



Sen. Susan Garrett

**Filed: 4/11/2005**

09400SB0966sam001

LRB094 04641 DRJ 44747 a

1 AMENDMENT TO SENATE BILL 966

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 966 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Counties Code is amended by changing  
5 Section 5-12001 as follows:

6 (55 ILCS 5/5-12001) (from Ch. 34, par. 5-12001)

7 Sec. 5-12001. Authority to regulate and restrict location  
8 and use of structures.

9 For the purpose of promoting the public health, safety,  
10 morals, comfort and general welfare, conserving the values of  
11 property throughout the county, lessening or avoiding  
12 congestion in the public streets and highways, and lessening or  
13 avoiding the hazards to persons and damage to property  
14 resulting from the accumulation or runoff of storm or flood  
15 waters, the county board or board of county commissioners, as  
16 the case may be, of each county, shall have the power to  
17 regulate and restrict the location and use of buildings,  
18 structures and land for trade, industry, residence and other  
19 uses which may be specified by such board, to regulate and  
20 restrict the intensity of such uses, to establish building or  
21 setback lines on or along any street, trafficway, drive,  
22 parkway or storm or floodwater runoff channel or basin outside  
23 the limits of cities, villages and incorporated towns which  
24 have in effect municipal zoning ordinances; to divide the

1 entire county outside the limits of such cities, villages and  
2 incorporated towns into districts of such number, shape, area  
3 and of such different classes, according to the use of land and  
4 buildings, the intensity of such use (including height of  
5 buildings and structures and surrounding open space) and other  
6 classification as may be deemed best suited to carry out the  
7 purposes of this Division; to prohibit uses, buildings or  
8 structures incompatible with the character of such districts  
9 respectively; and to prevent additions to and alteration or  
10 remodeling of existing buildings or structures in such a way as  
11 to avoid the restrictions and limitations lawfully imposed  
12 hereunder: Provided, that permits with respect to the erection,  
13 maintenance, repair, alteration, remodeling or extension of  
14 buildings or structures used or to be used for agricultural  
15 purposes shall be issued free of any charge. The corporate  
16 authorities of the county may by ordinance require the  
17 construction of fences around or protective covers over  
18 previously constructed artificial basins of water dug in the  
19 ground and used for swimming or wading, which are located on  
20 private residential property and intended for the use of the  
21 owner and guests. In all ordinances or resolutions passed under  
22 the authority of this Division, due allowance shall be made for  
23 existing conditions, the conservation of property values, the  
24 directions of building development to the best advantage of the  
25 entire county, and the uses to which property is devoted at the  
26 time of the enactment of any such ordinance or resolution.

27 The powers by this Division given shall not be exercised so  
28 as to deprive the owner of any existing property of its use or  
29 maintenance for the purpose to which it is then lawfully  
30 devoted, but provisions may be made for (i) the gradual  
31 elimination of the uses of unimproved lands or lot areas when  
32 the existing rights of the persons in possession are terminated  
33 or when the uses to which they are devoted are discontinued,  
34 (ii) the gradual elimination of uses to which the buildings and

1 structures are devoted if they are adaptable to permitted uses,  
2 and (iii) the gradual elimination of the buildings and  
3 structures when they are destroyed or damaged in major part;  
4 nor shall they be exercised so as to impose regulations,  
5 eliminate uses, buildings, or structures, or require permits  
6 with respect to land used for agricultural purposes, which  
7 includes the growing of farm crops, truck garden crops, animal  
8 and poultry husbandry, apiculture, aquaculture, dairying,  
9 floriculture, horticulture, nurseries, tree farms, sod farms,  
10 pasturage, viticulture, and wholesale greenhouses when such  
11 agricultural purposes constitute the principal activity on the  
12 land, other than parcels of land consisting of less than 5  
13 acres from which \$1,000 or less of agricultural products were  
14 sold in any calendar year in counties with a population between  
15 300,000 and 400,000 or in counties contiguous to a county with  
16 a population between 300,000 and 400,000, and other than  
17 parcels of land consisting of less than 5 acres in counties  
18 with a population in excess of 400,000, or with respect to the  
19 erection, maintenance, repair, alteration, remodeling or  
20 extension of buildings or structures used or to be used for  
21 agricultural purposes upon such land except that such buildings  
22 or structures for agricultural purposes may be required to  
23 conform to building or set back lines and counties may  
24 establish a minimum lot size for residences on land used for  
25 agricultural purposes; nor shall any such powers be so  
26 exercised as to prohibit the temporary use of land for the  
27 installation, maintenance and operation of facilities used by  
28 contractors in the ordinary course of construction activities,  
29 except that such facilities may be required to be located not  
30 less than 1,000 feet from any building used for residential  
31 purposes, and except that the period of such temporary use  
32 shall not exceed the duration of the construction contract; nor  
33 shall any such powers include the right to specify or regulate  
34 the type or location of any poles, towers, wires, cables,

