

## ACA 1 Analysis and Recommendation

**TITLE:** Local government financing: affordable housing and public infrastructure: voter approval

**AUTHOR(S):** Aguiar-Curry (D-Winters), Gonzalez (D-San Diego), Chiu (D-San Francisco)

**SPONSOR(S):** California Labor Federation, California Professional Firefighters, Housing California, and State Building and Construction Trades Council

**RECOMMENDATION:** Support

**BACKGROUND:** Within the Bay Area, several cities and counties have successfully passed voter-approved bonds and taxes dedicated to funding public infrastructure projects and affordable housing. In contrast, within some parts of the Bay Area and across the state, local funding measures have repeatedly fallen short of the two-thirds voter approval threshold required to incur bonded indebtedness or levy special taxes.

**PURPOSE:** ACA 1 is a re-introduction of ACA 1 (Aguiar-Curry) from the 2019-2020 legislative session. If approved by two-thirds vote of the Legislature, the bill would place before voters a constitutional amendment to lower the vote threshold from two-thirds to 55 percent for local special taxes and bonds to fund affordable housing, permanent supportive housing, and public infrastructure projects. The bill defines affordable housing to include housing developments that provide workforce housing affordable to households earning up to 150 percent of countywide median income and developments that provide housing affordable to lower, low-, or very low-income households. Permanent supportive housing is defined as housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services. Public infrastructure shall include, but is not limited to improvements to transit, streets and highways, water protection/quality, sanitation and sewer, wastewater treatment, protection of property from sea level rise, parks and open space, recreational facilities, flood control, broadband internet access, local hospital construction, public safety buildings/facilities, and public libraries.

**DISTRICT IMPACT:** ACA 1 would assist local funding efforts undertaken by cities, counties, and special districts throughout the state. Lowering the vote threshold to 55 percent increases the opportunities for local entities to fund important projects while still requiring significant support from voters. If passed, ACA 1 would also allow local governments and special district to address their priorities with less reliance on state or federal funding.

**OTHER COMMENTS:** BART has long supported proposed constitutional amendments to lower the voter threshold for transportation and other public infrastructure improvements. BART supported ACA 1 in the previous legislative session. The bill passed the Assembly's policy and fiscal committees but was never brought to a Floor vote.

**KNOWN SUPPORT/OPPOSITION:** None on file at this time.

**STATUS:** Introduced on 12/7/20 and pending committee referral in the Assembly.

**Assembly Constitutional Amendment**

**No. 1**

**Introduced by Assembly Members Aguiar-Curry, Lorena Gonzalez,  
and Chiu**

(Principal coauthor: Senator Wiener)

**(Coauthors: Assembly Members Berman, Burke, Kalra, Levine,  
Quirk, Robert Rivas, Blanca Rubio, Stone, Ting, Weber, and  
Wicks)**

December 7, 2020

---

Assembly Constitutional Amendment No. 1—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 1 and 4 of Article XIII A thereof, by amending Section 2 of, and by adding Section 2.5 to, Article XIII C thereof, by amending Section 3 of Article XIII D thereof, and by amending Section 18 of Article XVI thereof, relating to local finance.

LEGISLATIVE COUNSEL'S DIGEST

ACA 1, as introduced, Aguiar-Curry. Local government financing: affordable housing and public infrastructure: voter approval.

(1) The California Constitution prohibits the ad valorem tax rate on real property from exceeding 1% of the full cash value of the property, subject to certain exceptions.

This measure would create an additional exception to the 1% limit that would authorize a city, county, city and county, or special district to levy an ad valorem tax to service bonded indebtedness incurred to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure, affordable housing, or permanent supportive housing, or the acquisition or lease of real property for those purposes, if the proposition proposing that tax is approved by 55% of the voters

of the city, county, or city and county, as applicable, and the proposition includes specified accountability requirements. The measure would specify that these provisions apply to any city, county, city and county, or special district measure imposing an ad valorem tax to pay the interest and redemption charges on bonded indebtedness for these purposes that is submitted at the same election as this measure.

(2) The California Constitution conditions the imposition of a special tax by a local government upon the approval of  $\frac{2}{3}$  of the voters of the local government voting on that tax, and prohibits these entities from imposing an ad valorem tax on real property or a transactions or sales tax on the sale of real property.

This measure would authorize a local government to impose, extend, or increase a sales and use tax or transactions and use tax imposed in accordance with specified law or a parcel tax, as defined, for the purposes of funding the construction, rehabilitation, or replacement of public infrastructure, affordable housing, or permanent supportive housing if the proposition proposing that tax is approved by 55% of its voters voting on the proposition and the proposition includes specified accountability requirements. This measure would also make conforming changes to related provisions. The measure would specify that these provisions apply to any local measure imposing, extending, or increasing a sales and use tax, transactions and use tax, or parcel tax for these purposes that is submitted at the same election as this measure.

