

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

8 "Household" means the person or persons occupying a  
9 dwelling unit.

10 "Local government" means a county, municipality,  
11 township, or other political subdivision that has the primary  
12 authority to review development plans.

13 "Low-income housing" means housing that is affordable,  
14 according to the federal Department of Housing and Urban  
15 Development, for either home ownership or rental, and that is  
16 occupied, reserved, or marketed for occupancy by households  
17 with a gross household income that does not exceed 50% of the  
18 median gross household income for households of the same size  
19 within the county or primary metropolitan statistical area in  
20 which the housing is located. For purposes of this Act, the  
21 term "low-income housing" includes "very low-income housing".

22 "Moderate-income housing" means housing that is  
23 affordable, according to the federal Department of Housing  
24 and Urban Development, for either home ownership or rental,  
25 and that is occupied, reserved, or marketed for occupancy by  
26 households with a gross household income that is greater than  
27 50% but does not exceed 80% of the median gross household  
28 income for households of the same size within the county or  
29 primary metropolitan statistical area in which the housing is  
30 located.

31 "Unnecessary cost generating requirements" mean those  
32 development standards that may be eliminated or reduced that  
33 are not essential to protect the public health, safety, or  
34 welfare or that are not critical to the protection or

1 preservation of the environment, and that may otherwise make  
2 a project economically infeasible. An unnecessary cost  
3 generating requirement may include, but is not limited to,  
4 excessive standards or requirements for: minimum lot size,  
5 building size, building setbacks, spacing between buildings,  
6 impervious surfaces, open space, landscaping, buffering,  
7 reforestation, road width, pavements, parking, sidewalks,  
8 paved paths, culverts and stormwater drainage, and oversized  
9 water and sewer lines to accommodate future development  
10 without reimbursement.

11 "Very low-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 equal to 30% or less  
16 of the median gross household income for households of the  
17 same size within the county or primary metropolitan  
18 statistical area in which the housing is located.

19 Section 20. Local government action on affordable  
20 housing applications.

21 (a) An affordable housing developer may file an  
22 application for an affordable housing development in any  
23 nonexempt local government with the approving authority, in  
24 accordance with a checklist of items required for a complete  
25 application that is established by rule of the Department of  
26 Commerce and Community Affairs.

27 (b) The approving authority shall review the application  
28 in accordance with the standards set forth in Section 25, and  
29 has the power to issue a comprehensive permit. The  
30 comprehensive permit shall include all local government  
31 approvals or licenses, other than a building permit,  
32 necessary for the authorization of the affordable housing  
33 development. The approving authority shall hold at least one

1 public hearing on the proposal within 60 days after receipt  
2 of the application and shall render a decision within 40  
3 business days after the conclusion of the public hearing.

4 (c) Failure of the approving authority to act within  
5 this time frame means that the authority is deemed to have  
6 approved the application, unless the time frame is extended  
7 by a voluntary agreement with the applicant.

8 Section 25. Basis for approving authority determination.

9 (a) The approving authority shall grant approval of an  
10 affordable housing development unless facts produced in the  
11 record at the public hearing or otherwise of record  
12 demonstrate that the development as proposed:

13 (1) would have significant adverse effects on the  
14 environment; or

15 (2) would significantly conflict with planning  
16 goals and policies specified in the local government's  
17 comprehensive plan, provided they are not designed to, or  
18 do not have the effect of, rendering infeasible the  
19 development of affordable housing while permitting other  
20 forms of housing.

21 (b) The approving authority may condition the approval  
22 of the affordable housing development on compliance with  
23 local government development standards, contained in an  
24 ordinance or regulation, that are necessary for the  
25 protection of the health and safety of residents of the  
26 proposed development or of the residents of the local  
27 government, or that promote better site and building design  
28 in relation to the area surrounding the proposed development,  
29 provided that any ordinances or regulations must be equally  
30 applicable to both affordable housing developments and other  
31 developments, and provided that any conditions do not render  
32 the affordable housing development infeasible. The approving  
33 authority shall waive local government development standards

1 when their application would render the provision of  
2 affordable housing infeasible, unless a waiver would cause  
3 the affordable housing development to have significant  
4 adverse effects on the environment.