1 conduits, vaults, laterals or any other similar distributing  
2 equipment of a public utility as defined in the Public  
3 Utilities Act, if the public utility is subject to the Messages  
4 Tax Act, the Gas Revenue Tax Act or the Public Utilities  
5 Revenue Act, or if such facilities or equipment are located on  
6 any rights of way and are used for railroad purposes, nor shall  
7 any such powers be exercised with respect to uses, buildings,  
8 or structures of a public utility as defined in the Public  
9 Utilities Act, nor shall any such powers be exercised in any  
10 respect as to the facilities, as defined in Section 5-12001.1,  
11 of a telecommunications carrier, as also defined therein,  
12 except to the extent and in the manner set forth in Section  
13 5-12001.1. As used in this Act, "agricultural purposes" do not  
14 include the extraction of sand, gravel or limestone, and such  
15 activities may be regulated by county zoning ordinance even  
16 when such activities are related to an agricultural purpose.

17 Nothing in this Division shall be construed to restrict the  
18 powers granted by statute to cities, villages and incorporated  
19 towns as to territory contiguous to but outside of the limits  
20 of such cities, villages and incorporated towns. Any zoning  
21 ordinance enacted by a city, village or incorporated town shall  
22 supersede, with respect to territory within the corporate  
23 limits of the municipality, any county zoning plan otherwise  
24 applicable. The powers granted to counties by this Division  
25 shall be treated as in addition to powers conferred by statute  
26 to control or approve maps, plats or subdivisions. In this  
27 Division, "agricultural purposes" include, without limitation,  
28 the growing, developing, processing, conditioning, or selling  
29 of hybrid seed corn, seed beans, seed oats, or other farm  
30 seeds.

31 Nothing in this Division shall be construed to prohibit the  
32 corporate authorities of a county from adopting an ordinance  
33 that exempts pleasure driveways or park districts, as defined  
34 in the Park District Code, with a population of greater than

1 100,000, from the exercise of the county's powers under this  
2 Division.

3 The powers granted by this Division may be used to promote  
4 the creation and preservation of affordable housing, including  
5 the power to provide increased density or other zoning  
6 incentives to developers who are building affordable housing.

7 (Source: P.A. 89-654, eff. 8-14-96; 90-261, eff. 1-1-98;  
8 90-522, eff. 1-1-98; 90-655, eff. 7-30-98; 90-661, eff.  
9 7-30-98.)

10 Section 10. The Illinois Municipal Code is amended by  
11 changing Section 11-13-1 as follows:

12 (65 ILCS 5/11-13-1) (from Ch. 24, par. 11-13-1)

13 Sec. 11-13-1. To the end that adequate light, pure air, and  
14 safety from fire and other dangers may be secured, that the  
15 taxable value of land and buildings throughout the municipality  
16 may be conserved, that congestion in the public streets may be  
17 lessened or avoided, that the hazards to persons and damage to  
18 property resulting from the accumulation or runoff of storm or  
19 flood waters may be lessened or avoided, and that the public  
20 health, safety, comfort, morals, and welfare may otherwise be  
21 promoted, and to insure and facilitate the preservation of  
22 sites, areas, and structures of historical, architectural and  
23 aesthetic importance; the corporate authorities in each  
24 municipality have the following powers:

25 (1) To regulate and limit the height and bulk of  
26 buildings hereafter to be erected; (2) to establish,  
27 regulate and limit, subject to the provisions of Division  
28 14 of this Article 11, the building or set-back lines on or  
29 along any street, traffic-way, drive, parkway or storm or  
30 floodwater runoff channel or basin; (3) to regulate and  
31 limit the intensity of the use of lot areas, and to  
32 regulate and determine the area of open spaces, within and