(3) The California Constitution prohibits specified local government agencies from incurring any indebtedness exceeding in any year the income and revenue provided in that year, without the assent of  $\frac{2}{3}$  of the voters and subject to other conditions. In the case of a school district, community college district, or county office of education, the California Constitution permits a proposition for the incurrence of indebtedness in the form of general obligation bonds for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, to be adopted upon the approval of 55% of the voters of the district or county, as appropriate, voting on the proposition at an election.

This measure would expressly prohibit a special district, other than a board of education or school district, from incurring any indebtedness or liability exceeding any applicable statutory limit, as prescribed by the statutes governing the special district. The measure would also similarly require the approval of 55% of the voters of the city, county,

city and county, or special district, as applicable, to incur bonded indebtedness, exceeding in any year the income and revenue provided in that year, that is in the form of general obligation bonds issued to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure, affordable housing, or permanent supportive housing projects, if the proposition proposing that bond includes specified accountability requirements. The measure would specify that this 55% threshold applies to any proposition for the incurrence of indebtedness by a city, county, city and county, or special district for these purposes that is submitted at the same election as this measure.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

1     *Resolved by the Assembly, the Senate concurring,* That the  
2     Legislature of the State of California at its 2021–22 Regular  
3     Session commencing on the seventh day of December 2020,  
4     two-thirds of the membership of each house concurring, hereby  
5     proposes to the people of the State of California, that the  
6     Constitution of the State be amended as follows:

7     First—That Section 1 of Article XIII A thereof is amended to  
8     read:

9     SECTION 1. (a) The maximum amount of any ad valorem  
10    tax on real property shall not exceed ~~One~~ 1 percent ~~(1%)~~ of the  
11    full cash value of such ~~that~~ property. ~~The one percent (1%) tax to~~  
12    1 percent tax shall be collected by the counties and apportioned  
13    according to law to the districts within the counties.

14    (b) The limitation provided for in subdivision (a) shall not apply  
15    to ad valorem taxes or special assessments to pay the interest and  
16    redemption charges on any of the following:

17    (1) Indebtedness approved by the voters ~~prior to~~ before July 1,  
18    1978.

19    (2) Bonded indebtedness ~~for~~ to fund the acquisition or  
20    improvement of real property approved on or after July 1, 1978,  
21    by two-thirds of the votes cast by the voters voting on the  
22    proposition.

23    (3) Bonded indebtedness incurred by a school district,  
24    community college district, or county office of education for the  
25    construction, reconstruction, rehabilitation, or replacement of  
26    school facilities, including the furnishing and equipping of school  
27    facilities, or the acquisition or lease of real property for school

1 facilities, approved by 55 percent of the voters of the district or  
2 county, as appropriate, voting on the proposition on or after the  
3 effective date of the measure adding this paragraph. November 8,  
4 2000. This paragraph shall apply only if the proposition approved  
5 by the voters and resulting in the bonded indebtedness includes  
6 all of the following accountability requirements:

7 (A) A requirement that the proceeds from the sale of the bonds  
8 be used only for the purposes specified in ~~Article XIII A, Section~~  
9 ~~1(b)(3)~~, *this paragraph*, and not for any other purpose, including  
10 teacher and administrator salaries and other school operating  
11 expenses.

12 (B) A list of the specific school facilities projects to be funded  
13 and certification that the school district board, community college  
14 board, or county office of education has evaluated safety, class  
15 size reduction, and information technology needs in developing  
16 that list.

17 (C) A requirement that the school district board, community  
18 college board, or county office of education conduct an annual,  
19 independent performance audit to ensure that the funds have been  
20 expended only on the specific projects listed.

21 (D) A requirement that the school district board, community  
22 college board, or county office of education conduct an annual,  
23 independent financial audit of the proceeds from the sale of the  
24 bonds until all of those proceeds have been expended for the school  
25 facilities projects.

26 (4) (A) *Bonded indebtedness incurred by a city, county, city*  
27 *and county, or special district for the construction, reconstruction,*  
28 *rehabilitation, or replacement of public infrastructure, affordable*  
29 *housing, or permanent supportive housing for persons at risk of*  
30 *chronic homelessness, including persons with mental illness, or*  
31 *the acquisition or lease of real property for public infrastructure,*  
32 *affordable housing, or permanent supportive housing for persons*  
33 *at risk of chronic homelessness, including persons with mental*  
34 *illness, approved by 55 percent of the voters of the city, county,*  
35 *city and county, or special district, as appropriate, voting on the*  
36 *proposition on or after the effective date of the measure adding*  
37 *this paragraph. This paragraph shall apply only if the proposition*  
38 *approved by the voters and resulting in the bonded indebtedness*  
39 *includes all of the following accountability requirements:*

1 (i) A requirement that the proceeds from the sale of the bonds  
2 be used only for the purposes specified in this paragraph, and not  
3 for any other purpose, including city, county, city and county, or  
4 special district employee salaries and other operating expenses.

