
THIRD READING

Bill No: SCA 1
Author: Allen (D) and Wiener (D), et al.
Introduced: 12/3/18
Vote: 27

SENATE HOUSING COMMITTEE: 9-0, 6/4/19
AYES: Wiener, Morrell, Caballero, Durazo, McGuire, Roth, Skinner, Umberg,
Wieckowski
NO VOTE RECORDED: Bates, Moorlach

SENATE ELECTIONS & C.A. COMMITTEE: 4-0, 7/2/19
AYES: Umberg, Hertzberg, Leyva, Stern
NO VOTE RECORDED: Nielsen

SENATE APPROPRIATIONS COMMITTEE: 6-0, 8/30/19
AYES: Portantino, Bradford, Durazo, Hill, Jones, Wieckowski
NO VOTE RECORDED: Bates

SUBJECT: Public housing projects

SOURCE: California Association of Realtors
California Coalition for Rural Housing
California YIMBY
City of Los Angeles
Southern California Association Of Nonprofit Housing

DIGEST: This constitutional amendment repeals Article 34 of the California Constitution, which requires majority approval by the voters of a city or county for the development, construction, or acquisition of a publicly funded affordable housing project.

ANALYSIS:

Existing law:

- 1) Requires, under Article 34 of the California Constitution, majority approval by the voters of a city or county for the development, construction, or acquisition of a publicly funded “low-rent housing project.”
- 2) Provides that the term “low-rent housing project,” as defined in Section 1 of Article 34 of the California Constitution, does not apply to any development composed of urban or rural dwellings, apartments, or other living accommodations that meets any of the following:
 - a) The development is privately owned housing, receiving no property tax exemption, as specified, and not more than 49% of the dwellings, apartments, or other living accommodations of the development may be occupied by persons of low income.
 - b) The development is privately owned housing, is not exempt from property taxes 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 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.
 - 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.

This constitutional amendment repeals Article 34 of the California Constitution.

Comments

- 1) *Purpose of the amendment.* According to the author, “California has an estimated twenty-two affordable and available rental homes for every one hundred extremely low-income households. A majority of renters spends more than thirty percent of their income on housing, and nearly one-third spend more than half of their income just for a place to live. Forty percent of Californians also live close to or below the poverty line. Burdened by high housing costs, a financial setback for such families can spell catastrophe. Too many of our neighbors are one missed paycheck away from homelessness. Over the past few years California’s voters time and again have made their priorities clear, supporting state and local ballot measures that dedicate hundreds of millions in taxpayer dollars to tackling our housing and homelessness crises. We owe it to these taxpayers to use this money as cost-effectively as possible. Passed by voters in 1950, California’s Constitutional Article 34 was a direct response to the Federal Housing Act of 1949, part of President Harry Truman’s ‘Fair Deal’ to help lower-income post-war families move out of the slums and into better living situations. Some Californians, fearful of how this policy might change their neighborhoods, drove the push for a ballot measure requiring local governments seeking to ‘develop, construct, or acquire ... low-rent housing’ to also obtain approval for the development of the housing by a vote of the electorate. The Golden State has changed considerably since 1950. Our society had very different attitudes about race and ethnicity, class and poverty. There were also far less tools providing residents with an opportunity to alter or block plans for new housing—no Environmental Quality Act, no Brown Act, no Coastal Act, and far fewer lawsuits. Article 34 stands as an additional, anachronistic and expensive Constitutional barrier that subjects local governments to a web of regulations and costly elections that end up driving up the price of building publicly financed affordable housing. [This amendment] asks voters to eliminate an obstacle, enshrined in our Constitution, which currently undermines the ability of their elected leadership to address California’s acute housing and homelessness challenges.”

- 2) *Article 34 history.* Article 34 was added to the California Constitution in 1950 on the heels of the passage of the federal Housing Act of 1949. The Housing Act of 1949 banned explicit racial segregation in public housing, which left cities scrambling to find ways to separate communities of color from white neighborhoods. The real estate industry, unable to stop the passage of the Housing Act of 1949 at the federal level, sought to slow and stop its implementation at the state and local level.

The enactment of Article 34 grew out of a controversy surrounding a low-income housing project in Eureka, California. The local Housing Authority had applied for federal funding to cover the costs of planning and surveys for a low-income public housing development. After the application for funding was submitted, the City Clerk received a signed petition from more than 15% of the city electorate, requesting any city council approval of the loan application be submitted to the voters for approval. A lawsuit made its way to the California Supreme Court, holding that the power of referendum applies only to legislative acts, not acts that are executive or administrative. Since the acts were administrative and not legislative, the people could not use a referendum to change the city government's decisions, and the court had no jurisdiction.

