable members of the majority party, who will have to defend their vote to their constituents. The exception that proves the rule is Rhode Island, where Democrats—who occupy 87 percent of legislative seats—could largely ignore sniping from Republicans, who did not support most bills in Speaker Shekarchi's housing reform package. In most states, bipartisanship may be necessary not just as a vote-counting exercise but to prevent defections among the majority party.

In states with more than token minority party representation, such as New Jersey, some Republicans have built a brand out of criticizing state housing legislation as a big-city-Democrat power grab and bargaining for exceptions to the state's fair-share system. Assemblyman Parker Space—we cannot think of a more apt name for a critic of urbanism—is among the sponsors of a proposed constitutional amendment that would prohibit the state from requiring cities to rezone for added housing. Of more immediate relevance is the fact that New Jersey Democrats have yet to pass any

of their ambitious housing supply bills. A trend of minority opposition dissipating majority appetite for reform is consistent with our hypothesis that the value of bipartisanship exceeds simple vote-counting.

BEYOND EXPECTATIONS, SHORT OF AMBITIONS

Genuine progress on housing supply is happening throughout the country, in states red and blue; urban and rural; northeastern, southern, midwestern, and western. The book isn't closed: some states, most notably California, are just getting into the heart of their legislative season. Others, such as Massachusetts, hold two-year legislative sessions and may act later on ambitious bills.

In a year marked by well-known disappointments in Colorado and New York, it's worth emphasizing how much more was politically possible this year than in previous years. In the recent past, California and Oregon have arguably been alone in enacting sweeping statewide zoning reforms; four more states joined them in just the first half of 2023. Many other states passed narrower housing supply reforms. Even in states that experienced high-profile failures, the issue of housing supply has become an ongoing priority.

ABOUT THE AUTHORS

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NOTES

1. Salim Furth, "The Housing Revolution Brewing in 2023," The Hill, January 14, 2023.
2. See, for example, California YIMBY's 2023 legislation tracker, at <http://cayimby.org/2023-legislation/>, and Alfred Twu's Medium post, "2023 California Housing Legislation Highlights Bill Tracker," last updated June 11, 2023, at <https://alfredtwu.medium.com/2023-california-housing-legislation-highlights-bill-tracker-843ba2e9f820>.
3. Our colleague Emily Hamilton served as a task force member. Details about the housing task force and its reports can be found on the Montana Department of Environmental Quality website at "Governor's Housing Task Force," accessed July 7, 2023, <https://deq.mt.gov/about/housing-task-force>.
4. Frontier Institute, "The Montana Zoning Atlas 2.0," accessed July 6, 2023, <https://frontierinstitute.org/reports/the-montana-zoning-atlas-2-0/>. The Mercatus Center at George Mason University financially supported the Frontier Institute's Zoning Atlas research.

5. See, for example, Eric Dietrich, “Study Argues Pro-duplex Zoning Would Ease Montana’s Housing Crunch,” *Montana Free Press*, March 3, 2022.
6. Christian Britschgi, “NIMBY Cities Are Using Your Tax Dollars to Lobby Against New Housing,” *Reason*, June 1, 2023.
7. Dan Bertolet, “How the Washington Legislature Burst the Housing Abundance Dam,” *Sightline Institute*, May 8, 2023.
8. We demur from Bertolet’s inclusion of H.B. 1181 as a housing supply bill. The bill was primarily concerned with climate change, and its effects on housing supply will likely be mixed. Dan Bertolet, “50 Housing Bills and How They Fared in Olympia,” *Sightline Institute*, February 15, 2023 (periodically updated), accessed June 28, 2023, <https://www.sightline.org/2023/02/15/50-housing-bills-to-watch-in-olympia-right-now/>.
9. Dan Bertolet, “Washington State’s Environmental Policy Act Has Become a Bane to Sustainable Urban Development,” *Sightline Institute*, November 7, 2017.
10. Salim Furth, “Rhode Island’s Housing Process Package,” *Market Urbanism*, June 26, 2023.
11. Seven Days, Special Report: Locked Out: Vermont’s Housing Crisis, an ongoing series that began on January 12, 2022.
12. Anne Wallace Allen, “Housing Bills Take Aim at Local Control in Vermont Towns,” *Seven Days*, January 16, 2023.
13. Henry Grabar, “New York Has a YIMBY Governor,” *Slate*, January 11, 2023.
14. YIMBY Denver, “YIMBY Denver Applauds the Introduction of the More Housing Now Legislative Package,” March 22, 2023.
15. Josh Stephens, “Wiener Loses Again. Or Does He?,” *California Planning & Development Report*, February 3, 2020.
16. In Colorado, a measure banning growth caps passed, and New York lawmakers may circle back to one of the least controversial aspects of Governor Hochul’s proposal.
17. See “Randy Moss—‘One Clap’ by DJ Steve Porter,” October 31, 2010, YouTube video, 2:06, <https://www.youtube.com/watch?v=tmJcUlrkMNg>.
18. Arpit Gupta, Vrinda Mittal, and Stijn Van Nieuwerburgh, “Work from Home and the Office Real Estate Apocalypse” (NBER Working Paper No. 30526, National Bureau of Economic Research, Cambridge, MA, September 2022).
19. Jared Brey, “Florida’s Republican-Led, Nearly Unanimous Housing Reforms,” *Governing*, April 5, 2023.
20. Office of the Governor of Florida, “Governor Ron DeSantis Signs Legislation to Support Economic Development through Record Funding for Florida’s Housing Programs,” press release, March 29, 2023.
21. Christian Britschgi, “Portland, Maine, Will Vote on Whether to Roll Back the City’s Socialist Housing Policy Revolution,” *Reason*, June 13, 2023.