



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5322

Introduced 2/8/2012, by Rep. Arthur Turner

SYNOPSIS AS INTRODUCED:

20 ILCS 3805/2	from Ch. 67 1/2, par. 302
20 ILCS 3805/8	from Ch. 67 1/2, par. 308
20 ILCS 3805/10	from Ch. 67 1/2, par. 310

Amends the Illinois Housing Development Act. Removes from the definition of the term "limited-profit entity" limited-profit entities having articles of incorporation which provide that if the limited-profit entity receives a loan from the Illinois Housing Development Authority, the Chairman of the Authority shall have the power, if he determines that any such loan is in jeopardy of not being repaid, or that the proposed development for which such loan was made is in jeopardy of not being constructed, or the limited-profit entity is otherwise in violation of rules and regulations promulgated by the Authority, to appoint to the board of directors or other comparable controlling body of such limited-profit entity a number of new directors or persons, which number shall be sufficient to constitute a voting majority of such board or controlling body. Removes provisions prohibiting a limited-profit entity which receives loans from the Authority from making distributions in any one year with respect to a development financed by the Authority in excess of 6% of its equity in such development. Adds language providing that the equity in a development shall consist of the difference between the amount of the mortgage loan and the total cost of the development. Provides that the Authority shall approve a tenant selection plan submitted by the applicant for the loan prior to disbursing any funds in connection with the acquisition, rehabilitation, or construction of a development (rather than providing that prior to making a loan commitment for a development, the Authority shall approve a tenant selection plan submitted by the applicant for the loan). Effective immediately.

LRB097 16981 KTG 62172 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

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

4 Section 5. The Illinois Housing Development Act is amended
5 by changing Sections 2, 8, and 10 as follows:

6 (20 ILCS 3805/2) (from Ch. 67 1/2, par. 302)

7 Sec. 2. As used in this Act:

8 (a) "Authority" means the Illinois Housing Development
9 Authority created in this Act.

10 (b) "Development costs" means the costs approved by the
11 Authority as appropriate expenditures which may be incurred
12 prior to commitment and initial closing of assisted mortgage
13 financing or of housing related commercial facilities,
14 including but not limited to: (1) payments for options to
15 purchase properties for the proposed development or
16 facilities, deposits on contracts of purchase, or, with the
17 prior approval of the Authority, payments for the purchases of
18 such properties; (2) legal, organizational and consultants'
19 expenses; (3) payment of fees for preliminary feasibility
20 studies and engineering and architectural work; (4) necessary
21 application and other fees to federal, State and local
22 government agencies; and (5) such other expenses as the
23 Authority may deem appropriate to effectuate the purposes of

1 this Act.

2 (c) "Assisted mortgage financing" means a below market
3 interest rate mortgage insured or purchased, or a loan made, by
4 the Secretary of the United States Department of Housing and
5 Urban Development or by any other federal agency or
6 governmental corporation or by any political subdivision of the
7 State of Illinois or by any Illinois public corporation; a
8 market interest rate mortgage insured or purchased, or a loan
9 made in combination with, or as augmented by, a program of rent
10 supplements, interest subsidies, leasing, contributions or
11 grants, or other programs as are now or hereafter authorized by
12 federal law to serve low or moderate income persons; a mortgage
13 or loan made pursuant to this Act; or a mortgage or loan from
14 any private or public source with an interest rate and terms
15 satisfactory to the Authority and which will meet the
16 requirements and purposes of this Act.

17 (d) "Lending institution" means any bank, trust company,
18 savings bank, savings and loan association, credit union,
19 national banking association, mortgage banking association,
20 federal savings and loan association or federal credit unit
21 maintaining an office in the State, any insurance company or
22 any other entity or organization which makes or acquires loans
23 secured by real property.

24 (e) "Residential mortgage" means a loan owed to a lending
25 institution, to the Authority or to a trustee for holders of
26 bonds or notes of the Authority or to a trustee for owners of

1 pools of mortgages, and secured by a lien on real property
2 located in the State and improved by a residential structure or
3 a mixed residential and commercial structure, or unimproved if
4 the proceeds of such loan shall be used for the erection of a
5 residential structure or a mixed residential and commercial
6 structure thereon, whether or not such loan is insured or
7 guaranteed by the United States of America or any agency or
8 corporation thereof.

9 (f) "Development" means a specific work or improvement
10 undertaken to provide dwelling accommodations, including the
11 acquisition, construction or rehabilitation of lands,
12 buildings and community facilities and in connection therewith
13 to provide nonhousing facilities which are a part of a planned
14 large-scale project or new community.