Given that the citizens of Eureka could not make decisions around low-income housing developments in their community, they joined forces with the California Real Estate Association to enact Article 34 on the November 1950 ballot. According to the argument supporting the initiative, a vote in favor of adding Article 34 to the California Constitution was a vote for the right to say yes or no when a community was considering a low-income housing project. The need for community control was necessary because of tax waivers, and other forms of community assistance that a public housing project required.

Campaign materials and internal documents produced by the California Real Estate Association, the organization behind the ballot measure enacting Article 34 indicate that the constitutional change was more than just giving a voters a say in the approval of housing projects. According to the *Los Angeles Times*, an internal newsletter from the California Real Estate Association legislative committee Chairman stated:

“If you value your property, if you hold liberty dear, if you believe in the dignity of the individual, if you love this land of the free and the home of the brave, if you desire to stop the enemy of socialism that is gnawing at the vitals of America from within, the ballot box is your weapon, the one and only means by which our great Republic will be preserved and improved.”

- 3) *Practical impacts on housing development.* Article 34 requires that voter approval be obtained before any “state public body” develops, constructs or acquires a “low rent housing project.” Cities, counties, housing authorities and agencies are all “state public bodies” for purposes of Article 34. As a result, if any of those entities participates in development of a “low rent housing project”

and that participation rises to the level of development, construction, or acquisition of the project by the agency, approval by the local electorate is required for the project.

Local agencies usually seek general authority from the electorate to develop low income housing prior to the identification of a specific project. For example, a typical Article 34 election might authorize construction of 500 low income units anywhere in the city or county, its housing authority, or other state public bodies. Not all low- and moderate-income housing is a “low rent housing project.” To clarify the requirements of Article 34, the Legislature clarified in statute that specific projects would not require voter approval, such as projects with less than 49% of the units are occupied by low-income families, and privately owned housing that does not receive public financing, owner-occupied developments.

Jurisdictions that do not comply with Article 34 requirements are not eligible for state funds.

- 4) *Prior attempts at repeal.* In 1971, *James v. Valtierra* tested the constitutionality of Article 34. After low-income housing proposals were defeated by referenda in San Jose and San Mateo County, a group of black and Mexican-American persons who were eligible for low-income housing in these communities filed suit alleging Article 34 violated the federal Constitution’s Supremacy Clause, Privileges and Immunities Clause, and Equal Protection Clause. The US Supreme Court found that Article 34 did not rest on “distinctions based on race” because a referendum was required on any low-income project when the project was within the guidelines set forth in the article, not just projects which were to be occupied by racial minorities. The appellees also argued that Article 34 denied equal protection to low-income households because they were singled out for a mandatory referendum. The Court disagreed with this argument as well by pointing out that a referendum is a democratic decision-making procedure and that California has a long history of using the referendum process to influence or make public policy.

In 1974, Assemblymember Willie Brown authored a bill in the Legislature which placed the repeal of Article 34 on the ballot as Proposition 15. That measure was defeated. In 1977, Assemblymember Brown authored a modification of Article 34, which placed Proposition 4 on the 1980 ballot. Again this was defeated. The most recent attempt at repeal took place in 1993

as Proposition 168, this time with the support of the California Association of Realtors, which failed passage on a 60% vote.

Presently, no other state constitution requires voter approval for public housing.

5) *2020 Ballot*. If this bill passes the Legislature, it would require approval by the voters on the November 2020 ballot.

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

According to the Senate Appropriations Committee:

- One-time Secretary of State (SOS) costs in the range of \$438,000 to \$584,000 (General Fund), likely in 2020-21, 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.

SUPPORT: (Verified 8/30/19)

California Association of Realtors (co-source)
California Coalition for Rural Housing (co-source)
California YIMBY (co-source)
City of Los Angeles (co-source)
Southern California Association of Nonprofit Housing (co-source)
Aids Healthcare Foundation
California Apartment Association
California Association of Housing Authorities
California Association of Local Housing Finance Agencies
California Coalition for Rural Housing
California Partnership
California State Association of Counties
City of Berkeley
City of Beverly Hills
City of Santa Monica
City of West Hollywood
East Bay for Everyone
Eden Housing
League of Women Voters of California
Rural County Representatives of California
San Francisco Housing Action Coalition
Silicon Valley At Home

Southern California Rental Housing Association
1 Individual

OPPOSITION: (Verified 8/30/19)

None received

Prepared by: Alison Hughes / HOUSING / (916) 651-4124
9/1/19 9:56:43

****** END ******