
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: SB 406 **Hearing Date:** 5/2/2023
Author: Cortese
Version: 2/9/2023 Introduced
Urgency: No **Fiscal:** No
Consultant: Alison Hughes

SUBJECT: California Environmental Quality Act: exemption: financial assistance: housing

DIGEST: This bill allows local agencies to utilize a particular California Environmental Quality Act (CEQA) exemption limited to actions taken to provide financial assistance or insurance to develop and build housing for people with low- or moderate-incomes.

ANALYSIS:

Existing law:

- 1) Requires lead agencies with the principal responsibility for carrying out or approving a project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for the project, unless the project is exempt from the California Environmental Quality Act (CEQA). If a project may have a significant effect on the environment, the lead agency must prepare a draft EIR.
- 2) Exempts from CEQA any extension of time given to a city or county to prepare or adopt any elements of a general plan.
- 3) Exempts from CEQA actions taken by HCD and CHFA to provide financial assistance or insurance to develop and build housing for people with low or moderate incomes as long as the project receiving the financial assistance or insurance is subject to review under CEQA by another public agency.

This bill:

- 1) Extends the exemption enjoyed by HCD and CHFA under (3) above to local agencies provided they meet the same criteria, so the financial assistance for the projects is not subject to CEQA, but the project itself is subject to CEQA.

COMMENTS:

- 1) *Author's statement.* “To help address California’s unprecedented housing crisis, local governments across the State have adopted measures to provide financial assistance for the development and construction of affordable housing. However, local agencies are unclear as to whether state law requires independent CEQA determinations for projects that receive this financial assistance. Since the decision to help finance a project could be interpreted as a discretionary approval, financing agencies face pressure to make independent CEQA determinations at the financing stage. Applying CEQA in this context is inefficient, duplicative and ultimately delays and drives up the costs of affordable housing. SB 406 extends to local jurisdictions an existing law that exempts State financial assistance for affordable housing projects – but not the projects themselves – from CEQA.”

- 2) *CEQA Generally.* CEQA was enacted by the Legislature and signed into law by Governor Ronald Reagan in 1970. While it has evolved into a very complex Act over the past 53 years, at its core the basic principles of CEQA are relatively simple. It is designed to: (a) make government agencies and the public aware of the environmental impacts of a proposed project, (b) ensure the public can take part in the review process, and (c) identify and implement measures to mitigate or eliminate any negative impact the project may have on the environment.

CEQA is self-executing statute that is enforced by civil lawsuits that can challenge any project’s environmental review. Public agencies, as well as private individuals and organizations, can file lawsuits under CEQA.

- 3) *CEQA & Financing Decisions.* According to the sponsor, Santa Clara County, the proper place to challenge a CEQA decision is with the lead agency reviewing the substance of the project – not with a public agency whose sole role in the process is to award funding to a project.

Absent an exemption, the sponsor notes its county counsel’s office has to spend considerable staff time and resources preparing CEQA-related documents when seeking approval from the Board of Supervisors to issue project loans.

The sponsor also states the time spent doing this work often delays its ability to approve funding quickly, which is often needed in cases where county funds are being combined with state and local funding.

- 4) *Only Affect A Funding Decision.* Under the exemption proposed by this bill, local agencies would not have to issue a negative declaration and provide for a 30-day public comment period when it comes to making funding-related decisions. The exemption would only apply in the case where a project itself is subject to CEQA review by another public agency.

The committee is aware of other enacted legislation that have provided similar CEQA exemptions for local governments. For example, SB 850 (Committee on Budget and Fiscal Review, Chapter 48, Statutes of 2018) exempted from CEQA actions taken by a state agency or local government to provide financial assistance to an affordable housing development that receives SB 35 streamlined approval. AB 1197 (Santiago, Chapter 340, Statutes of 2019) exempted from CEQA any action taken by an eligible public agency in providing financial assistance to provide emergency shelters or supportive housing in the City of Los Angeles. SB 679 (Kamlager, Chapter 661, Statutes of 2022) exempted from CEQA any action taken by the Los Angeles County Affordable Housing Solutions Agency to finance, fund, or issue grants, loans, or bonds.

- 5) *Double referral.* This bill was heard in the Senate Environmental Quality Committee on March 15th and passed on a vote of 7-0.

RELATED LEGISLATION:

SB 679 (Kamlager, Chapter 661, Statutes of 2022) — exempted from CEQA any action taken by the Los Angeles County Affordable Housing Solutions Agency to finance, fund, or issue grants, loans, or bonds.

AB 1197 (Santiago, Chapter 340, Statutes of 2019) — exempted from CEQA any action taken by an eligible public agency in providing financial assistance to provide emergency shelters or supportive housing in the City of Los Angeles.

SB 850 (Committee on Budget and Fiscal Review, Chapter 48, Statutes of 2018) — exempted from CEQA actions taken by a state agency or local government to provide financial assistance to an affordable housing development that receives SB 35 streamlined approval.

SB 1925 (Sher, Chapter 1039, Statutes of 2002) — revised and re-cast the exemption available to HCD and CHFA.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 26, 2023.)

SUPPORT:

County of Santa Clara (Sponsor)
American Planning Association, California Chapter
California Apartment Association
California Housing Partnership Corporation
California State Association of Counties
Destination: Home
Livable California
Mission Street Neighbors
Rural County Representatives of California (RCRC)
Urban Counties of California (UCC)

OPPOSITION:

None received

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