

Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 989 (Gabriel) – As Amended May 3, 2021

Policy Committee:	Housing and Community Development	Vote: 6 - 0
	Local Government	8 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill creates the Housing Accountability Committee (HAC) to review appeals of affordable housing projects denied by a local government and to approve those projects if the denial violates the Housing Accountability Act. Among its provisions, this bill:

- 1) Requires the HAC to receive appeals from applicants when a local government denies a qualified affordable housing development or approves the development subject to conditions that, in the applicant's judgment, render the project economically infeasible.
- 2) Requires the committee to consist of eight members, including the directors of HCD and OPR and six others appointed by the Governor who meet specified qualifications, each for two-year terms.
- 3) Requires the committee members be uncompensated, but be reimbursed for actual and necessary expenses.
- 4) Requires an applicant to file an appeal within 30 days after the date of the decision by the local agency and the committee to notify the local agency of the filing with 10 days of receipt of the application. If the local agency transmits a copy of its decision and reasoning within 10 days, the committee must schedule an appeal hearing within 30 days. The hearing must occur no more than 60 days after the local agency receives the initial notice, unless all parties to the hearing agree to a later date.
- 5) Requires the committee to vacate a local decision if it finds that the local agency disapproved the housing development or conditioned the approval of the housing development in violation of the Housing Accountability Act, and requires the committee to order the local agency to issue any necessary approval for the development and, if applicable, to modify or remove any condition or requirement to make the development no longer infeasible.
- 6) Requires the local agency carry out a committee decision within 30 days of that decision.
- 7) Authorizes an applicant to enforce the order in court and recover attorney's fees, and allows the court to impose fines on the city or county as allowed under the Housing Accountability Act.
- 8) Authorizes HCD to charge applicants a fee for an appeal that does not exceed the cost of the hearing and requires a local agency to reimburse the applicant if the committee orders approval of the proposed development or modifies or removes the imposed conditions.

FISCAL EFFECT:

- 1) Estimated ongoing costs of \$2.1 million (GF) annually to HCD to establish and staff a new statewide Housing Accountability Committee to review appeals of projects denied by a local government under the Housing Accountability Act.

This estimate, based on approximately 30 appeals annually, includes 10 staff positions, including staff with specialized expertise, to communicate with stakeholders, develop guidelines, issue notices of appeal and investigate complex appeals, as well as attorney positions to address appeals of its determinations, consult in the development of regulations, and ensure that the committee hearings are conducted in compliance with state laws. Estimated staffing requirements could fluctuate, depending on the number of appeals the Committee receives.

The bill authorizes the Committee to charge a reasonable application fee for conducting hearings, which could partially offset costs. It is unlikely that fees would cover the full resources needed to operate and staff the Committee.

- 2) Estimated ongoing costs of \$304,000 (GF) annually, to the Governor's Office of Planning and Research (OPR) for two staff positions to attend potentially frequent oversight hearings based on the timelines for responding to appeals.
- 3) State-mandated local costs of an unknown amount to cities and counties to make the changes required by this bill. These costs are not state-reimbursable because local agencies have general authority to levy fees to cover costs associated with these changes.
- 4) Potential costs savings to HCD to the extent the appeals process set forth in this bill provides a lower cost option for enforcing the HAA relative to enforcing the HAA on behalf of a developer in court.

COMMENTS:

- 1) **Purpose.** This bill seeks to ensure local governments do not improperly deny affordable housing projects under the Housing Accountability Act by providing an alternative, more accessible appeals process to litigation. According to the author:

Despite California's well-documented affordable housing crisis, some local government officials have defied state law and denied affordable housing projects even when they are fully compliant with all local zoning and regulatory requirements. These officials understand that in most cases affordable housing proponents will have no practical means to challenge the unlawful denial as the current remedy, litigation in Superior Court, is almost always prohibitively expensive, time-consuming, and otherwise impractical. [This bill] would address this problem by creating an alternate appeal panel with specialized expertise.

- 2) **Housing Accountability Act (HAA).** If a housing development is denied by a local government or the local government places conditions on the project that make it infeasible, the developer can sue the local government under the HAA. The HAA limits 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. If a local agency is found by a court to be in violation of the HAA, the court may issue an order or judgement compelling compliance with the HAA within 60 days. The HAA also allows a court, upon determining the locality failed to comply with the order or judgment within 60 days, to impose fines on the local agency and deposit the fine into a local housing trust fund or other state account. The minimum fine is \$10,000 per unit and additional fines may be imposed if the court finds the locality acted in bad faith.

This bill would give developers an alternative to suing in court by giving the Housing Accountability Committee the authority of the court to hear appeals under the HAA. If the Housing Accountability Committee finds a local government violated the HAA, this bill allows it to order the local government to approve a project or approve a project with changes to make it feasible.

- 3) **HCD's Housing Accountability Unit.** AB 72 (Santiago), Chapter 370, Statutes of 2017, gave HCD additional authority to find a housing element out of compliance and a mechanism to enforce state housing law. If HCD finds a violation of law either in a local government's action or failure to act in regards to its housing element or other state housing laws, it notifies the local government and refers the violation to the Attorney General's (AGs) Office. This bill would provide HCD an alternative process under the Housing Accountability Committee.

The Governor's January budget includes resources to create a Housing Accountability Unit at HCD to further facilitate affordable housing production through monitoring, technical assistance, and enforcement of existing housing production laws. This includes \$4.3 million General Fund for HCD to provide technical assistance to help local governments meet planning and zoning requirements and to provide proactive engagement before enforcement becomes necessary.

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