

**First Regular Session  
Sixty-third General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 01-0344.01 Dan Cartin

**HOUSE BILL 01-1328**

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**HOUSE SPONSORSHIP**

**Madden, Boyd, and Plant**

**SENATE SPONSORSHIP**

**(None),**

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**House Committees**

Local Government

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING THE CONSTRUCTION OF PERMANENTLY AFFORDABLE**  
102             **UNITS AS A CONDITION OF SUBDIVISION APPROVAL BY A BOARD**  
103             **OF COUNTY COMMISSIONERS IN COUNTIES HAVING A**  
104             **POPULATION OF TEN THOUSAND OR MORE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Makes legislative findings on the necessity of affordable housing in certain areas of the state and the appropriateness of county subdivision regulations including requirements for permanently affordable housing units.

On and after January 1, 2002, prohibits a board of county

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

commissioners for a county exceeding a population of 10,000 from approving any preliminary subdivision plan or final plat containing 10 or more dwelling units unless the plan or plat provides that at least 10% of the total number of units consist of permanently affordable units.

Requires the subdivision regulations of such counties to include the following provisions governing permanently affordable units:

- The maximum income and asset limitations for an individual or family to be eligible to purchase a permanently affordable unit;
- Minimum sizes for permanently affordable units;
- The maximum sales price for permanently affordable units;
- Resale restrictions applicable to permanently affordable units;
- The conditions or circumstances under which a subdivision or development shall be exempted from the permanently affordable unit requirements.

Specifies that subdivision regulations may authorize an increase in density or density bonuses for a subdivision in which permanently affordable units must be constructed, not to exceed one unit for each permanently affordable unit constructed in such subdivision.

Requires subdivision regulations to include the following provisions for alternative methods of complying with affordable housing requirements:

- In lieu of constructing one or more permanently affordable units, payment of a specified sum of money by the subdivider or developer and deposit of those sums into the county affordable housing fund;
- Dedication of off-site land in lieu of constructing permanently affordable units;
- Any other reasonable alternatives to in lieu payments by subdividers and developers for permanently affordable units;

Requires affected counties to establish an affordable housing fund for the receipt and management of permanently affordable unit in lieu payments. Specifies that moneys in the fund must be utilized solely for the construction, purchase, and maintenance of affordable housing and for the costs of administering any programs in connection with permanently affordable units.

Specifies that the affordable housing provisions of the subdivision regulations shall not be applied to deprive any person of any vested right or property right or to abrogate an existing agreement.

Defines terms.



1 NEAR WHERE THEY WORK NEGATIVELY AFFECTS THE REGION'S JOBS AND  
2 HOUSING BALANCE AND HAS SERIOUS AND DETRIMENTAL TRANSPORTATION  
3 AND ENVIRONMENTAL CONSEQUENCES.

4 (d) BECAUSE UNDEVELOPED LAND APPROPRIATE FOR RESIDENTIAL  
5 DEVELOPMENT IN CERTAIN AREAS OF THE STATE IS LIMITED, IT IS ESSENTIAL  
6 THAT A REASONABLE PROPORTION OF SUCH LAND BE DEVELOPED INTO  
7 HOUSING UNITS AFFORDABLE TO LOW- AND MODERATE-INCOME RESIDENTS.

8  
9 (e) IT IS APPROPRIATE, AT THE DISCRETION OF THE PARTICULAR  
10 COUNTY, FOR COUNTY SUBDIVISION REGULATIONS IN CERTAIN AREAS OF  
11 THE STATE TO INCLUDE REQUIREMENTS FOR A MINIMUM NUMBER OF  
12 PERMANENTLY AFFORDABLE HOUSING UNITS IN ANY NEW SUBDIVISION OR  
13 DEVELOPMENT THAT CONTAINS A SPECIFIED NUMBER OF RESIDENTIAL  
14 DWELLING UNITS.