15 (g) "Persons and families of low and moderate income" and
16 "Low income or moderate income persons" means families and
17 persons who cannot afford to pay the amounts at which private
18 enterprise, without assisted mortgage financing, is providing
19 a substantial supply of decent, safe and sanitary housing. The
20 income limits for the admission of such families and persons to
21 developments shall be those established pursuant to the rules
22 applicable to the assisted mortgage financing program under
23 which such developments are financed.

24 (h) "Moderate rentals" means rent charges less than those
25 rents generally charged for new dwelling units of comparable
26 size and location built by the unassisted efforts of private

1 enterprise and financed at then current market interest rates.

2 (i) "Low rentals" means rent charges at least 10% lower
3 than moderate rentals.

4 (j) "Rents" or "Rentals" shall mean fees or charges paid
5 for use of a development under this Act, whether the
6 development is operated on a landlord-tenant basis or as a
7 condominium or cooperative.

8 (k) "Limited-profit entity" means any individual, joint
9 venture, partnership, limited partnership, trust or
10 corporation organized or existing under the laws of the State
11 of Illinois or authorized to do business in this State and
12 having articles of incorporation or comparable documents of
13 organization or a written agreement with the Authority which,
14 in addition to other requirements of law, provide that if the
15 limited-profit entity receives any loan from the Authority as
16 provided for in this Act, it shall be authorized to enter into
17 an agreement with the Authority providing for regulations with
18 respect to rents, profits, dividends and disposition of
19 property or franchises. †

20 ~~(1) that if the limited-profit entity receives any loan~~
21 ~~from the Authority as provided for in this Act, it shall be~~
22 ~~authorized to enter into an agreement with the Authority~~
23 ~~providing for regulations with respect to rents, profits,~~
24 ~~dividends and disposition of property or franchises; and~~

25 ~~(2) that if the limited-profit entity receives a loan,~~
26 ~~as provided for in this Act, the Chairman of the Authority,~~

1 ~~acting with the prior approval of the Authority, shall have~~
2 ~~the power, if he determines that any such loan is in~~
3 ~~jeopardy of not being repaid, or that the proposed~~
4 ~~development for which such loan was made is in jeopardy of~~
5 ~~not being constructed, or the limited profit entity is~~
6 ~~otherwise in violation of rules and regulations~~
7 ~~promulgated by the Authority, to appoint to the board of~~
8 ~~directors or other comparable controlling body of such~~
9 ~~limited profit entity a number of new directors or persons,~~
10 ~~which number shall be sufficient to constitute a voting~~
11 ~~majority of such board or controlling body,~~
12 ~~notwithstanding any other provisions of the limited profit~~
13 ~~entity's articles of incorporation or other documents of~~
14 ~~organization, or of any other provisions of law, provided~~
15 ~~that this requirement set forth in this paragraph (2) is~~
16 ~~not mandatory in the case of loans made solely with monies~~
17 ~~from the Authority's administrative fund.~~

18 (1) "Land development" means the process of clearing and
19 grading land, making, installing, or constructing waterlines
20 and water supply installations, sewerlines and sewage disposal
21 installations, steam, gas, and electric lines and
22 installations, roads, streets, curbs, gutters, sidewalks,
23 storm drainage facilities, and other installations or work,
24 whether on or off the site, necessary or desirable to prepare
25 land for residential, commercial, industrial, or other uses, or
26 to provide facilities for public or common use.

1 (m) "Nonprofit corporation" means a nonprofit corporation
2 incorporated pursuant to the provisions of the Illinois General
3 Not For Profit Corporation Act or the State Housing Act of 1933
4 and having articles of incorporation which, in addition to
5 other requirements of law, provide:

6 (1) that the corporation has been organized to provide
7 housing facilities for persons of low and moderate income;

8 (2) that all income and earnings of the corporation
9 shall be used exclusively for corporation purposes and that
10 no part of the net income or net earnings of the
11 corporation shall inure to the benefit or profit of any
12 private individual, firm, corporation, partnership, or
13 association;

14 (3) that the corporation is in no manner controlled or
15 under the direction or acting in the substantial interest
16 of private individuals, firms, corporations, partnerships,
17 or associations seeking to derive profit or gain therefrom
18 or seeking to eliminate or minimize losses in any dealings
19 or transactions therewith;

20 (4) that if the corporation receives any loan or
21 advance from the Authority as provided for in this Act, it
22 shall be authorized to enter into an agreement with the
23 Authority providing for regulation with respect to rents,
24 profits, dividends, and disposition of property or
25 franchises;