1 surrounding such buildings; (4) to classify, regulate and  
2 restrict the location of trades and industries and the  
3 location of buildings designed for specified industrial,  
4 business, residential, and other uses; (5) to divide the  
5 entire municipality into districts of such number, shape,  
6 area, and of such different classes (according to use of  
7 land and buildings, height and bulk of buildings, intensity  
8 of the use of lot area, area of open spaces, or other  
9 classification) as may be deemed best suited to carry out  
10 the purposes of this Division 13; (6) to fix standards to  
11 which buildings or structures therein shall conform; (7) to  
12 prohibit uses, buildings, or structures incompatible with  
13 the character of such districts; (8) to prevent additions  
14 to and alteration or remodeling of existing buildings or  
15 structures in such a way as to avoid the restrictions and  
16 limitations lawfully imposed under this Division 13; (9) to  
17 classify, to regulate and restrict the use of property on  
18 the basis of family relationship, which family  
19 relationship may be defined as one or more persons each  
20 related to the other by blood, marriage or adoption and  
21 maintaining a common household; ~~and~~ (10) to regulate or  
22 forbid any structure or activity which may hinder access to  
23 solar energy necessary for the proper functioning of a  
24 solar energy system, as defined in Section 1.2 of The  
25 Comprehensive Solar Energy Act of 1977; and (11) to promote  
26 the creation and preservation of affordable housing,  
27 including the power to provide increased density or other  
28 zoning incentives to developers who are building  
29 affordable housing.

30 The powers enumerated may be exercised within the corporate  
31 limits or within contiguous territory not more than one and  
32 one-half miles beyond the corporate limits and not included  
33 within any municipality. However, if any municipality adopts a  
34 plan pursuant to Division 12 of Article 11 which plan includes

1 in its provisions a provision that the plan applies to such  
2 contiguous territory not more than one and one-half miles  
3 beyond the corporate limits and not included in any  
4 municipality, then no other municipality shall adopt a plan  
5 that shall apply to any territory included within the territory  
6 provided in the plan first so adopted by another municipality.  
7 No municipality shall exercise any power set forth in this  
8 Division 13 outside the corporate limits thereof, if the county  
9 in which such municipality is situated has adopted "An Act in  
10 relation to county zoning", approved June 12, 1935, as amended.  
11 Nothing in this Section prevents a municipality of more than  
12 112,000 population located in a county of less than 185,000  
13 population that has adopted a zoning ordinance and the county  
14 that adopted the zoning ordinance from entering into an  
15 intergovernmental agreement that allows the municipality to  
16 exercise its zoning powers beyond its territorial limits;  
17 provided, however, that the intergovernmental agreement must  
18 be limited to the territory within the municipality's planning  
19 jurisdiction as defined by law or any existing boundary  
20 agreement. The county and the municipality must amend their  
21 individual zoning maps in the same manner as other zoning  
22 changes are incorporated into revised zoning maps. No such  
23 intergovernmental agreement may authorize a municipality to  
24 exercise its zoning powers, other than powers that a county may  
25 exercise under Section 5-12001 of the Counties Code, with  
26 respect to land used for agricultural purposes. This amendatory  
27 Act of the 92nd General Assembly is declarative of existing  
28 law. No municipality may exercise any power set forth in this  
29 Division 13 outside the corporate limits of the municipality  
30 with respect to a facility of a telecommunications carrier  
31 defined in Section 5-12001.1 of the Counties Code.

32 Notwithstanding any other provision of law to the contrary,  
33 at least 30 days prior to commencing construction of a new  
34 telecommunications facility within 1.5 miles of a

