
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: SB 469 **Hearing Date:** 4/18/2023
Author: Allen
Version: 3/28/2023
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Housing: publicly funded low-rent housing projects

DIGEST: This bill provides that Article 34 requirements do not apply to housing developments that receive funding from specified state housing programs.

ANALYSIS:

Existing law, under Article 34 of the California Constitution:

- 1) Requires 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 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.
- h) The development consists of the acquisition, rehabilitation, reconstruction, alterations work, new construction, or any combination of lodging facilities or dwelling units using any of the following:
 - i. Money from the Coronavirus Relief Fund, established by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act.
 - ii. Money from the Coronavirus State Fiscal Recovery Fund established by the federal American Rescue Plan Act of 2021 (ARPA).
 - iii. Money appropriated for purposes of affordable housing preservation.
 - iv. Money appropriated in the 2020 budget for purposes of providing housing for persons experiencing homelessness and who are impacted by COVID-19.

This bill:

- 1) Provides that the term “low-rent housing project,” as defined in Section 1 of Article 34 does not apply to any development composed of urban or rural dwellings, apartments, or other living accommodations that consists of the acquisition, rehabilitation, reconstruction, alterations work, new construction or any combination of lodging facilities or dwelling units using any of the following:
 - a) Money appropriated and disbursed by the Business, Consumer Services and Housing (BCSH) Agency, Department of Housing and Community Development (HCD), and the California Housing Finance Agency (CalHFA).
 - b) An allocation of federal or state low-income housing tax credits from the California Tax Credit Allocation Committee (TCAC).

COMMENTS:

- 1) *Author's statement.* “Article 34 of the California Constitution is an antiquated relic of the pre-Civil Rights Era that sought to limit the development of affordable housing and to bar families of color from accessing housing in affluent communities. While the deeply problematic nature of the original intent demands action, one unintended interpretation of Article 34 placed the state in a legal grey area that thwarts California’s affordable housing goals. Article 34 requires local voter approval of any “low-rent housing project” that is “developed, constructed, or acquired in any manner by any state public body.” Article 34 was not intended to cover affordable housing that receives state funding and is developed by private entities such as nonprofit affordable-housing developers. However, out of an abundance of caution, the state has required applicants for some funding sources to demonstrate Article 34 compliance before developments proceed. This adds unnecessary costs, delays, and uncertainty to the affordable housing projects. SB 469 exercises the Legislature’s authority to make clear that housing developments that receive loans or grant awards from the California Department of Housing and Community Development or a reservation of low-income housing tax credits from the state’s Tax Credit Allocation Committee do not trigger an Article 34 election.”
- 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 alternative 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 (known today as the California Association of Realtors) 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. Supporters argued 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’s jurisdiction, including 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 specified projects would not require voter approval, such as projects in which less than 49% of the units are occupied by low-income families; and privately owned housing that does not receive public financing; and 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.

Last year, the legislature passed SCA 2 (Allen/Wiener, Chapter 182, Statutes of 2022), which repeals Article 34 all together, subject to voter approval.

- 5) *Statutory changes versus constitutional amendment.* This bill would provide that Article 34 requirements do not apply to housing developments that receive funding from any state housing program administered by HCD, CalHFA or BCSH, or any housing projects receiving state or federal low income housing tax credits. This exemption would follow precedent of exempting specified funds for COVID-19 relief from provisions of Article 34. The author intends to bolster this exemption with a ballot measure to ask the voters to repeal the Article entirely.

RELATED LEGISLATION:

SCA 2 (Allen/Wiener, Chapter 182, Statutes of 2022) — repealed Article 34 of the California Constitution, subject to voter approval.

SCA 1 (Allen, 2020) — would have repealed 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. *This bill died at the Assembly Desk.*

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 12, 2023.)

SUPPORT:

California Housing Partnership Corporation (Co-Sponsor)
California Rural Legal Assistance Foundation (Co-Sponsor)
California Housing Consortium
EAH Housing
East Bay YIMBY
Grow the Richmond
How to ADU
Mercy Housing California
Merritt Community Capital Corporation
MidPen Housing Corporation
Mountain View YIMBY
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
People for Housing - Orange County
Progress Noe Valley
San Diego Housing Federation
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Rosa YIMBY
South Bay YIMBY
Southern California Association of Non-profit Housing (SCANPH)
Southside Forward
The Santa Monica Democratic Club
Ventura County YIMBY

YIMBY Action

OPPOSITION:

None received.

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