15 (f) IN ENACTING THIS PART 5, IT IS NOT THE INTENT OF THE GENERAL  
16 ASSEMBLY TO DEPRIVE ANY LANDOWNER OF ANY EXISTING VESTED RIGHTS  
17 CREATED BY STATUTE, CONTRACT, OR COMMON LAW OR ANY PROPERTY  
18 RIGHTS DERIVED FROM THE STATE OR FEDERAL CONSTITUTIONS, OR TO  
19 ABROGATE ANY CONTRACTUAL OBLIGATIONS OF THE STATE OR ANY LOCAL  
20 GOVERNMENTS IMPLEMENTING THE PROVISIONS OF THIS PART 5.

21 **30-28-502. Definitions.** AS USED IN THIS PART 5, UNLESS THE  
22 CONTEXT OTHERWISE REQUIRES:

23 (1) "PERMANENTLY AFFORDABLE UNIT" MEANS A RESIDENTIAL  
24 STRUCTURE THAT IS PURCHASED BY AND IS OCCUPIED AS A PRIMARY  
25 RESIDENCE BY ONE OR MORE INCOME ELIGIBLE HOUSEHOLDS.

26 (2) "SUBDIVIDER" OR "DEVELOPER" MEANS ANY PERSON, FIRM,  
27 PARTNERSHIP, JOINT VENTURE, ASSOCIATION, OR CORPORATION

1 PARTICIPATING AS OWNER, PROMOTER, DEVELOPER, OR SALES AGENT IN  
2 THE PLANNING, PLATTING, DEVELOPMENT, PROMOTION, OR SALE OF A  
3 SUBDIVISION.

4 **30-28-503. Permanently affordable units - subdivision plan**  
5 **approval.** (1) ON AND AFTER JANUARY 1, 2002, SUBDIVISION

6 REGULATIONS ADOPTED BY A BOARD OF COUNTY COMMISSIONERS  
7 PURSUANT TO SECTION 30-28-133 OF A COUNTY HAVING A POPULATION  
8 GREATER THAN TEN THOUSAND MAY INCLUDE PROVISIONS GOVERNING  
9 PERMANENTLY AFFORDABLE UNITS INCLUDING, BUT NOT LIMITED TO:

10 (a) A REQUIREMENT THAT NO PRELIMINARY PLAN OR FINAL PLAT  
11 FOR ANY SUBDIVISION OR DEVELOPMENT CONTAINING TEN OR MORE  
12 RESIDENTIAL DWELLING UNITS MAY BE APPROVED UNLESS THE SUBDIVISION  
13 PLAN OR PLAT PROVIDES THAT AT LEAST TEN PERCENT OF THE TOTAL  
14 NUMBER OF DWELLING UNITS WITHIN THE SUBDIVISION CONSIST OF  
15 PERMANENTLY AFFORDABLE UNITS;

16 (b) THE MAXIMUM INCOME AND ASSET LIMITATIONS FOR AN  
17 INDIVIDUAL OR FAMILY TO BE ELIGIBLE TO PURCHASE A PERMANENTLY  
18 AFFORDABLE UNIT, TAKING INTO CONSIDERATION SUCH FACTORS AS THE  
19 FOLLOWING:

20 (I) THE AREA MEDIAN INCOME AND THE LOW-INCOME LIMIT FOR  
21 SUCH COUNTY ESTABLISHED BY THE UNITED STATES DEPARTMENT OF  
22 HOUSING AND URBAN DEVELOPMENT;

23 (II) THE AMOUNT OF THE TOTAL INCOME OF SUCH INDIVIDUAL OR  
24 FAMILY AVAILABLE FOR HOUSING NEEDS;

25 (III) THE SIZE OF THE FAMILY;

26 (IV) THE COST AND CONDITION OF HOUSING FACILITIES AVAILABLE;

27 (V) THE ABILITY OF SUCH INDIVIDUAL OR FAMILY TO COMPETE

1 SUCCESSFULLY IN THE PRIVATE HOUSING MARKET AND TO PAY THE  
2 AMOUNTS AT WHICH PRIVATE ENTERPRISE IS PROVIDING DECENT, SAFE, AND  
3 SANITARY HOUSING; AND

4 (VI) OTHER RELEVANT STANDARDS ESTABLISHED BY VARIOUS  
5 PROGRAMS OF THE FEDERAL GOVERNMENT FOR DETERMINING ELIGIBILITY  
6 BASED ON THE INCOME OF SUCH INDIVIDUAL OR FAMILY;