5 (ii) A list of the specific projects to be funded, and a certification  
6 that the city, county, city and county, or special district has  
7 evaluated alternative funding sources.

8 (iii) A requirement that the city, county, city and county, or  
9 special district conduct an annual, independent performance audit  
10 to ensure that the funds have been expended only on the specific  
11 projects listed.

12 (iv) A requirement that the city, county, city and county, or  
13 special district conduct an annual, independent financial audit of  
14 the proceeds from the sale of the bonds until all of those proceeds  
15 have been expended for the public infrastructure or affordable  
16 housing projects, as applicable.

17 (v) A requirement that the city, county, city and county, or  
18 special district post the audits required by clauses (iii) and (iv) in  
19 a manner that is easily accessible to the public.

20 (vi) A requirement that the city, county, city and county, or  
21 special district appoint a citizens' oversight committee to ensure  
22 that bond proceeds are expended only for the purposes described  
23 in the measure approved by the voters.

24 (B) For purposes of this paragraph:

25 (i) "Affordable housing" shall include housing developments,  
26 or portions of housing developments, that provide workforce  
27 housing affordable to households earning up to 150 percent of  
28 countywide median income, and housing developments, or portions  
29 of housing developments, that provide housing affordable to lower,  
30 low-, or very low income households, as those terms are defined  
31 in state law.

32 (ii) "At risk of chronic homelessness" includes, but is not limited  
33 to, persons who are at high risk of long-term or intermittent  
34 homelessness, including persons with mental illness exiting  
35 institutionalized settings, including, but not limited to, jail and  
36 mental health facilities, who were homeless prior to admission,  
37 transition age youth experiencing homelessness or with significant  
38 barriers to housing stability, and others, as defined in program  
39 guidelines.

(iii) *"Permanent supportive housing" means housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community. "Permanent supportive housing" includes associated facilities, if those facilities are used to provide services to housing residents.*

(iv) *"Public infrastructure" shall include, but is not limited to, projects that provide any of the following:*

(I) *Water or protect water quality.*

(II) *Sanitary sewer.*

(III) *Treatment of wastewater or reduction of pollution from stormwater runoff.*

(IV) *Protection of property from impacts of sea level rise.*

(V) *Parks and recreation facilities.*

(VI) *Open space.*

(VII) *Improvements to transit and streets and highways.*

(VIII) *Flood control.*

(IX) *Broadband internet access service expansion in underserved areas.*

(X) *Local hospital construction.*

(XI) *Public safety buildings or facilities, equipment related to fire suppression, emergency response equipment, or interoperable communications equipment for direct and exclusive use by fire, emergency response, police or sheriff personnel.*

(XII) *Public library facilities.*

(v) *"Special district" has the same meaning as provided in subdivision (c) of Section 1 of Article XIII C and specifically includes a transit district, except that "special district" does not include a school district, redevelopment agency, or successor agency to a dissolved redevelopment agency.*

(C) *This paragraph shall apply to any city, county, city and county, or special district measure imposing an ad valorem tax to pay the interest and redemption charges on bonded indebtedness for those purposes described in this paragraph that is submitted at the same election as the measure adding this paragraph.*

(c) (1) *Notwithstanding any other provisions of law or of this Constitution, a school—districts, district, community college districts, and district, or county—offices office of education may*

1 levy a ~~55-percent~~ 55-percent vote ad valorem tax pursuant to  
2 paragraph (3) of subdivision (b).

3 (2) Notwithstanding any other provisions of law or this  
4 Constitution, a city, county, city and county, or special district  
5 may levy a 55-percent vote ad valorem tax pursuant to paragraph  
6 (4) of subdivision (b).

7 Second—That Section 4 of Article XIII A thereof is amended  
8 to read:

9 ~~Section 4. Cities, Counties and special districts;~~

10 SEC. 4. Except as provided by Section 2.5 of Article XIII C, a  
11 city, county, or special district, by a two-thirds vote of the qualified  
12 electors of such district, its voters voting on the proposition, may  
13 impose special taxes on such district, a special tax within that city,  
14 county, or special district, except an ad valorem taxes tax on real  
15 property or a transaction transactions tax or sales tax on the sale  
16 of real property within such City, County that city, county, or  
17 special district.

