

SENATE THIRD READING
SCA 2 (Allen and Wiener)
As Introduced December 7, 2020
2/3 vote

SUMMARY

Repeals Article 34 of the California Constitution.

Major Provisions

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.

COMMENTS

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

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>

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 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

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>

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% of affordable housing projects in the sample examined used four to eight sources of funding. In some cases developers have been forced to abandon affordable housing projects that would have otherwise gone forward without Article 34.

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% 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 a future 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.

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."

Arguments in Support

Writing in support of the bill All Home argues, "Time and time again, voters have made their priorities clear by supporting ballot measures that dedicate tax dollars to homelessness and housing. In order to meet our goals and the public demand for progress towards reducing

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

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

homelessness, we must spend those dollars effectively. Article 34 mires local governments in an expensive and time-consuming process, driving up the cost of constructing affordable housing and delaying the urgent actions that must be taken to address this crisis."

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) One-time Secretary of State (SOS) costs in the range of \$546,000 to \$728,000 (General Fund), likely in 2023-24, for printing and mailing costs to place the measure on the ballot in a statewide election. Actual costs may be higher or lower, depending on the length of required elements and the overall size of the ballot.

The SOS indicates printing and mailing costs associated with placing a measure on the statewide ballot are approximately \$91,000 per page, depending on the length of the ballot. The fiscal estimates noted above reflect the addition of six to eight pages in the Voter Information Guide.

- 2) To the extent repealing the voter-approval requirements in Article 34 makes it easier to develop, construct, and acquire publicly-funded low-income housing, this measure may result in increased public expenditures for those purposes. There would also be local savings from avoided election costs.

VOTES

SENATE FLOOR: 37-0-3

YES: Allen, Archuleta, Atkins, Becker, Borgeas, Bradford, Caballero, Cortese, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Bates, Dahle, Dodd

ASM HOUSING AND COMMUNITY DEVELOPMENT: 8-0-0

YES: Wicks, Seyarto, Carrillo, Gabriel, Kalra, Kiley, Bennett, Lee

ASM APPROPRIATIONS: 15-0-1

YES: Holden, Bigelow, Bryan, Calderon, Arambula, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

ABS, ABST OR NV: Megan Dahle

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