1 municipality, the telecommunications carrier constructing the  
2 facility shall provide written notice of its intent to  
3 construct the facility. The notice shall include, but not be  
4 limited to, the following information: (i) the name, address,  
5 and telephone number of the company responsible for the  
6 construction of the facility and (ii) the address and telephone  
7 number of the governmental entity that issued the building  
8 permit for the telecommunications facility. The notice shall be  
9 provided in person, by overnight private courier, or by  
10 certified mail to all owners of property within 250 feet of the  
11 parcel in which the telecommunications carrier has a leasehold  
12 or ownership interest. For the purposes of this notice  
13 requirement, "owners" means those persons or entities  
14 identified from the authentic tax records of the county in  
15 which the telecommunications facility is to be located. If,  
16 after a bona fide effort by the telecommunications carrier to  
17 determine the owner and his or her address, the owner of the  
18 property on whom the notice must be served cannot be found at  
19 the owner's last known address, or if the mailed notice is  
20 returned because the owner cannot be found at the last known  
21 address, the notice requirement of this paragraph is deemed  
22 satisfied. For the purposes of this paragraph, "facility" means  
23 that term as it is defined in Section 5-12001.1 of the Counties  
24 Code.

25 If a municipality adopts a zoning plan covering an area  
26 outside its corporate limits, the plan adopted shall be  
27 reasonable with respect to the area outside the corporate  
28 limits so that future development will not be hindered or  
29 impaired; it is reasonable for a municipality to regulate or  
30 prohibit the extraction of sand, gravel, or limestone even when  
31 those activities are related to an agricultural purpose. If all  
32 or any part of the area outside the corporate limits of a  
33 municipality which has been zoned in accordance with the  
34 provisions of this Division 13 is annexed to another

1 municipality or municipalities, the annexing unit shall  
2 thereafter exercise all zoning powers and regulations over the  
3 annexed area.

4 In all ordinances passed under the authority of this  
5 Division 13, due allowance shall be made for existing  
6 conditions, the conservation of property values, the direction  
7 of building development to the best advantage of the entire  
8 municipality and the uses to which the property is devoted at  
9 the time of the enactment of such an ordinance. The powers  
10 conferred by this Division 13 shall not be exercised so as to  
11 deprive the owner of any existing property of its use or  
12 maintenance for the purpose to which it is then lawfully  
13 devoted, but provisions may be made for the gradual elimination  
14 of uses, buildings and structures which are incompatible with  
15 the character of the districts in which they are made or  
16 located, including, without being limited thereto, provisions  
17 (a) for the elimination of such uses of unimproved lands or lot  
18 areas when the existing rights of the persons in possession  
19 thereof are terminated or when the uses to which they are  
20 devoted are discontinued; (b) for the elimination of uses to  
21 which such buildings and structures are devoted, if they are  
22 adaptable for permitted uses; and (c) for the elimination of  
23 such buildings and structures when they are destroyed or  
24 damaged in major part, or when they have reached the age fixed  
25 by the corporate authorities of the municipality as the normal  
26 useful life of such buildings or structures.

27 This amendatory Act of 1971 does not apply to any  
28 municipality which is a home rule unit.

29 (Source: P.A. 92-509, eff. 1-1-02; 93-698, eff. 7-9-04.)

30 Section 15. The Affordable Housing Planning and Appeal Act  
31 is amended by changing Sections 15, 25, 30, and 50 and by  
32 adding Section 60 as follows:

1 (310 ILCS 67/15)

2 Sec. 15. Definitions. As used in this Act:

3 "Affordable housing" means housing that has a sales price  
4 or rental amount that is within the means of a household that  
5 may occupy moderate-income or low-income housing. In the case  
6 of dwelling units for sale, housing that is affordable means  
7 housing in which mortgage, amortization, taxes, insurance, and  
8 condominium or association fees, if any, constitute no more  
9 than 30% of the gross annual household income for a household  
10 of the size that may occupy the unit. In the case of dwelling  
11 units for rent, housing that is affordable means housing for  
12 which the rent and utilities constitute no more than 30% of the  
13 gross annual household income for a household of the size that  
14 may occupy the unit.

15 "Affordable housing developer" means a nonprofit entity,  
16 limited equity cooperative or public agency, or private  
17 individual, firm, corporation, or other entity seeking to build  
18 an affordable housing development.

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

27 "Approving authority" means the governing body of the  
28 county or municipality.

29 "Area median household income" means the median household  
30 income adjusted for family size for applicable income limit  
31 areas as determined annually by the federal Department of  
32 Housing and Urban Development under Section 8 of the United  
33 States Housing Act of 1937.