5 (c) For purposes of this Act, a requirement, condition,  
6 ordinance, or regulation is considered to render an  
7 affordable housing development proposed by an affordable  
8 housing developer that is a nonprofit entity, limited equity  
9 cooperative, or public agency infeasible when it renders the  
10 development unable to proceed in accordance with program  
11 requirements of any public program for the production of  
12 affordable housing in view of the amount of subsidy  
13 realistically available. For an affordable housing  
14 development proposed by an affordable housing developer that  
15 is a private for-profit individual, firm, corporation, or  
16 other entity, the imposition of unnecessary cost generating  
17 requirements, either alone or in combination with other  
18 requirements, is considered to render an affordable housing  
19 development infeasible when it reduces the likely return on  
20 the development to a point where a reasonably prudent  
21 developer would not proceed.

22 Section 30. Appeal to State Housing Appeals Board.

23 (a) An affordable housing developer whose application is  
24 either denied or approved with conditions that in his or her  
25 judgment render the provision of affordable housing  
26 infeasible may, within 45 days after the decision, appeal to  
27 the State Housing Appeals Board challenging that decision.  
28 The Board shall render a decision on the application within  
29 120 days after the appeal is filed. In its determination of  
30 an appeal, the Board shall conduct a de novo review of the  
31 matter.

32 (b) In rendering its decision, the Board shall consider  
33 the facts and whether the approving authority correctly

1 applied the standards set forth in Section 25. In any  
2 proceeding before the Board, the approving authority bears  
3 the burden of demonstrating that it correctly applied the  
4 standards set forth in Section 25 in denying or conditionally  
5 approving the application for an affordable housing  
6 development.

7 (c) The Board may affirm, reverse, or modify the  
8 conditions of, or add conditions to, a decision made by the  
9 approving authority. The decision of the Board constitutes an  
10 order directed to the approving authority and is binding on  
11 the local government, which shall forthwith issue any and all  
12 necessary permits and approvals consistent with the  
13 determination of the Board.

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

16 Section 35. Enforcement. The order of the Board may be  
17 enforced by the Board or by the applicant in an action  
18 brought in the circuit court.

19 Section 40. Nonresidential development as part of an  
20 affordable housing development.

21 (a) An applicant for development of property that will  
22 be principally devoted to nonresidential uses in a  
23 nonresidential zoning district has the status of an  
24 affordable housing developer for the purposes of this Act  
25 when the applicant proposes that no less than 20% of the area  
26 of the development or 20% of the square footage of the  
27 development be devoted to affordable housing, except that the  
28 applicant bears the burden of proof of demonstrating that the  
29 purposes of a nonresidential zoning district will not be  
30 impaired by the construction of housing in that zoning  
31 district and that the health, safety, and welfare of the  
32 residents of the affordable housing will not be adversely

1 affected by nonresidential uses either in existence or  
2 permitted in that zoning district.

3 (b) For purposes of subsection (a), the square footage  
4 of the residential portion of the development shall be  
5 measured by the interior floor area of dwelling units,  
6 excluding that portion that is unheated. Square footage of  
7 the nonresidential portion shall be calculated according to  
8 the gross leasable area.

9 Section 45. Overconcentration of affordable housing. In  
10 order to prevent the drastic alteration of a community's  
11 character through the exercise of the rights conferred upon  
12 affordable housing developers by this Act, the requirements  
13 to approve affordable housing developments by a local  
14 government as specified in this Act cease when:

15 (1) the local government fulfills the requirements  
16 to become an exempt local government; or

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

20 Section 50. Housing Appeals Board.

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

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

24 (2) a local zoning board member;

25 (3) a regional planning board member;

26 (4) a city council member;

27 (5) a county board member;

28 (6) an affordable housing developer; and

29 (7) an affordable housing advocate.

30 In addition, the Chairman of the Illinois Housing  
31 Development Authority, ex officio, shall serve as a  
32 non-voting member.



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