7 (c) MINIMUM SIZES FOR PERMANENTLY AFFORDABLE UNITS  
8 INCLUDING, BUT NOT LIMITED TO, THE AVERAGE FLOOR AREA OF DETACHED  
9 AND ATTACHED PERMANENTLY AFFORDABLE UNITS AND THE CONDITIONS  
10 WHEN A VARIANCE FROM OR EXCEPTION TO THE FLOOR AREA  
11 REQUIREMENTS MAY BE GRANTED;

12 (d) THE MAXIMUM SALES PRICE FOR PERMANENTLY AFFORDABLE  
13 UNITS, TAKING INTO CONSIDERATION THE ABILITY OF PERSONS WITH  
14 VERY-LOW, LOW, AND MODERATE INCOMES TO PURCHASE A UNIT AT SUCH  
15 PRICE, WHICH PRICE MAY BE SET ON A QUARTERLY BASIS;

16 (e) RESALE RESTRICTIONS APPLICABLE TO PERMANENTLY  
17 AFFORDABLE UNITS INCLUDING, BUT NOT LIMITED TO:

18 [REDACTED]

19 (I) A REQUIREMENT THAT THE RESALE PRICE OF ANY PERMANENTLY  
20 AFFORDABLE UNIT NOT EXCEED THE PURCHASE PRICE PAID BY THE OWNER  
21 OF THE UNIT EXCEPT FOR:

22 (A) CUSTOMARY CLOSING COSTS AND COSTS OF SALE;

23 (B) COSTS OF REAL ESTATE COMMISSIONS PAID BY THE SELLER IF  
24 A LICENSED REAL ESTATE AGENT IS EMPLOYED AND IF THAT AGENT  
25 CHARGES COMMISSIONS AT A RATE CUSTOMARY FOR THE PARTICULAR  
26 COUNTY;

27 (C) CONSIDERATION OF PERMANENT CAPITAL IMPROVEMENTS

1 INSTALLED BY THE SELLER;

2 (D) AN INFLATIONARY FACTOR OR APPRECIATION FACTOR  
3 ESTABLISHED IN THE SUBDIVISION REGULATIONS;

4 (II) A REQUIREMENT THAT THE DEED CONVEYING TITLE TO THE  
5 PERMANENTLY AFFORDABLE UNIT MUST REFERENCE A COVENANT OR  
6 DECLARATION OF RESTRICTIONS IN A FORM APPROVED BY THE BOARD OF  
7 COUNTY COMMISSIONERS;

8 (f) THE CONDITIONS OR CIRCUMSTANCES UNDER WHICH A  
9 SUBDIVISION OR DEVELOPMENT SHALL BE EXEMPTED FROM THE  
10 PERMANENTLY AFFORDABLE UNIT REQUIREMENTS.

11 (2) IN ADDITION TO THE PROVISIONS DESCRIBED IN SUBSECTION (2)  
12 OF THIS SECTION, SUCH SUBDIVISION REGULATIONS MAY AUTHORIZE AN  
13 INCREASE IN DENSITY OR DENSITY BONUSES FOR A SUBDIVISION IN WHICH  
14 PERMANENTLY AFFORDABLE UNITS MUST BE CONSTRUCTED, NOT TO  
15 EXCEED ONE UNIT FOR EACH PERMANENTLY AFFORDABLE UNIT  
16 CONSTRUCTED IN SUCH SUBDIVISION.

17 **30-28-504. Alternative methods of compliance.**

18 (1) SUBDIVISION REGULATIONS ADOPTED BY A BOARD OF COUNTY  
19 COMMISSIONERS PURSUANT TO SECTION 30-28-133 OF A COUNTY  
20 DESCRIBED IN SECTION 30-28-503 (1) MAY INCLUDE ALTERNATIVE  
21 METHODS OF COMPLYING WITH THE PERMANENTLY AFFORDABLE UNIT  
22 REQUIREMENTS OF THIS PART 5, INCLUDING, BUT NOT LIMITED TO, THE  
23 FOLLOWING:

