

1 AN ACT concerning affordable housing.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the  
5 Builders' Appeal Act.

6 Section 5. Findings. The legislature finds and declares  
7 that:

8 (1) there exists an acute shortage of affordable,  
9 accessible, safe, and sanitary housing for low-income and  
10 moderate-income households in the State;

11 (2) it is imperative that action be taken  
12 immediately to assure the availability of low-income and  
13 moderate-income housing; and

14 (3) it is necessary for all local governments in  
15 the State to assist in providing low-income and  
16 moderate-income housing opportunities to assure the  
17 health, safety, and welfare of all citizens of the State.

18 Section 10. Purpose. The purpose of this Act is to  
19 provide expeditious relief from local ordinances and  
20 regulations that inhibit the construction of affordable  
21 housing needed to serve low-income and moderate-income  
22 households in this State. The provisions of this Act shall be  
23 liberally construed to accomplish this purpose.

24 Section 15. Definitions. As used in this Act:

25 "Affordable housing" means housing that has a sales price  
26 or rental amount that is within the means of a household that  
27 may occupy moderate-income, low-income, or very low-income  
28 housing. In the case of dwelling units for sale, housing that  
29 is affordable means housing in which mortgage, amortization,

1 taxes, insurance, and condominium or association fees, if  
2 any, constitute no more than 30% of the gross annual  
3 household income for a household of the size that may occupy  
4 the unit. In the case of dwelling units for rent, housing  
5 that is affordable means housing for which the rent and  
6 utilities constitute no more than 35% of the gross annual  
7 household income for a household of the size that may occupy  
8 the unit.

9 "Affordable housing developer" means a nonprofit entity,  
10 limited equity cooperative, public agency, or private  
11 individual, firm, corporation, or other entity seeking to  
12 build an affordable housing development.

13 "Affordable housing development" means (i) any housing  
14 that is subsidized by the federal or State government or (ii)  
15 any housing in which at least 20% of the dwelling units are  
16 subject to covenants or restrictions that require that the  
17 dwelling units be sold or rented at prices that preserve them  
18 as affordable housing for a period of at least 15 years.

19 "Approving authority" means the planning commission,  
20 zoning board of appeals, governing body, or other local  
21 government body designated by law or ordinance to review and  
22 approve an affordable housing development.

23 "Development" means any building, construction,  
24 renovation, mining, extraction, dredging, filling,  
25 excavation, or drilling activity or operation; any material  
26 change in the use or appearance of any structure or in the  
27 land itself; the division of land into parcels; any change in  
28 the intensity or use of land, such as an increase in the  
29 number of dwelling units in a structure or a change to a  
30 commercial or industrial use from a less intensive use; and  
31 any activity that alters a shore, beach, seacoast, river,  
32 stream, lake, pond, canal, marsh, dune area, woodlands,  
33 wetland, endangered species habitat, aquifer, or other  
34 resource area, including coastal construction or other

1 activity.

2 "Exempt local government" means:

3 (1) any local government in which at least 10% of  
4 its housing units, at the time an application is made  
5 under this Act, have been subsidized by the federal or  
6 State government, or by a private entity, and in which  
7 occupancy is restricted or intended for low-income and  
8 moderate-income households;

9 (2) any local government whose median household  
10 income is, according to most recent census data, less  
11 than 80% of the median household income of the county or  
12 primary metropolitan statistical area as last defined and  
13 delineated by the U.S. Bureau of the Census in which the  
14 local government is located; or

15 (3) any local government whose percentage of  
16 substandard dwelling units in its total housing stock, as  
17 determined by the most recently available census data, is  
18 more than 1.2 times (120%) the percentage of those  
19 dwellings in the housing stock for the county or primary  
20 metropolitan statistical area in which the local  
21 government is located.

22 "Household" means the person or persons occupying a  
23 dwelling unit.

24 "Local government" means a county, municipality,  
25 township, or other political subdivision that has the primary  
26 authority to review development plans.

27 "Low-income housing" means housing that is affordable,  
28 according to the federal Department of Housing and Urban  
29 Development, for either home ownership or rental, and that is  
30 occupied, reserved, or marketed for occupancy by households  
31 with a gross household income that does not exceed 50% of the  
32 median gross household income for households of the same size  
33 within the county or primary metropolitan statistical area in  
34 which the housing is located. For purposes of this Act, the

1 term "low-income housing" includes "very low-income housing".