18 Third—That Section 2 of Article XIII C thereof is amended to  
19 read:

20 SEC. 2. Local Government Tax Limitation. Notwithstanding  
21 any other provision of this Constitution:

22 (a) ~~All taxes~~ Any tax imposed by any a local government shall  
23 be deemed to be is either a general taxes tax or a special taxes.  
24 Special purpose districts tax. A special district or agencies, agency,  
25 including a school districts, shall have no power district, has no  
26 authority to levy a general taxes. tax.

27 (b) ~~No~~ A local government may not impose, extend, or increase  
28 any general tax unless and until that tax is submitted to the  
29 electorate and approved by a majority vote. A general tax shall is  
30 not be deemed to have been increased if it is imposed at a rate not  
31 higher than the maximum rate so approved. The election required  
32 by this subdivision shall be consolidated with a regularly scheduled  
33 general election for members of the governing body of the local  
34 government, except in cases of emergency declared by a unanimous  
35 vote of the governing body.

36 (c) Any general tax imposed, extended, or increased, without  
37 voter approval, by any local government on or after January 1,  
38 1995, and prior to before the effective date of this article, shall  
39 may continue to be imposed only if that general tax is approved  
40 by a majority vote of the voters voting in an election on the issue



1 of the imposition, which election shall be held ~~within two years~~  
2 ~~of the effective date of this article~~ *no later than November 6, 1996*,  
3 and in compliance with subdivision (b).

4 (d) ~~No-Except as provided by Section 2.5~~, a local government  
5 may *not* impose, extend, or increase any special tax unless and  
6 until that tax is submitted to the electorate and approved by a  
7 two-thirds vote. A special tax ~~shall~~ *is not be* deemed to have been  
8 increased if it is imposed at a rate not higher than the maximum  
9 rate so approved.

10 Fourth—That Section 2.5 is added to Article XIII C thereof, to  
11 read:

12 SEC. 2.5. (a) The imposition, extension, or increase of a sales  
13 and use tax imposed in accordance with the Bradley-Burns Uniform  
14 Local Sales and Use Tax Law (Part 1.5 (commencing with Section  
15 7200) of Division 2 of the Revenue and Taxation Code) or a  
16 successor law, a transactions and use tax imposed in accordance  
17 with the Transactions and Use Tax Law (Part 1.6 (commencing  
18 with Section 7251) of Division 2 of the Revenue and Taxation  
19 Code) or a successor law, or a parcel tax imposed by a local  
20 government for the purpose of funding the construction,  
21 reconstruction, rehabilitation, or replacement of public  
22 infrastructure, affordable housing, or permanent supportive housing  
23 for persons at risk of chronic homelessness, including persons with  
24 mental illness, or the acquisition or lease of real property for public  
25 infrastructure, affordable housing, or permanent supportive housing  
26 for persons at risk of chronic homelessness, including persons with  
27 mental illness, is subject to approval by 55 percent of the voters  
28 in the local government voting on the proposition, if both of the  
29 following conditions are met:

30 (1) The proposition is approved by a majority vote of the  
31 membership of the governing board of the local government.

32 (2) The proposition contains all of the following accountability  
33 requirements:

34 (A) A requirement that the proceeds of the tax only be used for  
35 the purposes specified in the proposition, and not for any other  
36 purpose, including general employee salaries and other operating  
37 expenses of the local government.

38 (B) A list of the specific projects that are to be funded by the  
39 tax, and a certification that the local government has evaluated  
40 alternative funding sources.

1 (C) A requirement that the local government conduct an annual,  
2 independent performance audit to ensure that the proceeds of the  
3 special tax have been expended only on the specific projects listed  
4 in the proposition.

5 (D) A requirement that the local government conduct an annual,  
6 independent financial audit of the proceeds from the tax during  
7 the lifetime of that tax.

8 (E) A requirement that the local government post the audits  
9 required by subparagraphs (C) and (D) in a manner that is easily  
10 accessible to the public.

11 (F) A requirement that the local government appoint a citizens'  
12 oversight committee to ensure the proceeds of the special tax are  
13 expended only for the purposes described in the measure approved  
14 by the voters.

15 (b) For purposes of this section, the following terms have the  
16 following meanings:

17 (1) "Affordable housing" shall include housing developments,  
18 or portions of housing developments, that provide workforce  
19 housing affordable to households earning up to 150 percent of  
20 countywide median income, and housing developments, or portions  
21 of housing developments, that provide housing affordable to lower,  
22 low-, or very low income households, as those terms are defined  
23 in state law.