24 (a) IN LIEU OF CONSTRUCTING ONE OR MORE PERMANENTLY  
25 AFFORDABLE UNITS, PAYMENT OF A SPECIFIED SUM OF MONEY BY THE  
26 SUBDIVIDER OR DEVELOPER FOR EACH PERMANENTLY AFFORDABLE UNIT.  
27 ANY SUCH SUM MAY BE PAID INTO THE COUNTY AFFORDABLE HOUSING

1 FUND ESTABLISHED PURSUANT TO SECTION 30-28-504.

2 (b) IN LIEU OF CONSTRUCTING ONE OR MORE PERMANENTLY  
3 AFFORDABLE UNITS, DEDICATION OF LAND TO THE COUNTY THAT IS  
4 LOCATED IN THE COUNTY AND THAT IS EQUIVALENT IN VALUE TO:

5 (I) A CASH-IN-LIEU CONTRIBUTION THAT WOULD OTHERWISE BE  
6 REQUIRED BY SUCH SUBDIVISION REGULATIONS; OR

7 (II) THE LAND UPON WHICH THE REQUIRED PERMANENTLY  
8 AFFORDABLE UNITS WOULD OTHERWISE HAVE BEEN CONSTRUCTED.

9 (c) ANY OTHER REASONABLE ALTERNATIVES TO IN LIEU PAYMENTS  
10 BY SUBDIVIDERS AND DEVELOPERS FOR PERMANENTLY AFFORDABLE UNITS  
11 SO LONG AS THE VALUE OF THE ALTERNATIVE CONSIDERATION IS  
12 EQUIVALENT TO OR GREATER THAN THE PAYMENT REQUIRED IN LIEU OF  
13 CONSTRUCTING PERMANENTLY AFFORDABLE UNITS.

14 **30-28-505. Affordable housing fund.** THE BOARD OF COUNTY  
15 COMMISSIONERS OF A COUNTY HAVING A POPULATION GREATER THAN TEN  
16 THOUSAND MAY ESTABLISH AN AFFORDABLE HOUSING FUND FOR THE  
17 RECEIPT AND MANAGEMENT OF PERMANENTLY AFFORDABLE UNIT IN LIEU  
18 PAYMENTS. MONEYS RECEIVED INTO THAT FUND PURSUANT TO THIS PART  
19 5 MAY BE UTILIZED SOLELY FOR THE CONSTRUCTION, PURCHASE, AND  
20 MAINTENANCE OF AFFORDABLE HOUSING AND FOR THE COSTS OF  
21 ADMINISTERING ANY PROGRAMS IN CONNECTION WITH PERMANENTLY  
22 AFFORDABLE UNITS.

23 **30-28-506. No abrogation of existing right or agreement.**

24 (1) NO PROVISION OF SUBDIVISION REGULATIONS ADOPTED PURSUANT TO  
25 THIS PART 5 RELATING TO THE CONSTRUCTION OF PERMANENTLY  
26 AFFORDABLE UNITS SHALL BE APPLIED IN A MANNER THAT:

27 (a) DEPRIVES ANY PERSON OR ENTITY OF AN EXISTING VESTED



1 RIGHT CREATED BY STATUTE, CONTRACT, OR COMMON LAW;

2 (b) DEPRIVES ANY PERSON OR ENTITY OF A PROPERTY RIGHT  
3 PROTECTED UNDER THE FEDERAL OR STATE CONSTITUTIONS; OR

4 (c) RESULTS IN THE ABROGATION OF AN EXISTING AGREEMENT  
5 ENFORCEABLE AGAINST THE PLANNING JURISDICTION IN EFFECT AT THE  
6 TIME THE SUBDIVISION REGULATIONS ARE ADOPTED.

7 **SECTION 3. Effective date.** This act shall take effect at 12:01  
8 a.m. on the day following the expiration of the ninety-day period after  
9 final adjournment of the general assembly that is allowed for submitting  
10 a referendum petition pursuant to article V, section 1 (3) of the state  
11 constitution; except that, if a referendum petition is filed against this act  
12 or an item, section, or part of this act within such period, then the act,  
13 item, section, or part, if approved by the people, shall take effect on the  
14 date of the official declaration of the vote thereon by proclamation of the  
15 governor.