2 "Moderate-income housing" means housing that is  
3 affordable, according to the federal Department of Housing  
4 and Urban Development, for either home ownership or rental,  
5 and that is occupied, reserved, or marketed for occupancy by  
6 households with a gross household income that is greater than  
7 50% but does not exceed 80% of the median gross household  
8 income for households of the same size within the county or  
9 primary metropolitan statistical area in which the housing is  
10 located.

11 "Unnecessary cost generating requirements" mean those  
12 development standards that may be eliminated or reduced that  
13 are not essential to protect the public health, safety, or  
14 welfare or that are not critical to the protection or  
15 preservation of the environment, and that may otherwise make  
16 a project economically infeasible. An unnecessary cost  
17 generating requirement may include, but is not limited to,  
18 excessive standards or requirements for: minimum lot size,  
19 building size, building setbacks, spacing between buildings,  
20 impervious surfaces, open space, landscaping, buffering,  
21 reforestation, road width, pavements, parking, sidewalks,  
22 paved paths, culverts and stormwater drainage, and oversized  
23 water and sewer lines to accommodate future development  
24 without reimbursement.

25 "Very low-income housing" means housing that is  
26 affordable, according to the federal Department of Housing  
27 and Urban Development, for either home ownership or rental,  
28 and that is occupied, reserved, or marketed for occupancy by  
29 households with a gross household income equal to 30% or less  
30 of the median gross household income for households of the  
31 same size within the county or primary metropolitan  
32 statistical area in which the housing is located.

33 Section 20. Local government action on affordable

1 housing applications.

2 (a) An affordable housing developer may file an  
3 application for an affordable housing development in any  
4 nonexempt local government with the approving authority, in  
5 accordance with a checklist of items required for a complete  
6 application that is established by rule of the Department of  
7 Commerce and Community Affairs.

8 (b) The approving authority shall review the application  
9 in accordance with the standards set forth in Section 25, and  
10 has the power to issue a comprehensive permit. The  
11 comprehensive permit shall include all local government  
12 approvals or licenses, other than a building permit,  
13 necessary for the authorization of the affordable housing  
14 development. The approving authority shall hold at least one  
15 public hearing on the proposal within 60 days after receipt  
16 of the application and shall render a decision within 40  
17 business days after the conclusion of the public hearing.

18 (c) Failure of the approving authority to act within  
19 this time frame means that the authority is deemed to have  
20 approved the application, unless the time frame is extended  
21 by a voluntary agreement with the applicant.

22 Section 25. Basis for approving authority determination.

23 (a) The approving authority shall grant approval of an  
24 affordable housing development unless facts produced in the  
25 record at the public hearing or otherwise of record  
26 demonstrate that the development as proposed:

27 (1) would have significant adverse effects on the  
28 environment; or

29 (2) would significantly conflict with planning  
30 goals and policies specified in the local government's  
31 comprehensive plan, provided they are not designed to, or  
32 do not have the effect of, rendering infeasible the  
33 development of affordable housing while permitting other

1 forms of housing.

2 (b) The approving authority may condition the approval  
3 of the affordable housing development on compliance with  
4 local government development standards, contained in an  
5 ordinance or regulation, that are necessary for the  
6 protection of the health and safety of residents of the  
7 proposed development or of the residents of the local  
8 government, or that promote better site and building design  
9 in relation to the area surrounding the proposed development,  
10 provided that any ordinances or regulations must be equally  
11 applicable to both affordable housing developments and other  
12 developments, and provided that any conditions do not render  
13 the affordable housing development infeasible. The approving  
14 authority shall waive local government development standards  
15 when their application would render the provision of  
16 affordable housing infeasible, unless a waiver would cause  
17 the affordable housing development to have significant  
18 adverse effects on the environment.

19 (c) For purposes of this Act, a requirement, condition,  
20 ordinance, or regulation is considered to render an  
21 affordable housing development proposed by an affordable  
22 housing developer that is a nonprofit entity, limited equity  
23 cooperative, or public agency infeasible when it renders the  
24 development unable to proceed in accordance with program  
25 requirements of any public program for the production of  
26 affordable housing in view of the amount of subsidy  
27 realistically available. For an affordable housing  
28 development proposed by an affordable housing developer that  
29 is a private for-profit individual, firm, corporation, or  
30 other entity, the imposition of unnecessary cost generating  
31 requirements, either alone or in combination with other  
32 requirements, is considered to render an affordable housing  
33 development infeasible when it reduces the likely return on  
34 the development to a point where a reasonably prudent

1 developer would not proceed.

