Bill No:	AB 1413	**Hearing Date:**	6/24/2024
Author:	Ting		
Version:	6/6/2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Hank Brady		

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

DIGEST: This bill establishes timeframes 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).

ANALYSIS:

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 (EIR) for this action, unless the project is exempt from CEQA.

2) 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.
   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.

3) Provides, pursuant to the HAA, that when a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time that the housing development project's application is complete, but the local agency proposes to

disapprove the project or to impose a condition that the project be developed at a lower density, then the local agency shall base its decision regarding the proposed housing development project upon specified written findings.

4) 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 substantial evidence in the record.

5) Requires that if a project applicant files a notice indicating that they believe that a local agencies action or inaction constitutes a failure to make a lawful determination under CEQA, or an abuse of discretion (applicant's notice), as specified, then the local agency must file a notice with the county clerk, within five working days, as specified.

This bill:

1) Requires a local agency to post an applicant's notice on their website and provide copies of the notice to interested parties, as specified.

2) Requires local agencies to consider all objections, comments, evidence and concerns received regarding the project itself or regarding an applicant's notice.

3) Prohibits a local agency from making a determination on the project until at least 60 days after receiving an applicant's notice.

COMMENTS:

1) *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."

2) *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 Housing Accountability Act (HAA), commonly referred to as the Anti-NIMBY Law. 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 shall be entitled to attorney's fees unless the court find that awarding fees would not further the purposes of the HAA. If a locality fails to comply within 60 days, the court shall 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 shall multiply the fine by a factor of five.

3) *CEQA, exemptions, and ministerial approvals.* CEQA applies when a development project requires discretionary approval from a local government agency. When a local agency has the discretion to approve a project, its CEQA evaluation begins with deciding whether an activity qualifies as a project subject to CEQA review. If an activity is deemed a "project," the agency decides whether it is exempt from compliance with CEQA under either a statutory or a categorical exemption. Statutory exemptions are activities the Legislature has excluded from CEQA despite potential environmental impacts. If a project is statutorily exempt, it can be implemented without a CEQA evaluation.

In addition to statutory exemptions, the Legislature specifically directed the Secretary of the California Natural Resources Agency to designate categorical

exemptions from CEQA. Categorical exemptions include projects that the Secretary deems do not have a significant impact on the environment. The CEQA Guidelines, set forth in the California Code of Regulations, establish more than two dozen categorical exemptions covering a wide range of projects, from minor alterations of existing facilities to construction of certain types of buildings. As with statutory exemptions, if the project is categorically exempt, no formal evaluation is required, and the project can be implemented without a CEQA evaluation. Despite the creation of new by-right and development streamlining measures that bypass the CEQA process, if a city chooses not to grant the permits – in violation of state law – a developer's only recourse is to sue.

4) *AB 1633.* As noted above, The HAA prohibits local governments from disapproving certain housing development projects. 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, Chapter 768, Statutes of 2023) expanded the list of activities that constitute "disapproval" of a housing development project under the HAA to include a local agency's failure to make a determination of whether a project is exempt from CEQA, abuse of discretion, or failure to adopt certain environmental documents. This bill requires that 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, the local agency must notify interested parties and provide 60 days for comments before making a determination.

5) *Double referral.* This bill was also referred to the Local Government Committee.

RELATED LEGISLATION:

AB 1893 (Wicks, 2024) — amends the Housing Accountability Act (HAA) to revise the standards a housing development project must meet in order to qualify for the "Builder's Remedy," which authorizes projects to bypass local development standards in jurisdictions that fail to adopt a substantially compliant housing element. This bill also expands the scope of actions that constitute disapproval of a housing development project by a local government. *This bill is currently pending in the Local Government Committee.*

AB 1633 (Ting, Chapter 768, Statutes of 2023) — provided, until January 1, 2031, that a disapproval under the HAA includes a local agency's failure to make a determination of whether a project is exempt from CEQA, abuse of discretion, or failure to adopt certain environmental documents under specified circumstances.

SB 167 (Skinner, Chapter 368, Statutes of 2017) — made a number of changes to the HAA to ensure local agency compliance during the approval process for proposed housing developments. The measure also clarified existing provisions of the HAA and imposed added penalties on agencies that violate the HAA without proper findings.

FISCAL EFFECT: Appropriation: No   Fiscal Com.: Yes   Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, June 19, 2024.)

SUPPORT:

Bay Area Council
State Building & Construction Trades Council of California

OPPOSITION:

None received.

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