26 (5) that if the corporation receives a loan or advance,

1 as provided for in this Act, the chairman of the Authority,
2 acting with the prior approval of the majority of the
3 members of the Authority, shall have the power if he
4 determines that any such loan or advance is in jeopardy of
5 not being repaid, or that the proposed development for
6 which such loan or advance was made is in jeopardy of not
7 being constructed, or that some part of the net income or
8 net earnings of the corporation is inuring to the benefit
9 of any private individual, firm, corporation, partnership,
10 or association, or that the corporation is in some manner
11 controlled or under the direction of or acting in the
12 substantial interest of any private individual, firm,
13 corporation, partnership, or association seeking to derive
14 benefit or gain therefrom or seeking to eliminate or
15 minimize losses in any dealings or transactions therewith,
16 or is in violation of rules and regulations promulgated by
17 the Authority to appoint to the board of directors of such
18 corporation a number of new directors, which number shall
19 be sufficient to constitute a majority of such board,
20 notwithstanding any other provisions of such articles of
21 incorporation or of any other provisions of law; and

22 (6) that each development of such corporation shall be
23 operated exclusively for the benefit of the persons who are
24 housed in such development which shall include families or
25 persons of low or moderate income as required by this Act,
26 and that such development shall reserve for families or

1 persons of low or moderate income the number and types of
2 dwelling units required by applicable federal or State law.

3 The requirements contained in paragraphs (2), (3), (5) and
4 (6) are not mandatory in the case of loans made solely from the
5 Authority's administrative fund.

6 (n) "State" means the State of Illinois.

7 (o) "Community facilities" means the land, buildings,
8 improvements and equipment for land development, for health,
9 welfare, recreational, social, educational and commercial
10 activities, and for public, common or municipal services.

11 (p) "Sinking fund payment" means the amount of money
12 specified in the resolution or resolutions authorizing term
13 bonds as payable into a sinking fund during a particular period
14 for the retirement of term bonds at maturity after such period,
15 but shall not include any amount payable by reason only of the
16 maturity of a bond.

17 (q) "Housing related commercial facilities" means
18 commercial facilities which are or are to be related to a
19 development. Commercial facilities are related to a
20 development if they are, in the sole judgment of the Authority,
21 located in the same area as the development and (i) necessary
22 or desirable in order to provide services for residents of that
23 area in which the development is located; or (ii) a portion of
24 the revenues of the commercial facilities are to be used to
25 provide funds for paying costs of construction, acquisition,
26 rehabilitation, operation, maintenance of or payment of debt

1 service on the development or (iii) necessary or desirable in
2 order to make the development successful, such as, without
3 limitation, eliminating or preventing slum or blighted
4 conditions, preserving historic structures or ensuring that
5 facilities are not inconsistent with the development. For
6 purposes of this Section, "commercial facilities" includes
7 land, buildings, improvements, equipment and all ancillary
8 facilities for use for offices, stores, retirement homes,
9 hotels, financial institutions, service health care,
10 education, recreation or research establishments or any other
11 commercial purpose.

12 (r) "Rate protection contract" means interest rate
13 exchange agreements; currency exchange agreements; forward
14 payment conversion agreements; contracts providing for payment
15 or receipt of funds based on levels of, or changes in, interest
16 rates, currency exchange rates, stock or other indices;
17 contracts to exchange cash flows or a series of payments;
18 contracts, including without limitation, interest rate caps;
19 interest rate floors; interest rate locks; interest rate
20 collars; rate of return guarantees or assurances, to manage
21 payment, currency, rate, spread or similar exposure; the
22 obligation, right, or option to issue, put, lend, sell, grant a
23 security interest in, buy, borrow or otherwise acquire, a bond,
24 note or other security or interest therein as an investment, as
25 collateral, as a hedge, or otherwise as a source or assurance
26 of payment to or by the Authority or as a reduction of the

1 Authority's or an obligor's risk exposure; repurchase
2 agreements; securities lending agreements; and other
3 agreements or arrangements similar to the foregoing.

4 (s) "Affordable Housing Program Trust Fund Bonds or Notes"
5 means bonds or notes issued by the Authority pursuant to the
6 provisions of this Act for the purposes of providing affordable
7 housing to low and very low income persons as provided in the
8 Illinois Affordable Housing Act through the use or pledge, in
9 whole or in part, of Trust Fund Moneys dedicated or otherwise
10 made available to the Authority.

11 (t) "Trust Fund Moneys" has the meaning given to that term
12 in Section 3 of the Illinois Affordable Housing Act.

13 (Source: P.A. 87-250; 88-93.)