24 (2) "At risk of chronic homelessness" includes, but is not limited  
25 to, persons who are at high risk of long-term or intermittent  
26 homelessness, including persons with mental illness exiting  
27 institutionalized settings, including, but not limited to, jail and  
28 mental health facilities, who were homeless prior to admission,  
29 transition age youth experiencing homelessness or with significant  
30 barriers to housing stability, and others, as defined in program  
31 guidelines.

32 (3) "Permanent supportive housing" means housing with no  
33 limit on length of stay, that is occupied by the target population,  
34 and that is linked to onsite or offsite services that assist residents  
35 in retaining the housing, improving their health status, and  
36 maximizing their ability to live and, when possible, work in the  
37 community. "Permanent supportive housing" includes associated  
38 facilities, if those facilities are used to provide services to housing  
39 residents.

(4) "Public infrastructure" shall include, but is not limited to, the projects that provide any of the following:

(A) Water or protect water quality.

(B) Sanitary sewer.

(C) Treatment of wastewater or reduction of pollution from stormwater runoff.

(D) Protection of property from impacts of sea level rise.

(E) Parks and recreation facilities.

(F) Open space.

(G) Improvements to transit and streets and highways.

(H) Flood control.

(I) Broadband internet access service expansion in underserved areas.

(J) Local hospital construction.

(K) Public safety buildings or facilities, equipment related to fire suppression, emergency response equipment, or interoperable communications equipment for direct and exclusive use by fire, emergency response, police or sheriff personnel.

(L) Public library facilities.

(c) This section shall apply to any local measure imposing, extending, or increasing a sales and use tax imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, a transactions and use tax imposed in accordance with the Transactions and Use Tax Law, or a parcel tax imposed by a local government for those purposes described in subdivision (a) that is submitted at the same election as the measure adding this section.

Fifth—That Section 3 of Article XIII D thereof is amended to read:

SEC. 3. ~~Property Taxes, Assessments, Fees and Charges Limited.~~ ~~(a) No~~ *(a) An agency shall not assess a tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:*

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII ~~A~~ *A or receiving a 55-percent approval pursuant to Section 2.5 of Article XIII C.*

(3) Assessments as provided by this article.

1 (4) Fees or charges for ~~property-related~~ *property-related* services  
2 as provided by this article.

3 (b) For purposes of this article, fees for the provision of electrical  
4 or gas service ~~shall are not be~~ deemed charges or fees imposed as  
5 an incident of property ownership.

6 Sixth—That Section 18 of Article XVI thereof is amended to  
7 read:

8 SEC. 18. (a) ~~No~~ *A* county, city, town, township, board of  
9 education, or school district, shall *not* incur any indebtedness or  
10 liability in any manner or for any purpose exceeding in any year  
11 the income and revenue provided for ~~such~~ *that* year, without the  
12 assent of two-thirds of the voters of the public entity voting at an  
13 election to be held for that purpose, except that with respect to any  
14 such public entity ~~which~~ *that* is authorized to incur indebtedness  
15 for public school purposes, any proposition for the incurrence of  
16 indebtedness in the form of general obligation bonds for the  
17 purpose of repairing, ~~reconstructing~~ *reconstructing*, or replacing  
18 public school buildings determined, in the manner prescribed by  
19 law, to be structurally unsafe for school use, shall be adopted upon  
20 the approval of a majority of the voters of the public entity voting  
21 on the proposition at ~~such~~ *the* election; nor unless before or at the  
22 time of incurring such indebtedness provision shall be made for  
23 the collection of an annual tax sufficient to pay the interest on such  
24 indebtedness as it falls due, and to provide for a sinking fund for  
25 the payment of the principal thereof, on or before maturity, which  
26 shall not exceed forty years from the time of contracting the  
27 indebtedness. *A special district, other than a board of education*  
28 *or school district, shall not incur any indebtedness or liability*  
29 *exceeding any applicable statutory limit, as prescribed by the*  
30 *statutes governing the special district as they currently read or*  
31 *may thereafter be amended by the Legislature.*

32 (b) (1) Notwithstanding subdivision (a), ~~on or after the effective~~  
33 ~~date of the measure adding this subdivision, in the case of any~~  
34 ~~school district, community college district, or county office of~~  
35 ~~education, any proposition for the incurrence of indebtedness in~~  
36 ~~the form of general obligation bonds for the construction,~~  
37 ~~reconstruction, rehabilitation, or replacement of school facilities,~~  
38 ~~including the furnishing and equipping of school facilities, or the~~  
39 ~~acquisition or lease of real property for school facilities, purposes~~  
40 ~~described in paragraph (3) or (4) of subdivision (b) of Section 1~~

1 of Article XIII A shall be adopted upon the approval of 55 percent  
2 of the voters of the ~~district or county~~, school district, community  
3 college district, county office of education, city, county, city and  
4 county, or other special district, as appropriate, voting on the  
5 proposition at an election. This subdivision shall apply ~~only~~ to a  
6 proposition for the incurrence of indebtedness in the form of  
7 general obligation bonds for the purposes specified in this  
8 subdivision *only* if the proposition meets all of the accountability  
9 requirements of paragraph (3) or (4) of subdivision ~~(b)~~ (b), as  
10 appropriate, of Section 1 of Article XIII A.