2 Section 30. Appeal to State Housing Appeals Board.

3 (a) An affordable housing developer whose application is  
4 either denied or approved with conditions that in his or her  
5 judgment render the provision of affordable housing  
6 infeasible may, within 45 days after the decision, appeal to  
7 the State Housing Appeals Board challenging that decision.  
8 The Board shall render a decision on the application within  
9 120 days after the appeal is filed. In its determination of  
10 an appeal, the Board shall conduct a de novo review of the  
11 matter.

12 (b) In rendering its decision, the Board shall consider  
13 the facts and whether the approving authority correctly  
14 applied the standards set forth in Section 25. In any  
15 proceeding before the Board, the approving authority bears  
16 the burden of demonstrating that it correctly applied the  
17 standards set forth in Section 25 in denying or conditionally  
18 approving the application for an affordable housing  
19 development.

20 (c) The Board may affirm, reverse, or modify the  
21 conditions of, or add conditions to, a decision made by the  
22 approving authority. The decision of the Board constitutes an  
23 order directed to the approving authority and is binding on  
24 the local government, which shall forthwith issue any and all  
25 necessary permits and approvals consistent with the  
26 determination of the Board.

27 (d) The appellate court has the exclusive jurisdiction  
28 to review decisions of the Board.

29 Section 35. Enforcement. The order of the Board may be  
30 enforced by the Board or by the applicant in an action  
31 brought in the circuit court.

1 Section 40. Nonresidential development as part of an  
2 affordable housing development.

3 (a) An applicant for development of property that will  
4 be principally devoted to nonresidential uses in a  
5 nonresidential zoning district has the status of an  
6 affordable housing developer for the purposes of this Act  
7 when the applicant proposes that no less than 20% of the area  
8 of the development or 20% of the square footage of the  
9 development be devoted to affordable housing, except that the  
10 applicant bears the burden of proof of demonstrating that the  
11 purposes of a nonresidential zoning district will not be  
12 impaired by the construction of housing in that zoning  
13 district and that the health, safety, and welfare of the  
14 residents of the affordable housing will not be adversely  
15 affected by nonresidential uses either in existence or  
16 permitted in that zoning district.

17 (b) For purposes of subsection (a), the square footage  
18 of the residential portion of the development shall be  
19 measured by the interior floor area of dwelling units,  
20 excluding that portion that is unheated. Square footage of  
21 the nonresidential portion shall be calculated according to  
22 the gross leasable area.

23 Section 45. Overconcentration of affordable housing. In  
24 order to prevent the drastic alteration of a community's  
25 character through the exercise of the rights conferred upon  
26 affordable housing developers by this Act, the requirements  
27 to approve affordable housing developments by a local  
28 government as specified in this Act cease when:

29 (1) the local government fulfills the requirements  
30 to become an exempt local government; or

31 (2) the number of units of affordable housing  
32 approved and built pursuant to this Act exceeds 5,000  
33 dwelling units over a period of 5 years.



1 Section 50. Housing Appeals Board.

2 (a) A Housing Appeals Board is created consisting of 7  
3 members appointed by the Governor as follows:

4 (1) a circuit judge, who shall act as chairperson;

5 (2) a local zoning board member;

6 (3) a regional planning board member;

7 (4) a city council member;

8 (5) a county board member;

9 (6) an affordable housing developer; and

10 (7) an affordable housing advocate.

11 In addition, the Chairman of the Illinois Housing  
12 Development Authority, ex officio, shall serve as a  
13 non-voting member.

14 (b) Initial terms of 4 members designated by the  
15 Governor shall be for 2 years. Initial terms of 3 members  
16 designated by the Governor shall be for one year. Thereafter,  
17 members shall be appointed for terms of 2 years. A member  
18 shall receive no compensation for his or her services, but  
19 shall be reimbursed by the State for all reasonable expenses  
20 actually and necessarily incurred in the performance of his  
21 or her official duties. The board shall hear all petitions  
22 for review filed under this Act and shall conduct all  
23 hearings in accordance with the rules and regulations  
24 established by the chairperson. The Illinois Housing  
25 Development Authority shall provide space and clerical and  
26 other assistance that the Board may require.