

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 Affordable Housing Planning and Appeal Act.

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

8 (1) there exists a shortage of affordable,  
9 accessible, safe, and sanitary housing in the State;

10 (2) it is imperative that action be taken to assure  
11 the availability of workforce and retirement housing; and

12 (3) local governments in the State that do not have  
13 sufficient affordable housing are encouraged to assist in  
14 providing affordable housing opportunities to assure the  
15 health, safety, and welfare of all citizens of the State.

16 Section 10. Purpose. The purpose of this Act is to  
17 encourage counties and municipalities to incorporate  
18 affordable housing within their housing stock sufficient to  
19 meet the needs of their county or community. Further,  
20 affordable housing developers who believe that they have been  
21 unfairly treated due to the fact that the development  
22 contains affordable housing may seek relief from local  
23 ordinances and regulations that may inhibit the construction  
24 of affordable housing needed to serve low-income and  
25 moderate-income households in this State.

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

27 "Affordable housing" means housing that has a sales price  
28 or rental amount that is within the means of a household that  
29 may occupy moderate-income or low-income housing. In the case

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

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

14 "Affordable housing development" means (i) any housing  
15 that is subsidized by the federal or State government or (ii)  
16 any housing in which at least 20% of the dwelling units are  
17 subject to covenants or restrictions that require that the  
18 dwelling units be sold or rented at prices that preserve them  
19 as affordable housing for a period of at least 15 years, in  
20 the case of for-sale housing, and at least 30 years, in the  
21 case of rental housing.

22 "Approving authority" means the governing body of the  
23 county or municipality.

24 "Development" means any building, construction,  
25 renovation, or excavation or any material change in the use  
26 or appearance of any structure or in the land itself; the  
27 division of land into parcels; or any change in the intensity  
28 or use of land, such as an increase in the number of dwelling  
29 units in a structure or a change to a commercial use.

30 "Exempt local government" means any local government in  
31 which at least 10% of its total year-round housing units are  
32 affordable, as determined by the Illinois Housing Development  
33 Authority pursuant to Section 20 of this Act; or any  
34 municipality under 1,000 population.

1 "Household" means the person or persons occupying a  
2 dwelling unit.

3 "Local government" means a county or municipality.

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

11 "Moderate-income housing" means housing that is  
12 affordable, according to the federal Department of Housing  
13 and Urban Development, for either home ownership or rental,  
14 and that is occupied, reserved, or marketed for occupancy by  
15 households with a gross household income that is greater than  
16 50% but does not exceed 80% of the median gross household  
17 income for households of the same size within the county in  
18 which the housing is located.

19 "Non-appealable local government requirements" means all  
20 essential requirements that protect the public health and  
21 safety, including any local building, electrical, or plumbing  
22 code requirements or those requirements that are critical to  
23 the protection or preservation of the environment.

24 Section 20. Determination of exempt local governments.

25 (a) Beginning January 1, 2006, the Illinois Housing  
26 Development Authority shall determine which local governments  
27 are exempt and not exempt from the operation of this Act  
28 based on an identification of the total number of year-round  
29 housing units in the most recent decennial census for each  
30 local government within the State and by an inventory of  
31 for-sale and rental affordable housing units, as defined in  
32 this Act, for each local government from the decennial census  
33 and other relevant sources.

1 (b) The Illinois Housing Development Authority shall  
2 make this determination by:

3 (i) totaling the number of for-sale housing units  
4 in each local government that are affordable to  
5 households with a gross household income that is less  
6 than 80% of the median household income within the county  
7 or primary metropolitan statistical area;

8 (ii) totaling the number of rental units in each  
9 local government that are affordable to households with a  
10 gross household income that is less than 60% of the  
11 median household income within the county or primary  
12 metropolitan statistical area;

13 (iii) adding the number of for-sale and rental  
14 units for each local government from items (i) and (ii);  
15 and

16 (iv) dividing the sum of (iii) above by the total  
17 number of year-round housing units in the local  
18 government as contained in the latest decennial census  
19 and multiplying the result by 100 to determine the  
20 percentage of affordable housing units within the  
21 jurisdiction of the local government.

22 (c) Beginning January 1, 2006, the Illinois Housing  
23 Development Authority shall publish on an annual basis a list  
24 of exempt and non-exempt local governments and the data that  
25 it used to calculate its determination. The data shall be  
26 shown for each local government in the State and for the  
27 State as a whole.

28 (d) A local government or developer of affordable  
29 housing may appeal the determination of the Illinois Housing  
30 Development Authority as to whether the local government is  
31 exempt or non-exempt under this Act in connection with an  
32 appeal under Section 30 of this Act.

33 Section 25. Affordable housing plan.

1 (a) Prior to July 1, 2004, all non-exempt local  
2 governments must approve an affordable housing plan.

3 (b) For the purposes of this Act, the affordable housing  
4 plan shall consist of at least the following:

5 (i) a statement of the total number of affordable  
6 housing units that are necessary to exempt the local  
7 government from the operation of this Act as defined in  
8 Section 15 and Section 20;

9 (ii) an identification of lands within the  
10 jurisdiction that are most appropriate for the  
11 construction of affordable housing and of existing  
12 structures most appropriate for conversion to, or  
13 rehabilitation for, affordable housing, including a  
14 consideration of lands and structures of developers who  
15 have expressed a commitment to provide affordable housing  
16 and lands and structures that are publicly or  
17 semi-publicly owned;

18 (iii) incentives that local governments may provide  
19 for the purpose of attracting affordable housing to their  
20 jurisdiction; and

21 (iv) a goal of a minimum of 15% of all new  
22 development or redevelopment within the local government  
23 that would be defined as affordable housing in this Act;  
24 or a minimum of a 3 percentage point increase in the  
25 overall percentage of affordable housing within its  
26 jurisdiction, as defined in Section 20 of this Act; or a  
27 minimum of a total of 10% of affordable housing within  
28 its jurisdiction.