11 (2) *The amendments made to this subdivision by the measure*  
12 *adding this paragraph shall apply to any proposition for the*  
13 *incurrence of indebtedness in the form of general obligation bonds*  
14 *pursuant to this subdivision for the purposes described in*  
15 *paragraph (4) of subdivision (b) of Section 1 of Article XIII A that*  
16 *is submitted at the same election as the measure adding this*  
17 *paragraph.*

18 (c) When two or more propositions for incurring any  
19 indebtedness or liability are submitted at the same election, the  
20 votes cast for and against each proposition shall be counted  
21 separately, and ~~when if~~ two-thirds or a majority or 55 percent of  
22 the voters, as the case may be, voting on any one of those  
23 propositions, vote in favor thereof, the proposition shall be deemed  
24 adopted.

## SCA 2 Analysis and Recommendation

**TITLE:** Public housing projects

**AUTHOR(S):** Allen (D-Los Angeles) and Wiener (D-San Francisco)

**SPONSOR(S):** California Association of Realtors

**RECOMMENDATION:** Support

**BACKGROUND:** Article 34 of the California Constitution was enacted in 1950, following the enactment of the Federal Housing Act of 1949, which banned racial discrimination in public housing. Article 34 requires a vote of the local electorate before public funding can be expended on a low-rent housing project and was passed as an effort to restore the ability to segregate housing locally.

Today, not all low-and moderate-income housing is considered “low-rent housing.” Statutory and case law permit the development of many kinds of low-and moderate-income housing not characterized as a “low-rent housing project,” and therefore not subject to Article 34 voter authorization.

**PURPOSE:** SCA 2 bill is a re-introduction of SCA 1 (Allen and Wiener) from the 2019-2020 legislative session. If approved by two-thirds of the Legislature, the bill would place before California voters a proposal to repeal Article 34, thereby eliminating the required local vote before a municipality can move forward with a low-rent housing project. Since the original basis of Article 34 was to maintain segregation in housing, proponents argue it is no longer warranted as a component of California’s Constitution.

**DISTRICT IMPACT:** If approved by voters, SCA 2 will generally ease the local municipal process for moving forward with low-rent housing developments. The measure is intended to remove an antiquated procedural obstacle as California endeavors to address its housing crisis, which is especially acute in the Bay Area. Publicly owned affordable housing for low-income populations is critical to reducing homelessness and ensuring that housing is available to people of all income levels.

**OTHER COMMENTS:** BART supported SCA 1 in the previous legislative session. The bill passed the Senate but was held at the Assembly Desk.

**KNOWN SUPPORT/OPPOSITION:** None on file at this time.

**STATUS:** Introduced on 12/7/20; pending committee referral in the Senate.

---

Introduced by Senators Allen and Wiener

December 7, 2020

---

Senate Constitutional Amendment No. 2—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing Article XXXIV thereof, relating to public housing projects.

LEGISLATIVE COUNSEL'S DIGEST

SCA 2, as introduced, Allen. Public housing projects.

The California Constitution prohibits the development, construction, or acquisition of a low-rent housing project, as defined, in any manner by any state public body until a majority of the qualified electors of the city, town, or county in which the development, construction, or acquisition of the low-rent housing project is proposed approve the project by voting in favor at an election, as specified.

This measure would repeal these provisions.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

- 1     *Resolved by the Senate, the Assembly concurring, That the*
- 2     Legislature of the State of California at its 2021–22 Regular
- 3     Session commencing on the seventh day of December 2020,
- 4     two-thirds of the membership of each house concurring, hereby
- 5     proposes to the people of the State of California, that the
- 6     Constitution of the State be amended as follows:
- 7     That Article XXXIV thereof is repealed.

O

## **SB 10 Analysis and Recommendation**

**TITLE:** Planning and zoning: housing development: density

**AUTHOR:** Wiener (D-San Francisco)

**SPONSOR:** California YIMBY

**RECOMMENDATION:** Support

**BACKGROUND:** On December 16, 2020, Senate President Pro Tempore Atkins announced the Building Opportunities for All Housing Package, a collection of bills aimed at bolstering the production of mid-density and affordable housing, opening commercial corridors to residential development, and providing tools and flexibility to local government and community partners. SB 10 is one of six bills within the Senate housing package and a re-introduction of SB 902 (Wiener) from the 2019-2020 legislative session.

