

Date of Hearing: May 11, 2022

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Buffy Wicks, Chair

SCA 2 (Allen) – As Introduced December 7, 2020

SENATE VOTE: 37-0

SUBJECT: Public housing projects

SUMMARY: Repeals Article 34 of the California Constitution which requires development, construction, or acquisition of publicly-funded low-rent housing projects to be approved by a majority of voters in a city or county.

EXISTING LAW:

- 1) Provides that no low rent housing project shall hereafter be developed, constructed, or acquired in any manner by any state public body until, a majority of the qualified electors of the city, town or county, as the case may be, in which it is proposed to develop, construct, or acquire the same, voting upon such issue, approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election.
- 2) Defines the following terms:
 - a) “Low rent housing project” to mean any development composed of urban or rural dwellings, apartments or other living accommodations for persons of low income, financed in whole or in part by the Federal Government or a state public body or to which the Federal Government or a state public body extends assistance by supplying all or part of the labor, by guaranteeing the payment of liens, or otherwise. Excludes projects with existing contracts for financial assistance between any state public body and the Federal Government in respect to such project;
 - b) “Persons of low income” to mean persons or families who lack the amount of income which is necessary (as determined by the state public body developing, constructing, or acquiring the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding;
 - c) “State public body” means this State, or any city, city and county, county, district, authority, agency, or any other subdivision or public body of this State; and
 - d) “Federal Government” means the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America. (Section 1, Article XXXIV, CA Constitution)
- 3) Specifies that the provisions of this Article shall be self-executing but legislation not in conflict may be enacted to facilitate its operation. (Section 2, Article XXXIV, CA Constitution)
- 4) Includes a severability clause stating that if any portion, section or clause of this article, or the application thereof to any person or circumstance, shall for any reason be declared

unconstitutional or held invalid, the remainder of this Article, or the application of such portion, section or clause to other persons or circumstances, shall not be affected thereby. (Section 3, Article XXXIV, CA Constitution)

- 5) Provides that the provisions of this Article shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith. (Section 4, Article XXXIV, CA Constitution)
- 6) Provides that “low-rent housing project,” as defined in Section 1 of Article XXXIV of the California Constitution, does not apply to any development composed of urban or rural dwellings, apartments, or other living accommodations, that meets any one of the following criteria:
 - a) The development is privately owned housing, receiving no ad valorem property tax exemption, other than the welfare exemption, not fully reimbursed to all taxing entities; and not more than 49 percent of the units may be occupied by persons of low income;
 - b) The development is privately owned housing, is not exempt from ad valorem taxation by reason of any public ownership, and is not financed with direct long-term financing from a public body;
 - c) The development is intended for owner-occupancy, which may include a limited equity housing cooperative, as defined, or cooperative or condominium ownership, rather than for rental-occupancy;
 - d) The development consists of newly constructed, privately owned, one-to-four family dwellings not located on adjoining sites;
 - e) The development consists of existing dwelling units leased by the state public body from the private owner of these dwelling units;
 - f) The development consists of the rehabilitation, reconstruction, improvement or addition to, or replacement of, dwelling units of a previously existing low-rent housing project, or a project previously or currently occupied by lower income households, as defined;
 - g) The development consists of the acquisition, rehabilitation, reconstruction, improvement, or any combination thereof, of a rental housing development which, prior to the date of the transaction to acquire, rehabilitate, reconstruct, improve, or any combination thereof, was subject to a contract for federal or state public body assistance for the purpose of providing affordable housing for low-income households and maintains, or enters into, a contract for federal or state public body assistance for the purpose of providing affordable housing for low-income households; or
 - h) The development consists of the acquisition, rehabilitation, reconstruction, alterations work, new construction, or any combination thereof, of lodging facilities or dwelling units using any of the following:

- i. Moneys received from the Coronavirus Relief Fund established by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136);
 - ii. Moneys received from the Coronavirus State Fiscal Recovery Fund established by the federal American Rescue Plan Act of 2021 (ARPA) (Public Law 117-2);
 - iii. Moneys appropriated and disbursed pursuant to Chapter 5.5 (commencing with Section 50606) of Part 2 of Division 31;
 - iv. Moneys appropriated and disbursed pursuant to Chapter 6.6 (commencing with Section 50672) of Part 2 of Division 31; or
 - v. Moneys appropriated and disbursed to fund the uses and accomplish the objectives specified in Section 50675.1.1 or 50675.1.3. (Health and Safety Code Section 37001 *et seq.*)
- 7) Provides that the maximum income of “persons of low income,” as determined by the state public body, developing, constructing, or acquiring the property, for purposes of Section 1 of Article XXXIV of the State Constitution, shall not exceed the maximum income of lower income households, as defined. (Health and Safety Code Section 37001.3)
- 8) States that “develop, construct, or acquire,” as used in Section 1 of Article XXXIV of the State Constitution, shall not be interpreted to apply to activities of a state public body when that body does any of the following:
- a) Provides financing, secured by a deed of trust or other security instrument to a private owner of existing housing; or acquires a development, for which financing previously has been provided, as a temporary measure to protect its security and with an intention to change the ownership so that it will not continue to be the owner of a low-rent housing project;
 - b) Acquires or makes improvements to land which is anticipated to be sold, ground leased, or otherwise transferred to a private owner prior to its development as a low-rent housing project, provided specified criteria are met;
 - c) Leases existing dwelling units from the private owner of such units, provided the lease or a subtenancy thereunder does not result in a decrease of property tax revenues with respect to the dwelling units leased;
 - d) Provides assistance to the private owner or occupant of existing housing which enables an occupant to live in decent, safe, and sanitary housing at a rent he or she can afford to pay; and
 - e) Provides assistance to a low-rent housing project and monitors construction or rehabilitation of that project and compliance with conditions of that assistance to the extent of:

- i. Carrying out routine governmental functions;
 - ii. Performing conventional activities of a lender; or
 - iii. Imposing constitutionally mandated or statutorily authorized conditions accepted by a grantee of assistance.
 - f) Provides assistance to a development prior to its becoming a low-rent housing project without intending or expecting that the development will become a low-rent housing project, as defined;
 - g) Provides financing for a low-rent housing project pursuant to Chapter 6.7 (commencing with Section 51325) of Part 3 of Division 31; or
 - h) Provides financing for a low-rent housing project pursuant to Article 3.2 (commencing with Section 987.001) and Article 5y (commencing with Section 998.540) of Chapter 6 of Division 4 of the Military and Veterans Code, as specified. (Health and Safety Code Section 37001.5 *et seq.*)
- 9) Specifies that a housing authority may engage in a number of activities in order to provide housing to low income individuals, including:
- a) Preparing, carrying out, acquiring, leasing and operating housing projects and developments for persons of low income;
 - b) Providing for the construction, reconstruction, improvement, alteration, or repair of all or part of any housing project;
 - c) Providing leased housing to persons of low income; and
 - d) Offering counseling, referral, and advisory services to persons and families of low or moderate income in connection with the purchase, rental, occupancy, maintenance, or repair of housing. (Health and Safety Code Section 34312)

FISCAL EFFECT: Unknown

COMMENTS:

Author's statement: According to the author, "California has only 22 affordable and available rentals for every 100 extremely low-income households. A majority of California renters spend more than 30% of their income on housing (nearly one-third spend more than half). Too many people are one missed paycheck away from homelessness. Article 34 was created in response to the Federal Housing Act of 1949, part of President Truman's Fair Deal to help lower-income post-war families move into better living situations. Society had very different attitudes about race, ethnicity, class, and poverty 70 years ago. There were far less tools for residents to alter or block plans for new housing—no California Environmental Quality Act, Brown Act, or Coastal Act, and far fewer lawsuits. California's voters have made it clear they want leaders to do better by those struggling to afford housing—supporting ballot measures dedicating hundreds of millions in taxpayer dollars to tackling the housing and homelessness crises. The state owes it to

all taxpayers to use the money as efficiently as possible. SCA 2 will give voters an opportunity to eliminate an obstacle enshrined in the California Constitution in a bygone era, which undermines elected officials' ability to address California's acute housing and homelessness challenges."

The housing affordability crisis: California is facing a housing crisis that disproportionately impacts California's most economically-vulnerable households. According to data from the 2019 American Communities Survey, over half of the state's renter households are considered rent-burdened, defined as paying more than 30 percent of their income towards rent. High rents disproportionately impact low-income renter households in the state and 80 percent of lower income households are rent-burdened. To address the shortage of affordable housing options, the most recent update of the Statewide Housing Plan calls for the production of over a million units of affordable housing units for lower income households in the coming years¹.

Background on Article 34: In 1950 California voters approved Proposition 10 which added Article 34 to the state Constitution. Adopted as part of the backlash to federal investment in low-income public housing, Article 34 requires cities and counties to get voters' approval before any low rent housing development can be built. A recent article in KQED notes, "California is now the only state that has this law, and it applies only to public funding for affordable housing, which is disproportionately used by people of color."²

The California Real Estate Association led the effort to add Article 34 to the Constitution after an unsuccessful attempt by residents in Eureka, CA to block a low-income housing project which the local housing authority planned to build with federal funding. Eureka voters gathered signatures requesting that the city's financing of the housing development require voter approval. However, following a legal battle, the California Supreme Court held that the power of a voter referendum only extends to legislatively enacted policies and not executive or administration decisions.

The historical and contemporary costs of Article 34: For more than 70 years the construction of publicly-subsidized affordable rental housing in California has faced an added barrier that no other type of housing must clear: a constitutional requirement for local voter approval. This extra barrier has had a number of consequences for the state's ability to create affordable housing. First, in the decades following the adoption of Article 34 the state lost out on significant federal funding for affordable low-income housing. Specifically, California housing authorities missed out on millions in federal resources that the federal Department of Housing and Urban Development (HUD) would have provided to construct low-income public housing if local city and county voters had not rejected proposed public housing developments at the ballot.