14 (20 ILCS 3805/8) (from Ch. 67 1/2, par. 308)

15 Sec. 8. The Authority may, pursuant to its rules or
16 regulations, or pursuant to agreements with persons to whom it
17 makes mortgage or other loans, provide for methods of limiting
18 profits or cash flow or other distributions available to
19 limited profit entities to whom it has made or will make such
20 loans. A limited profit entity which receives loans from the
21 Authority may not make distributions in any one year with
22 respect to a development financed by the Authority in excess of
23 6% of its equity in such development, except that the right to
24 such distribution shall be cumulative. This distribution
25 limitation may not be increased above 6% during the life of the

1 ~~Authority's loan, whether the loan is outstanding on or is made~~
2 ~~after the effective date of this amendatory Act of 1991,~~
3 ~~unless, by resolution of the members, the Authority determines~~
4 ~~that an increase is necessary to preserve the development as~~
5 ~~affordable to low and moderate income persons and families or~~
6 ~~that an increase provides for the creation of additional units~~
7 ~~of housing affordable to low or moderate income persons and~~
8 ~~families in the development or otherwise in this State. The~~
9 ~~equity in a development shall consist of the difference between~~
10 ~~the amount of the mortgage loan and the total cost of the~~
11 ~~development. The total cost of the development shall include~~
12 ~~construction or rehabilitation costs including job overhead~~
13 ~~and a builder's and sponsor's profit and risk fee,~~
14 ~~architectural, engineering, legal and accounting costs,~~
15 ~~organizational expenses, land value, interest and financing~~
16 ~~charges paid during construction, the cost of landscaping and~~
17 ~~off site improvements, whether or not such costs have been paid~~
18 ~~in cash or in a form other than cash. With respect to every~~
19 ~~development the Authority shall, by resolution, establish the~~
20 ~~entity's equity at the time of making of the final mortgage~~
21 ~~advance and, for purposes of this paragraph, that figure shall~~
22 ~~remain constant during the life of the Authority's loan with~~
23 ~~respect to such development, unless adjusted pursuant to a~~
24 ~~resolution of the members based on criteria set forth in the~~
25 ~~Authority's rules or regulations. The Authority may, pursuant~~
26 ~~to its rules or regulations, or pursuant to agreements with~~

1 ~~persons to whom it makes mortgage or other loans, provide for~~
2 ~~methods of limiting profits or cash flow or other distributions~~
3 ~~available to the person.~~ Such alternative methods may include,
4 without limitation, a limitation which may vary from period to
5 period based on changes in the costs of borrowing money and may
6 be changed from time to time. ~~Such alternative methods may be~~
7 ~~in lieu of the 6% limitation as provided in this Section.~~ With
8 respect to mortgage loans to limited profit entities, the
9 alternative method shall be such as shall, in the sole judgment
10 of the Authority, result in the lowest rents consistent with
11 attracting private enterprise to acquire, construct,
12 rehabilitate, operate and maintain the development. The equity
13 in a development shall consist of the difference between the
14 amount of the mortgage loan and the total cost of the
15 development. The total cost of the development shall include
16 construction or rehabilitation costs including job overhead
17 and a builder's and sponsor's profit and risk fee,
18 architectural, engineering, legal, and accounting costs,
19 organizational expenses, land value, interest and financing
20 charges paid during construction, and the cost of landscaping
21 and off-site improvements, whether or not such costs have been
22 paid in cash or in a form other than cash.

23 (Source: P.A. 87-250.)

24 (20 ILCS 3805/10) (from Ch. 67 1/2, par. 310)

25 Sec. 10. The ~~Prior to making a loan commitment for a~~

1 ~~development under this Act, the~~ Authority shall approve a
2 tenant selection plan submitted by the applicant for the loan
3 prior to disbursing any funds in connection with the
4 acquisition, rehabilitation, or construction of a development.

5 The Authority shall formulate regulations from time to time
6 setting forth the criteria for tenant selection plans. These
7 criteria shall include income limits, which may vary with the
8 size and circumstances of the family unit of tenants. The
9 income limits shall be sufficiently flexible to avoid undue
10 economic homogeneity among the tenants of a development. The
11 Authority may formulate regulations from time to time for the
12 alteration of occupancies of tenants who exceed established
13 income limits. The tenant selection plan shall specify how many
14 units in the development shall be held available for rentals to
15 persons of low or moderate income, as defined in this Act.

16 In determining the number of units which shall be so held
17 available for rental to persons of low or moderate income, the
18 Authority shall require that the number of dwelling units so
19 held reserved for them in each development shall not be less
20 than the number required by applicable federal and State law.

21 In connection with any mortgage loan for a development, the
22 Authority may enter into an agreement with the owner of the
23 development as a part of the loan providing that as long as the
24 loan remains outstanding or such longer period as is set forth
25 in the agreement, the development shall be held available for
26 such rentals. Any such agreement shall, upon being recorded in

1 the manner provided for recording of deeds or registered in the
2 manner specified for registration of titles, be binding upon
3 any subsequent owners of the development as provided by its
4 terms.

5 (Source: P.A. 87-250.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.