

SENATE THIRD READING
SB 592 (Wiener)
As Amended August 26, 2019
Majority vote

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.

Major Provisions

- 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.

COMMENTS:

The HAA: The purpose of the HAA, also known as the "Anti-NIMBY Act," is to limit 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 on a project 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. Many provisions of the HAA are limited to lower-income housing developments. In 2011, the California Court of Appeal in *Honchariw v. County of Stanislaus* (200 Cal.App.4th 1066) held that specified provisions of the HAA apply to all housing projects, not just affordable projects.

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. A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact based on objective safety standards, polices, or conditions as they exist on the date the application is deemed complete.

In 2017, the Legislature passed, and the Governor signed, three bills making 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, the HAA was strengthened to increase 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. This could expand the number of housing developments that are afforded the protections of the HAA. AB 3194 (Daly), Chapter 243, Statutes of 2018, required approval of certain housing development projects that are inconsistent with zoning if the jurisdiction has not brought its zoning ordinance into compliance with the general plan

Expansion to of definition of housing development: The HAA defines a housing development project as residential units only, mixed use housing where two-thirds are residential, or transitional and supportive housing. This bill would add ADUs.

Ministerial approvals: Local governments approve many permits ministerially, including building permits, solar permits, demolition permits, grading permits. This bill would extend the HAA to all ministerial approvals. The author has indicated the intent of the bill is to extend the protections of the HAA to housing developments that are approved via a ministerial process. Over the last few years, the Legislature has created several ministerial approval options for developments. Developers can apply for ministerial approval for housing developments that include a percentage of affordable housing, pay prevailing wage, and are not located on sensitive sites through SB 35 (Wiener), Chapter 366, Statutes of 2017. SB 35 requires local governments to respond to an application for streamlining within a specified period of time. AB 2162 (Chiu), Chapter 753, Statutes of 2018, creates a by right process for affordable housing developments that include a percentage of supportive housing units.

According to the Author:

According to the author, "California is experiencing a historic housing shortage. One of the causes of this shortage is a difficult, idiosyncratic, risky entitlement process. This leads to expensive and time consuming lawsuits between housing advocacy groups, developers, and cities. The act has several ambiguities that have arisen since the 2017 housing package, particularly related to how the Housing Accountability Act interacts with ministerial approval processes, such as the one created in SB 35. This law endeavors to reduce the opportunity for wasteful conflict by clarifying and strengthening existing law related to litigating housing disapprovals."

Arguments in Support:

Supporters argue that this bill will help to increase production of housing by removing local barriers.

Arguments in Opposition:

Opponents argue this bill would subject all ministerial permits, not just housing projects approved by right, to the HAA which will add cost and burdens to the development process.

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, 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.

VOTES:

SENATE FLOOR: 38-0-0

YES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dodd, Durazo, Galgiani, Glazer, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Jones, Leyva, McGuire, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Stone, Umberg, Wieckowski, Wiener, Wilk

ASM HOUSING AND COMMUNITY DEVELOPMENT: 6-0-2

YES: Chiu, Diep, Gloria, Kiley, Limón, Quirk-Silva
ABS, ABST OR NV: Gabriel, Maienschein

ASM LOCAL GOVERNMENT: 8-0-0

YES: Aguiar-Curry, Lackey, Bloom, Boerner Horvath, Ramos, Gonzalez, Robert Rivas, Voepel

ASM APPROPRIATIONS: 16-0-2

YES: Gonzalez, Bigelow, Bloom, Bonta, Brough, Calderon, Carrillo, Chau, Eggman, Fong, Gabriel, Eduardo Garcia, Obernolte, Petrie-Norris, Quirk, Robert Rivas
ABS, ABST OR NV: Diep, Maienschein

UPDATED:

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CONSULTANT: Lisa Engel / H. & C.D. / (916) 319-2085

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