**PURPOSE:** SB 10 removes local restrictions, including those enacted by a voter initiative, to allow a local government to pass an ordinance, to zone a parcel for up to 10 units of residential density per parcel, at a height specified in the local ordinance, if the parcel is located on one of the following:

- a) a transit-rich area, defined as a parcel within one-half mile of a major transit stop or a parcel on a high-quality bus corridor with a fixed-route bus service that meets specified service interval times.
- b) a jobs-rich area, defined as an area identified by the state that is high opportunity and either jobs rich or would enable shorter commute distances.
- c) An urban infill site, defined as a site in which at least 75% of the perimeter adjoins parcels that are developed with urban uses and is zoned for residential use or residential mixed-use development with at least 2/3 of the square footage of the development designated for residential use.

SB 10 would require the Department of Housing and Community Development, in consultation with the Office of Planning and Research, to determine jobs-rich areas and publish a map of those areas every five years, commencing January 1, 2022. The bill specifies that an adopted ordinance does not qualify as a "project" under the California Environmental Quality Act and prohibits a project consisting of 10 or more units located on a parcel rezoned pursuant to these provisions from being approved ministerially or by-right.

**DISTRICT IMPACT:** SB 10 is complimentary to goals within BART's Transit Oriented Development Program as it seeks to support housing production near transit, job-rich areas, and urban infill sites. In the Bay Area, neighborhoods within proximity to BART, a high-quality bus corridor, or a regional job center could see an increase in new housing through local ordinances to approval mid-density projects. Denser housing near BART may result in increased transit ridership and mode shifts as data shows that residents within a half-mile of BART are twice as likely to walk, bike or take transit for their commute trip and own fewer cars. Housing next to high-quality transit and job-rich areas also offers a sustainable way to reduce freeway congestion and greenhouse gas emissions related to vehicle trips.

**OTHER COMMENTS:** BART supported SB 902 in the previous legislative session. The bill was held on suspense in the Assembly Appropriations Committee.

**KNOWN SUPPORT/OPPOSITION:** Support: California YIMBY (Sponsor), Los Angeles Business Council, Valley Industry and Commerce Association (VICA); Opposition: None on file as this time.

**STATUS:** Introduced on 12/7/20. Referred to the Senate Housing Committee and Senate Government and Finance Committee. Referral to the Senate Environmental Quality Committee rescinded due to limitations placed on hearings because of COVID.



**Introduced by Senator Wiener**  
**(Principal coauthors: Senators Atkins and Caballero)**  
**(Principal coauthor: Assembly Member Robert Rivas)**

December 7, 2020

---

An act to add Section 65913.5 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 10, as introduced, Wiener. Planning and zoning: housing development: density.

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law requires an attached housing development to be a permitted use, not subject to a conditional use permit, on any parcel zoned for multifamily housing if at least certain percentages of the units are available at affordable housing costs to very low income, lower income, and moderate-income households for at least 30 years and if the project meets specified conditions relating to location and being subject to a discretionary decision other than a conditional use permit. Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing.

This bill would, notwithstanding any local restrictions on adopting zoning ordinances, authorize a local government to pass an ordinance to zone any parcel for up to 10 units of residential density per parcel, at a height specified in the ordinance, if the parcel is located in a transit-rich area, a jobs-rich area, or an urban infill site, as those terms are defined. In this regard, the bill would require the Department of Housing and Community Development, in consultation with the Office

of Planning and Research, to determine jobs-rich areas and publish a map of those areas every 5 years, commencing January 1, 2022, based on specified criteria. The bill would specify that an ordinance adopted under these provisions is not a project for purposes of the California Environmental Quality Act. The bill would prohibit a residential or mixed-use residential project consisting of 10 or more units that is located on a parcel rezoned pursuant to these provisions from being approved ministerially or by right.

This bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 65913.5 is added to the Government
- 2 Code, to read:
- 3 65913.5. (a) (1) Notwithstanding any local restrictions on
- 4 adopting zoning ordinances enacted by the jurisdiction, including
- 5 restrictions enacted by a local voter initiative, that limit the
- 6 legislative body's ability to adopt zoning ordinances, a local
- 7 government may pass an ordinance to zone a parcel for up to 10
- 8 units of residential density per parcel, at a height specified by the
- 9 local government in the ordinance, if the parcel is located in one
- 10 of the following:
- 11 (A) A transit-rich area.
- 12 (B) A jobs-rich area.
- 13 (C) An urban infill site.
- 14 (2) An ordinance adopted in accordance with this subdivision
- 15 shall not constitute a "project" for purposes of Division 13
- 16 (commencing with Section 21000) of the Public Resources Code.
- 17 (3) Paragraph (1) shall not apply to parcels located within a very
- 18 high fire hazard severity zone, as determined by the Department
- 19 of Forestry and Fire Protection pursuant to Section 51178, or within
- 20 a high or very high fire hazard severity zone as indicated on maps
- 21 adopted by the Department of Forestry and Fire Protection pursuant
- 22 to Section 4202 of the Public Resources Code. This paragraph
- 23 does not apply to parcels excluded from the specified hazard zones
- 24 by a local agency pursuant to subdivision (b) of Section 51179, or

1 sites that have adopted fire hazard mitigation measures pursuant  
2 to existing building standards or state fire mitigation measures  
3 applicable to the development.

4 (b) (1) Notwithstanding any other law, a residential or  
5 mixed-use residential project consisting of more than 10 new  
6 residential units on one or more parcels that have been zoned to  
7 permit residential development pursuant to this section shall not  
8 be approved ministerially or by right, and shall not be exempt from  
9 Division 13 (commencing with Section 21000) of the Public  
10 Resources Code.

11 (2) Paragraph (1) shall not apply to a project to create no more  
12 than two accessory dwelling units and no more than two junior  
13 accessory dwelling units per parcel pursuant to Sections 65852.2  
14 and 65852.22 of the Government Code.

15 (3) A project may not be divided into smaller projects in order  
16 to exclude the project from the prohibition in this subdivision.

17 (c) For purposes of this section:

18 (1) "High-quality bus corridor" means a corridor with fixed  
19 route bus service that meets all of the following criteria:

20 (A) It has average service intervals of no more than 15 minutes  
21 during the three peak hours between 6 a.m. to 10 a.m., inclusive,  
22 and the three peak hours between 3 p.m. and 7 p.m., inclusive, on  
23 Monday through Friday.

24 (B) It has average service intervals of no more than 20 minutes  
25 during the hours of 6 a.m. to 10 a.m., inclusive, on Monday through  
26 Friday.

27 (C) It has average intervals of no more than 30 minutes during  
28 the hours of 8 a.m. to 10 p.m., inclusive, on Saturday and Sunday.

29 (2) (A) "Jobs-rich area" means an area identified by the  
30 Department of Housing and Community Development in  
31 consultation with the Office of Planning and Research that is high  
32 opportunity and either is jobs rich or would enable shorter commute  
33 distances based on whether, in a regional analysis, the tract meets  
34 both of the following:

35 (i) The tract is high opportunity, meaning its characteristics are  
36 associated with positive educational and economic outcomes for  
37 households of all income levels residing in the tract.

38 (ii) The tract meets either of the following criteria:

39 (I) New housing sited in the tract would enable residents to live  
40 near more jobs than is typical for tracts in the region.

1 (II) New housing sited in the tract would enable shorter commute  
2 distances for residents, relative to existing commute patterns and  
3 jobs-housing fit.

4 (B) The Department of Housing and Community Development  
5 shall, commencing on January 1, 2022, publish and update, every  
6 five years thereafter, a map of the state showing the areas identified  
7 by the department as “jobs-rich areas.”

8 (3) “Transit-rich area” means a parcel within one-half mile of  
9 a major transit stop, as defined in Section 21064.3 of the Public  
10 Resources Code, or a parcel on a high-quality bus corridor.

11 (4) “Urban infill site” means a site that satisfies all of the  
12 following:

13 (A) A site that is a legal parcel or parcels located in a city if,  
14 and only if, the city boundaries include some portion of either an  
15 urbanized area or urban cluster, as designated by the United States  
16 Census Bureau, or, for unincorporated areas, a legal parcel or  
17 parcels wholly within the boundaries of an urbanized area or urban  
18 cluster, as designated by the United States Census Bureau.

19 (B) A site in which at least 75 percent of the perimeter of the  
20 site adjoins parcels that are developed with urban uses. For the  
21 purposes of this section, parcels that are only separated by a street  
22 or highway shall be considered to be adjoined.

23 (C) A site that is zoned for residential use or residential  
24 mixed-use development, or has a general plan designation that  
25 allows residential use or a mix of residential and nonresidential  
26 uses, with at least two-thirds of the square footage of the  
27 development designated for residential use.

28 (d) The Legislature finds and declares that ensuring the adequate  
29 production of affordable housing is a matter of statewide concern  
30 and is not a municipal affair as that term is used in Section 5 of  
31 Article XI of the California Constitution. Therefore, this section  
32 applies to all cities, including charter cities.