Past efforts to repeal Article 34 detailed the amount of funds the state has lost because of the requirement for voter approval of low-income rental housing. Specifically, ACA 40 in 1973 was authored by Assemblymember Willie Brown and was identical to this measure. After being passed by the Legislature, ACA 40 appeared on the ballot as Proposition 15 in November 1974 and failed with only 38.7 percent of voters supporting it. According a legislative analysis of ACA 40 (Brown, 1973), "housing authorities must bear the cost of informing the public on the

¹ <https://statewide-housing-plan-cahed.hub.arcgis.com/>

² <https://www.kqed.org/news/11907336/lawmakers-push-to-repeal-anti-black-housing-law-in-california-constitution>

merits of low-rent housing...HUD monies do not defray this expense. Voters have rejected an estimated 48 percent of low rent housing referendums since adoption of Article 34 in 1950. Rejections represent over 16,000 units (lot average cost/unit is \$15,000). The total loss of possible federal funds is over \$25 million.” The \$25 billion in lost federal affordable housing funds between the enactment of Article 34 and the consideration of ACA 40 in 1973 would be the equivalent of \$1.65 billion today³.

While the federal government no longer focuses on funding new publicly-owned affordable rental buildings, Article 34 continues to pose a number of challenges for contemporary affordable housing development efforts. Both the California Housing Financing Agency (CalHFA) and HCD place conditions on accessing state funds for affordable rental housing related to Article 34. A guidance memo for applicants to HCD’s Multifamily Housing Program (MHP) notes:

“HCD, as a state agency and a public lender, has an obligation to ensure that the requirements of Article 34 are met, if applicable, by projects for which it provides assistance. In order to do so, it is a requirement of the Department’s multi-family assistance programs that the applicant provide evidence that a project complies with, or is exempt from, the requirements of Article 34...Applicants generally attempt to satisfy this requirement by providing a letter from the applicant’s legal counsel. Frequently, these letters contain a brief conclusion that a project is exempt from Article 34, but fail to include any factual information or legal analysis in support of the conclusion.”⁴

In other words, to comply with this requirement every applicant seeking state funding for affordable rental housing must work with legal counsel to establish that their project is either exempt from Article 34 or that it complies with it (also referred to as having “Article 34 authority”). The Legislature has specified certain conditions that trigger an exemption to the Article 34 requirement for local voter approval for affordable housing. For example, no vote is required when an affordable housing development is privately owned and no more than 49 percent of the units are occupied by persons of low income. Other exemptions include situations where the state leases privately owned units and cases where rehabilitation, reconstruction, or improvements are undertaken on existing low-income housing.

To qualify for an exemption from Article 34, developers often face additional hurdles. Specifically, developers can only use a limited amount of public financing to cover the project to comply with the exemption which requires no more than 49 percent of units to be restricted to low-income households. As a result, developers must identify and secure other sources of funding to complete the development. This in turn drives up costs and increases the time it takes to build affordable housing. A report from the UC Berkeley Turner Center on Housing Innovation notes that “on average, every additional source of funding on a project is associated with an increase of \$6,400 per unit, or 2 percent, in total development costs.”⁵ The study also found that 80 percent of affordable housing projects in the sample examined used 4 to 8 sources of funding. In some cases developers have been forced to abandon affordable housing projects that would have otherwise gone forward without Article 34.

³ Calculated using January 1973 to January 2022 conversion: https://www.bls.gov/data/inflation_calculator.htm

⁴ <https://www.hcd.ca.gov/grants-funding/docs/ArticleXXXIVMemo.pdf>

⁵ <https://turnercenter.berkeley.edu/research-and-policy/development-costs-lihtc-9-percent-california/>

Affordable housing projects can also avoid Article 34 by establishing authority for a development due to prior voter approval of the project or a measure allowing a certain number of low-income units to be constructed in the city or county. This allows multiple affordable housing developments to receive Article 34 authority until the allowable cap is hit. For example, San Francisco approved 6,000 units under Article 34 over two local elections and in November of 2020 the County of Humboldt approved Measure I, which gives the county authority to build publicly-funded affordable housing units equal to up to 2.5 percent of the existing housing stock for the county⁶. For affordable housing developments in these jurisdictions the entity seeking to build the housing must ensure that the development will not exceed the voter-approved cap on the number of units that can be built under Article 34.

If this Senate Constitutional Amendment passes both houses of the Legislature with a 2/3 vote it would appear on the November 8, 2022 ballot for voters to consider. A majority vote by the people of California would repeal Article 34 and immediately reduce the red tape that currently makes it harder and more expensive to build much-needed affordable housing.

Related Legislation

SCA 1 (Allen, 2020): Would have repealed Article 34 of the California Constitution. *This Senate Constitutional Amendment died at the Assembly Desk.*

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors (Co-Sponsor)
AIDS Health Care Foundation
All Home
City of Los Angeles
City of Pasadena
CivicWell
Fremont for Everyone
Health Officers Association of California
Housing California
LA Family Housing
League of Women Voters of California
National Association of Social Workers, California Chapter
San Francisco Bay Area Rapid Transit District
Zillow Group
Individuals - 2

Opposition

None on file.

Analysis Prepared by: Sandra Nakagawa / H. & C.D. / (916) 319-2085

⁶ <https://humboldt.gov.org/2830/Measure-I-Affordable-Housing-Initiative>