

Date of Hearing: August 28, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Lorena Gonzalez, Chair  
SB 592 (Wiener) – As Amended August 26, 2019

Policy Committee:	Housing and Community Development	Vote:	6 - 0
	Local Government		8 - 0

Urgency: No      State Mandated Local Program: Yes      Reimbursable: No

**SUMMARY:**

This bill extends protections of the Housing Accountability Act (HAA) to accessory dwelling units (ADUs) and certain ministerial decisions, and adds new provisions related to enforcement of the HAA. Specifically, this bill:

- 1) Applies the HAA to a housing development project regardless of whether the local agency's review of the project is a ministerial or a use-by-right decision, or a discretionary approval.
- 2) Adds ADUs to the definition of "housing development project."
- 3) Defines "lower density" to include any conditions that have the same effect or impact on the ability of the housing development project to provide housing, including a condition requiring a reduction in the number of bedrooms.
- 4) Provides that if an applicant resubmits an application to a local agency after it has been determined to be inconsistent, not in compliance or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement or other similar provision, then the local agency is required to provide an applicant written documentation explaining why the housing development is inconsistent, not in compliance or not in conformity within 30 days of the resubmittal.
- 5) Specifies, for any action brought to enforce the provisions of the HAA, the enforcement provisions apply regardless of whether the action of the local agency was taken in a proceeding that legally requires a hearing.

**FISCAL EFFECT:**

Negligible state costs. Local state-mandated costs are not reimbursable by the state because local agencies have the authority to levy fees to cover these costs.

**COMMENTS:**

- 1) **Purpose.** This bill seeks to clarify and strengthen the ministerial approval process and housing disapproval provisions of the HAA in order to reduce litigation and increase the supply of affordable housing.
- 2) **Background.** Existing law, the HAA, also known as the "Anti-NIMBY Act," limits the ability of local agencies to reject or make infeasible housing developments without a

thorough analysis of the economic, social and environmental effects of the action. The HAA provides for a judicial remedy that allows a court to issue an order to compel a city to take action on a development project. If a local government fails to comply with a court order to take action, then the court can issue fines of \$10,000 or more per unit until the local government complies. An applicant, a person who would be eligible to apply for residency in the development or emergency shelter or a housing organization may bring an action to enforce the HAA.

When a local agency rejects any housing development project that complies with objective general plan, zoning standards or design review, or requires that it be developed at a lower density for it to be approved, the decision must be based on written findings supported by a preponderance of the evidence that the development would have a specific, adverse impact on the public health and safety, unless the project is developed at a lower density, and there is no way to mitigate the adverse impacts except to reduce the density or disprove the project.

In 2017, three bills made significant changes to the HAA. Under identical measures, AB 678 (Bocanegra), Chapter 373, Statutes of 2017, and SB 167 (Skinner), Chapter 368, Statutes of 2017, increased the burden on local jurisdictions when denying a housing project, imposing fines for a violation of the HAA and expanding judicial remedies for violations of the HAA. AB 1515 (Daly), Chapter 378, Statutes of 2017, changed the standard the court must use in reviewing the denial of a housing development by providing that a project is consistent with local planning and zoning laws if there is substantial evidence that would allow a reasonable person to find it consistent.

Last year, AB 3194 (Daly), Chapter 243, Statutes of 2018, further modified the HAA by requiring approval of certain housing development projects inconsistent with zoning if the jurisdiction has not brought its zoning ordinance into compliance with the general plan.

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