34 "Community land trust" means a private, not-for-profit

1 corporation organized exclusively for charitable, cultural,  
2 and other purposes and created to acquire and own land for the  
3 benefit of the local government, including the creation and  
4 preservation of affordable housing.

5 "Development" means any building, construction,  
6 renovation, or excavation or any material change in the use or  
7 appearance of any structure or in the land itself; the division  
8 of land into parcels; or any change in the intensity or use of  
9 land, such as an increase in the number of dwelling units in a  
10 structure or a change to a commercial use.

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

16 "Household" means the person or persons occupying a  
17 dwelling unit.

18 "Housing trust fund" means a separate fund within a local  
19 government established solely for the purpose of holding and  
20 disbursing financial resources to address the affordable  
21 housing needs of individuals or households that may occupy  
22 low-income or moderate-income housing.

23 "Local government" means a county or municipality.

24 "Low-income housing" means housing that is affordable,  
25 according to the federal Department of Housing and Urban  
26 Development, for either home ownership or rental, and that is  
27 occupied, reserved, or marketed for occupancy by households  
28 with a gross household income that does not exceed 50% of the  
29 area median household income.

30 "Moderate-income housing" means housing that is  
31 affordable, according to the federal Department of Housing and  
32 Urban Development, for either home ownership or rental, and  
33 that is occupied, reserved, or marketed for occupancy by  
34 households with a gross household income that is greater than

1 50% but does not exceed 80% of the area median household  
2 income.

3 "Non-appealable local government requirements" means all  
4 essential requirements that protect the public health and  
5 safety, including any local building, electrical, fire, or  
6 plumbing code requirements or those requirements that are  
7 critical to the protection or preservation of the environment.

8 (Source: P.A. 93-595, eff. 1-1-04; 93-678, eff. 6-28-04.)

9 (310 ILCS 67/25)

10 Sec. 25. Affordable housing plan.

11 (a) Prior to April 1, 2005, all non-exempt local  
12 governments must approve an affordable housing plan. Upon  
13 recalculation of the non-exempt list under Section 20 using new  
14 decennial census data, any local government determined to be  
15 non-exempt for the first time by the Illinois Housing  
16 Development Authority shall have 18 months from the date of  
17 notification of its non-exempt status to approve an affordable  
18 housing plan under this Act.

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

21 (i) a statement of the total number of affordable  
22 housing units that are necessary to exempt the local  
23 government from the operation of this Act as defined in  
24 Section 15 and Section 20;

25 (ii) an identification of lands within the  
26 jurisdiction that are most appropriate for the  
27 construction of affordable housing and of existing  
28 structures most appropriate for conversion to, or  
29 rehabilitation for, affordable housing, including a  
30 consideration of lands and structures of developers who  
31 have expressed a commitment to provide affordable housing  
32 and lands and structures that are publicly or semi-publicly  
33 owned;

1 (iii) incentives that local governments may provide  
2 for the purpose of attracting affordable housing to their  
3 jurisdiction; and

4 (iv) a goal of a minimum of 15% of all new development  
5 or redevelopment within the local government that would be  
6 defined as affordable housing in this Act; or a minimum of  
7 a 3 percentage point increase in the overall percentage of  
8 affordable housing within its jurisdiction, as described  
9 in subsection (b) of Section 20 of this Act; or a minimum  
10 of a total of 10% affordable housing within its  
11 jurisdiction as described in subsection (b) of Section 20  
12 of this Act. These goals may be met, in whole or in part,  
13 through the creation of affordable housing units under  
14 intergovernmental agreements as described in subsection  
15 (e) of this Section.

16 (c) Within 60 days after the adoption of an affordable  
17 housing plan or revisions to its affordable housing plan, the  
18 local government must submit a copy of that plan to the  
19 Illinois Housing Development Authority.

20 (d) In order to promote the goals of this Act and to  
21 maximize the creation of affordable housing throughout the  
22 State of Illinois, a local government, whether exempt or  
23 non-exempt under this Act, may adopt the following measures to  
24 address the need for affordable housing:

25 (1) A local government may create a housing trust fund,  
26 which may be used, without limitation, to support the  
27 following affordable housing activities:

28 (A) Housing production, including, without  
29 limitation, new construction, rehabilitation, and  
30 adaptive re-use.