29 (c) Within 60 days after the adoption of an affordable  
30 housing plan or revisions to its affordable housing plan, the  
31 local government must submit a copy of that plan to the  
32 Illinois Housing Development Authority.

33 Section 30. Appeal to State Housing Appeals Board.

1           (a) Beginning January 1, 2006, an affordable housing  
2 developer whose application is either denied or approved with  
3 conditions that in his or her judgment render the provision  
4 of affordable housing infeasible may, within 45 days after  
5 the decision, submit to the State Housing Appeals Board  
6 information regarding why the developer believes he or she  
7 was unfairly denied or conditions were placed upon the  
8 tentative approval of the development unless the local  
9 government that rendered the decision is exempt under Section  
10 15 or Section 20 of this Act. The Board shall maintain all  
11 information forwarded to them by developers and shall compile  
12 and make available an annual report summarizing the  
13 information thus received.

14           (b) Beginning January 1, 2009, an affordable housing  
15 developer whose application is either denied or approved with  
16 conditions that in his or her judgment render the provision  
17 of affordable housing infeasible may, within 45 days after  
18 the decision, appeal to the State Housing Appeals Board  
19 challenging that decision unless the municipality or county  
20 that rendered the decision is exempt under Section 15 of this  
21 Act. The developer must submit information regarding why the  
22 developer believes he or she was unfairly denied or  
23 unreasonable conditions were placed upon the tentative  
24 approval of the development.

25           (c) Beginning January 1, 2009, the Board shall render a  
26 decision on the appeal within 120 days after the appeal is  
27 filed. In its determination of an appeal, the Board shall  
28 conduct a de novo review of the matter. In rendering its  
29 decision, the Board shall consider the facts and whether the  
30 developer was treated in a manner that places an undue burden  
31 on the development due to the fact that the development  
32 contains affordable housing as defined in this Act. The Board  
33 shall further consider any action taken by the unit of local  
34 government in regards to granting waivers or variances that

1 would have the effect of creating or prohibiting the economic  
2 viability of the development. In any proceeding before the  
3 Board, the developer bears the burden of demonstrating that  
4 he or she has been unfairly denied or unreasonable conditions  
5 have been placed upon the tentative approval for the  
6 application for an affordable housing development.

7 (d) The Board shall dismiss any appeal if:

8 (i) the local government has adopted an affordable  
9 housing plan as defined in Section 25 of this Act and  
10 submitted that plan to the Illinois Housing Development  
11 Authority within the time frame required by this Act; and

12 (ii) the local government has implemented its  
13 affordable housing plan and has met its goal as  
14 established in its affordable housing plan as defined in  
15 Section 25 of this Act.

16 (e) The Board shall dismiss any appeal if the reason for  
17 denying the application or placing conditions upon the  
18 approval is a non-appealable local government requirement  
19 under Section 15 of this Act.

20 (f) 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 (g) The appellate court has the exclusive jurisdiction  
28 to review decisions of the Board.

29 Section 40. Nonresidential development as part of an  
30 affordable housing development.

31 (a) An affordable housing developer who applies to  
32 develop property that contains nonresidential uses in a  
33 nonresidential zoning district must designate either at least

1 50% of the area or at least 50% of the square footage of the  
2 development for residential use. Unless adjacent to a  
3 residential development, the nonresidential zoning district  
4 shall not include property zoned industrial. The applicant  
5 bears the burden of proof of demonstrating that the purposes  
6 of a nonresidential zoning district will not be impaired by  
7 the construction of housing in the zoning district and that  
8 the public health and safety of the residents of the  
9 affordable housing will not be adversely affected by  
10 nonresidential uses either in existence or permitted in that  
11 zoning district. The development should be completed  
12 simultaneously to the extent possible and shall be unified in  
13 design.

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

20 Section 50. Housing Appeals Board.

21 (a) Prior to July 1, 2006, a Housing Appeals Board shall  
22 be created consisting of 7 members appointed by the Governor  
23 as follows:

- 24 (1) a retired circuit judge or retired appellate  
25 judge, who shall act as chairperson;
- 26 (2) a zoning board of appeals member;
- 27 (3) a planning board member;
- 28 (4) a mayor or municipal council or board member;
- 29 (5) a county board member;
- 30 (6) an affordable housing developer; and
- 31 (7) an affordable housing advocate.

32 In addition, the Chairman of the Illinois Housing  
33 Development Authority, ex officio, shall serve as a



1 non-voting member.

2 (b) Initial terms of 4 members designated by the  
3 Governor shall be for 2 years. Initial terms of 3 members  
4 designated by the Governor shall be for one year. Thereafter,  
5 members shall be appointed for terms of 2 years. A member  
6 shall receive no compensation for his or her services, but  
7 shall be reimbursed by the State for all reasonable expenses  
8 actually and necessarily incurred in the performance of his  
9 or her official duties. The board shall hear all petitions  
10 for review filed under this Act and shall conduct all  
11 hearings in accordance with the rules and regulations  
12 established by the chairperson. The Illinois Housing  
13 Development Authority shall provide space and clerical and  
14 other assistance that the Board may require.

15 (c) The Illinois Housing Development Authority may adopt  
16 such other rules and regulations as it deems necessary and  
17 appropriate to carry out the Board's responsibilities under  
18 this Act and to provide direction to local governments and  
19 affordable housing developers.