



American Planning Association
California Chapter

Making Great Communities Happen

MEMO TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE
FROM: APA CALIFORNIA
DATE: JUNE 2, 2017
SUBJECT: **AB 678 (Bocanegra) – Oppose Unless Amended** – Changes to the Housing Accountability Act - In Senate Judiciary Committee – Tuesday, July 11

APA California has reviewed the recent amendments to AB 678 and SB 167, which we understand will be eventually amended to include the same language. Both bills would make major changes to the Housing Accountability Act (HAA), including a change in the standard of review for violations from substantial evidence to preponderance of the evidence, substantially increased fines and penalties for non-compliance with the HAA, a new required HAA analysis, and increased restrictions on the ability for local agencies to reduce density.

Over the past few months, the author, staff, committee staff, APA and sponsors have been able to come to agreement on almost all of the concerns originally expressed by APA. Of chief importance to APA is that this bill will be able to target enforcement to those localities that violate the HAA, ensuring that cities and counties that actively support housing have fair options for compliance. APA greatly appreciates the time and effort that all stakeholders have brought to this process.

APA suggested a number of technical amendments to the bill which have been accepted but are not yet in print. Given those amendments, at this time there are only two major issues yet to be resolved, and a recent Supreme Court decision that should be fixed so that it does not erode the strength of the HAA as envisioned in this bill. Below are the remaining issues:

Finding an alternative to the ability of a judge to impose fines based on progress made toward attaining a “target RHNA” allocation. There is no such target or requirement. Local agencies cannot agree to a judge making a determination of fines based on something that is not defined, is not required in statute, or required of cities and counties. APA has suggested an alternative to this language that allows the judge to compare the number of housing project applications submitted to a city or county, to the number of projects actually entitled and approved by the city and county. This comparison would give the judge a clear indication of the jurisdiction’s project approval policies and

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record of approvals. And project approvals are something that cities and counties actually control, as opposed to “meeting a target RHNA”. There aren’t enough subsidies available to build all of the affordable income units allocated through the RHNA even if local governments build the housing themselves, which they don’t have the resources or expertise to do. And there are a number of reasons that housing projects approved by a city or county are not built or take years to build that have nothing to do with the RHNA. Not one jurisdiction has yet to see the total number of RHNA units for lower income and moderate income built in their city or county. RHNA isn’t an indication of how hard cities and counties are working to get projects they receive approved, but their record on housing approvals compared to those submitted is.

Granting cities and counties adequate time to comply with CEQA when complying with a judge’s order. Currently, the bill gives a city or county 60 days to comply with the judge’s order to approve a project that was the subject of a court challenge – 60 days is not enough time however to approve a project that is subject to CEQA. For instance, the action required by the court may be subject to CEQA if the project was denied by the city or county, since in that case the project was not subject to CEQA, and no CEQA may have been done. It is also possible that lower density or other conditions were imposed as a CEQA mitigation measure. This is particularly important given that the bill requires, rather than allows, the judge to impose fines for local agencies that do not comply with the judge’s order within 60 days. The HAA is clear that cities and counties must make all CEQA findings and comply with CEQA, so adequate time for compliance must be included in this process.

Fixing a recent Supreme Court decision that is contrary to the goals of the HAA. In *Eden Housing v. The Town of Los Gatos*, June 9, 2017, the Superior Court made a decision that agreed that the City had no objective reasons to deny a housing project application. However, the court then went on to say that the Subdivision Map Act findings allow the City to make subjective findings, and there is no indication that the Legislature intended the HAA findings to require objective Map Act findings. If the Legislature wants the HAA to be useful, it should make it clear that objective findings must be made under all statutes. Below is language for objective standards to address the decision. APA believes this language would close this loophole for jurisdictions that want to avoid the requirements in the HAA.

(j) All discretionary approvals for proposed housing development projects, including without limitation applications for use permits, variances, design review, and subdivisions, shall be reviewed only for compliance with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete. When a proposed housing development project complies with applicable, objective general plan, zoning, *and subdivision* standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist...

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APA appreciates the author continuing to work with us on these last few remaining issues. For information, please contact Sande George, Stefan/George Associates, APA California's lobbyist, at 443-5301, sgeorge@stefangeorge.com.

cc: Members of the Senate Judiciary Committee
The Governor
OPR
Republican Caucus

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