31 (B) Acquisition, including, without limitation,  
32 vacant land, single-family homes, multi-unit  
33 buildings, and other existing structures that may be  
34 used in whole or in part for residential use.

- 1           (C) Rental payment assistance.  
2           (D) Home-ownership purchase assistance.  
3           (E) Preservation of existing affordable housing.  
4           (F) Weatherization.  
5           (G) Emergency repairs.  
6           (H) Housing related support services, including  
7           homeownership education and financial counseling.

- 8           (I) Capacity grants to not-for-profit  
9           organizations that are actively engaged in addressing  
10          the affordable housing needs of low-income and  
11          moderate-income households.

12          Local governments may authorize housing trust funds to  
13          accept and utilize funds, property, and other resources  
14          from all proper and lawful public and private sources so  
15          long as those funds are used solely for addressing the  
16          affordable housing needs of individuals or households that  
17          may occupy low-income or moderate-income housing.

18          (2) A local government may create a community land  
19          trust, which may: acquire developed or undeveloped parcels  
20          of land; hold them in perpetuity and for conveyance under  
21          long-term ground leases; transfer ownership of any  
22          structural improvements on such parcels to lessees; and  
23          retain a preemptive option to purchase any such structural  
24          improvements at a price determined by a formula ensuring  
25          that the improvement remains affordable in perpetuity to  
26          individuals or households that may occupy low-income or  
27          moderate-income housing.

28          (3) A local government may use its zoning powers to  
29          promote the creation and preservation of affordable  
30          housing as authorized under Section 5-12001 of the Counties  
31          Code and Section 11-13-1 of the Illinois Municipal Code.

32          (4) A local government may accept donations of money or  
33          land in order to use those donations to address the  
34          affordable housing needs of individuals or households that

1 may occupy low-income or moderate-income housing. These  
2 donations may include donations of money or land from  
3 developers in lieu of building affordable housing.

4 (e) In order to encourage regional cooperation and the  
5 maximum creation of affordable housing in areas lacking such  
6 housing in the State of Illinois, any non-exempt local  
7 government may enter into intergovernmental agreements with  
8 local governments within 10 miles of its corporate boundaries  
9 in order to create affordable housing units to meet the goals  
10 of this Act. A non-exempt local government may not enter into  
11 an intergovernmental agreement, however, with any local  
12 government that contains more than 25% affordable housing as  
13 determined under Section 20 of this Act. All intergovernmental  
14 agreements entered into to create affordable housing units to  
15 meet the goals of this Act must also specify how many of the  
16 affordable housing units created will be credited to each local  
17 government participating in the agreement for purposes of  
18 complying with this Act. In specifying how many affordable  
19 housing units will be credited to each local government, the  
20 same affordable housing unit may not be counted by more than  
21 one local government. This subsection (e) is inoperative on and  
22 after January 1, 2010.

23 (Source: P.A. 93-595, eff. 1-1-04; 93-678, eff. 6-28-04.)

24 (310 ILCS 67/30)

25 Sec. 30. Appeal to State Housing Appeals Board.

26 (a) (Blank). Beginning January 1, 2006, an affordable  
27 housing developer whose application is either denied or  
28 approved with conditions that in his or her judgment render the  
29 provision of affordable housing infeasible may, within 45 days  
30 after the decision, submit to the State Housing Appeals Board  
31 information regarding why the developer believes he or she was  
32 unfairly denied or conditions were placed upon the tentative  
33 approval of the development unless the local government that

1 ~~rendered the decision is exempt under Section 15 or Section 20~~  
2 ~~of this Act. The Board shall maintain all information forwarded~~  
3 ~~to them by developers and shall compile and make available an~~  
4 ~~annual report summarizing the information thus received.~~

5 (b) Beginning January 1, 2009, an affordable housing  
6 developer whose application is either denied or approved with  
7 conditions that in his or her judgment render the provision of  
8 affordable housing infeasible may, within 45 days after the  
9 decision, appeal to the State Housing Appeals Board challenging  
10 that decision unless the municipality or county that rendered  
11 the decision is exempt under Section 15 of this Act. The  
12 developer must submit information regarding why the developer  
13 believes he or she was unfairly denied or unreasonable  
14 conditions were placed upon the tentative approval of the  
15 development. In the case of local governments that are  
16 determined to be non-exempt for the first time by the Illinois  
17 Housing Development Authority under Section 20 using new  
18 decennial census data, no developer may appeal to the State  
19 Housing Appeals Board until 60 months after a local government  
20 has been notified of its non-exempt status.

