

Date of Hearing: August 30, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Christopher M. Ward, Chair

AB 1413 (Ting) – As Amended August 22, 2024

SUBJECT: Housing Accountability Act: disapprovals: California Environmental Quality Act

SUMMARY: Establishes a minimum 60-day timeframe in the Housing Accountability Act (HAA) for local agencies to consider objections, comments, and evidence related to determining whether a HAA-protected housing development project is exempt from the California Environmental Quality Act (CEQA). Specifically, **this bill:**

- 1) Requires a local agency to post an applicant’s written notice of action or inaction that the applicant believes constitutes an abuse of discretion or a failure to make a determination of whether a HAA project is exempt from CEQA, and provide a copy of the notice to any person who has made a written request for such notices, within five working days of receiving the written notice.
- 2) Requires a local agency to consider all objections, comments, evidence, and concerns about the project or the applicant’s written notice and prohibit the local agency from making a determination until at least 60 days after the applicant has given timely written notice to the local agency, as specified.
- 3) Reorganizes provisions of the HAA defining “disapprove a housing development project” to improve clarity.

EXISTING LAW:

- 1) Establishes CEQA, which requires public agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or an environmental impact report for this action, unless the project is exempt from CEQA. (Public Resources Code Sections 21000-21189.70.10 and Title 14 of the California Code of Regulations)
- 2) Prohibits a local agency, pursuant to the HAA, from disapproving a housing development project containing units affordable to very low-, low- or moderate income households, or conditioning the approval in a manner that renders the housing project infeasible, unless it makes specified findings based upon a preponderance of evidence in the record. (Government Code (GC) Section 65589.5(d))
- 3) Defines, for the purposes of the HAA, “disapprove the housing development project” as any instance in which a local agency does any of the following:
 - a) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building project;
 - b) Fails to comply with specified time periods for approving or disapproving development projects; or

- c) Fails to make a determination of whether a project is exempt from CEQA, or commits an abuse of discretion for certain infill projects, as specified. (GC 65589.5(h)(6))
- 4) Requires that if a project applicant files a notice indicating that they believe that a local agency's action or inaction constitutes a failure to make a lawful determination under CEQA, or an abuse of discretion, as specified, then the local agency must file a notice with the county clerk within five working days. (GC 65589.59(h)(6)(i)(V)(ib))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: "In 2023, I authored AB 1633, which stated that a local agency's misuse of its discretionary powers under CEQA to delay or deny housing developments constitutes a violation of the Housing Accountability Act (HAA). AB 1413 clarifies the provisions in AB 1633 to require additional public disclosure and ensure there is adequate time for stakeholder engagement when a local government is evaluating potential HAA violations. This strikes the appropriate balance between protecting public engagement while preventing the abuse of CEQA that stalls housing production."

Housing Accountability Act (HAA): In 1982, in response to the housing crisis, which was viewed as threatening the economic, environmental, and social quality of life in California, the Legislature enacted the HAA. The purpose of the HAA is to help ensure that a city does not reject or make infeasible housing development projects that contribute to meeting the housing need determined pursuant to the Housing Element Law without a thorough analysis of the economic, social, and environmental effects of the action and without complying with the HAA. The HAA restricts a city's ability to disapprove, or require density reductions in, certain types of residential projects. The HAA does not preclude a locality from imposing developer fees necessary to provide public services or requiring a housing development project to comply with objective standards, conditions, and policies appropriate to the localities share of the regional housing needs assessment.

If a locality denies approval or imposes conditions that have a substantial adverse effect on the viability or affordability of a housing development for very low-, low-, or moderate-income households, and the denial or imposition of conditions is subject to a court challenge, the burden is on the local government to show that its decision is consistent with specified written findings.

If a court finds that a locality violated the HAA, a court must issue an order or judgment compelling compliance with the HAA within 60 days, including but not limited to, an order that the locality take action on the housing development project or shelter. The plaintiff is entitled to attorney's fees unless the court finds that awarding fees would not further the purposes of the HAA. If a locality fails to comply within 60 days, the court must impose fines, a minimum of \$10,000 per housing unit in the housing development project, which shall be deposited in a local housing trust fund. The court may also approve the housing development project. If the court finds the locality acted in bad faith, in addition to other remedies, the court must multiply the fine by a factor of five.

The HAA and CEQA take different approaches to housing development. The intersection of these two Acts therefore has resulted in gray areas or conflict. For example, the HAA requires that a local government cannot disapprove a housing development project that is consistent with

the jurisdiction's zoning ordinance and general plan designation, unless the preponderance of evidence shows that certain conditions are met, such as the project would cause health and safety issues that cannot be mitigated. The HAA explicitly states that it does not restrict the authority of a public agency to require mitigation measures under CEQA.

AB 1633 (Ting), Chapter 768, Statutes of 2023: The HAA historically specified certain actions by a local government that individually or collectively constituted a local government “disapproving” a project. This list included a local government taking a vote to disapprove a housing project, or failing to comply with statutorily mandated project approval timelines. AB 1633 (Ting) attempted to settle the law regarding what happens when a local government requires CEQA analysis beyond what the courts may consider sufficient to make a reasonable determination of the environmental implications of a project. It does so by adding, to the definition of what it means to “disapprove the housing development project” in the HAA, the following two instances:

- 1) When a local agency fails to make a determination of whether a project is exempt from CEQA, or commits an abuse of discretion in that determination; or
- 2) When a local agency fails to either require further study or adopt a negative declaration or addendum for the project, certify an environmental impact report, or approve another environmental document for the project, or commits an abuse of discretion in that instance.

By adding these two criteria to the HAA, plaintiffs could utilize the legal remedies in the HAA to sue local agencies that utilize CEQA delays as a means to disapprove, render financially infeasible, or downsize a project without having actually voted to do so.

This bill requires the local agency to notify interested parties and provide at least 60 days for comments before making a determination, when a project applicant notifies a local agency that it believes the local agency’s action or inaction relative to CEQA constitutes a disapproval of the housing development project.

Arguments in Support: According to the State Building and Construction Trades Council of California, “Last year Assembly Member Ting authored AB 1633 which specified that a local agency’s use of its discretionary powers under the California Environmental Quality Act (CEQA) to delay or deny housing developments constitutes a violation of the HAA. However, when that bill passed, there were concerns raised by stakeholders that it could negatively impact public engagement with projects under review. We appreciate the time that Assembly Member Ting and his hard-working staff spent with us clarifying that public engagement is important when it comes to CEQA enforcement. We believe that these amendments will bolster the ability for the public to weigh in when necessary and clarifies AB 1633 to ensure there is public disclosure and enough time for meaningful public engagement.

Arguments in Opposition: None on file.

Related Legislation:

AB 1633 (Ting), Chapter 768, Statutes of 2023: Added, to the definition of what it means to “disapprove the housing development project” in the HAA, the following two instances: 1) When a local agency fails to make a determination of whether a project is exempt from CEQA, or commits an abuse of discretion in that determination; or 2) When a local agency fails to either

require further study or adopt a negative declaration or addendum for the project, certify an environmental impact report, or approve another environmental document for the project, or commits an abuse of discretion in that instance.

AB 2656 (Ting) of the 2021-22 Session was substantially similar to AB 1633 (Ting). This bill was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council
State Building & Construction Trades Council of California
State Building and Construction Trades Council

Opposition

None on file.

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