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

1 arbitrary and unreasonable and without substantial relation to  
2 the public health, safety, or welfare. ~~he or she has been~~  
3 ~~unfairly denied or unreasonable conditions have been placed~~  
4 ~~upon the tentative approval for the application for an~~  
5 ~~affordable housing development.~~

6 If a developer proves by a preponderance of the evidence  
7 that the local government's decision was based on an intent to  
8 prohibit or render infeasible the development of affordable  
9 housing, then the local government's decision will be deemed to  
10 be arbitrary and unreasonable and without substantial relation  
11 to the public health, safety, or welfare. In determining  
12 whether the developer has proved an intent to prohibit or  
13 render infeasible the development of affordable housing, the  
14 Board shall consider the following factors:

15 (1) Whether the local government has adopted an  
16 affordable housing plan under this Act.

17 (2) Whether the local government has made a good faith  
18 effort to implement its affordable housing plan,  
19 including, but not limited to, whether the local government  
20 has adopted new policies or programs or made an  
21 appropriation to help create affordable housing.

22 (3) Whether the local government's regulations have  
23 been consistently applied to comparable proposed  
24 developments, whether or not the proposals include  
25 affordable housing.

26 (4) Evidence of a consistent pattern of behavior by the  
27 local government to restrict the economic viability of  
28 affordable housing developments.

29 In reviewing the legitimacy of the local government's  
30 action as it applies to the specific development in question,  
31 the Board's review shall be based solely on the record  
32 established during the local government proceedings. However,  
33 in determining whether the developer has proved that there is  
34 an intent to prohibit or render infeasible the development of

1 affordable housing, the Board, in addition to reviewing the  
2 record established at the local level, may examine evidence not  
3 introduced in the local government proceeding that is relevant  
4 to the factors set forth in items (1) through (4) of this  
5 subsection (c).

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

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

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

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

19 (f) The Board may affirm, reverse, or modify the conditions  
20 of, or add conditions to, a decision made by the approving  
21 authority. The decision of the Board constitutes an order  
22 directed to the approving authority and is binding on the local  
23 government.

24 (g) The appellate court has the exclusive jurisdiction to  
25 review decisions of the Board. Any appeal to the Appellate  
26 Court of a final ruling by the State Housing Appeals Board may  
27 be heard only in the Appellate Court for the District in which  
28 the local government involved in the appeal is located.

29 (Source: P.A. 93-595, eff. 1-1-04.)

30 (310 ILCS 67/50)

31 Sec. 50. Housing Appeals Board.

32 (a) Prior to January 1, 2008 ~~July 1, 2006~~, a Housing  
33 Appeals Board shall be created consisting of 7 members

1 appointed by the Governor as follows:

2 (1) a retired circuit judge or retired appellate judge,  
3 who shall act as chairperson;

4 (2) a zoning board of appeals member;

5 (3) a planning board member;

6 (4) a mayor or municipal council or board member;

7 (5) a county board member;

8 (6) an affordable housing developer; and

9 (7) an affordable housing advocate.

10 In addition, the Chairman of the Illinois Housing  
11 Development Authority, ex officio, shall serve as a non-voting  
12 member. No more than 4 of the appointed members may be from the  
13 same political party. Appointments under items (2), (3), and  
14 (4) shall be from local governments that are not exempt under  
15 this Act.

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

28 (c) (Blank). ~~The Illinois Housing Development Authority~~  
29 ~~may adopt such other rules and regulations as it deems~~  
30 ~~necessary and appropriate to carry out the Board's~~  
31 ~~responsibilities under this Act and to provide direction to~~  
32 ~~local governments and affordable housing developers.~~

33 (Source: P.A. 93-595, eff. 1-1-04.)

1 (310 ILCS 67/60 new)

2 Sec. 60. Rulemaking authority. The Illinois Housing  
3 Development Authority shall adopt other rules and regulations  
4 as needed to carry out the Board's responsibilities under this  
5 Act and to provide direction to local governments and  
6 affordable housing developers.

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