

Date of Hearing: May 3, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 943 (Santiago) – As Introduced February 16, 2017

SUBJECT: Land use regulations: local initiatives: voter approval.

SUMMARY: Requires any ordinance that is submitted to the voters of a city that would curb, delay, or deter growth or development within the city, to be approved by at least two-thirds of the votes cast on it at the election in order to take effect. Specifically, **this bill:**

- 1) Requires, if a proposed ordinance is submitted to the voters of a city, pursuant to either existing law regarding initiative petitions or procedures adopted by a charter city, pursuant to the California Constitution, that would curb, delay, or deter growth or development within the city, that the ordinance must be approved by at least two-thirds of the votes cast on it at the election.
- 2) Finds and declares that the bill's provisions address a matter of statewide concern and shall therefore apply equally to all cities, including charter cities.

EXISTING LAW:

- 1) Grants, pursuant to the California Constitution, authority to a city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- 2) Requires every city and county to prepare and adopt a general plan containing seven mandatory elements, including a housing element.
- 3) Provides that the initiative is the power of electors to propose statutes and amendments to the Constitution and to adopt or reject them.
- 4) Provides that initiative powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide.
- 5) Requires a county or a city, when it receives an initiative petition that is signed by a specified number of voters, to do one of the following:
 - a) Adopt the initiative without alteration;
 - b) Submit the initiative to the voters, as specified; or,
 - c) Order a report on the initiative, to be completed within 30 days, before deciding whether to adopt it or submit it to the voters.
- 6) Provides that if a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. The ordinance shall be considered as adopted upon the date that the vote is declared by the legislative body, and shall go into effect 10 days after that date.

- 7) Requires a local governing body that chooses to submit an initiative measure to the voters, rather than adopting the initiative without alteration, to call a special election for the voters to consider that initiative measure, if certain conditions are met.
- 8) Allows a county or city to adopt a charter by majority vote of its electors voting on the question. Specifies that the charter is effective when filed with the Secretary of State. Allows a charter to be amended, revised, or repealed in the same manner. Requires a charter, amendment, revision, or repeal thereof to be published in the official state statutes. Specifies that the provisions of a charter are the law of the state and have the force and effect of legislative enactments.
- 9) Allows the governing body or charter commission of a county or city to propose a charter or revision. Specifies that amendment or repeal may be proposed by initiative or by the governing body.
- 10) Specifies that an election to determine whether to draft or revise a charter and elect a charter commission may be required by initiative or by the governing body.
- 11) Specifies that if provisions of two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill requires, if a proposed ordinance is submitted to the voters of a city, pursuant to either existing law regarding initiative petitions or procedures adopted by a charter city, pursuant to the California Constitution, that would curb, delay, or deter growth or development within the city, that the ordinance must be approved by at least two-thirds of the votes cast on it at the election. The bill also specifies that these provisions apply to charter cities.

This bill is sponsored by the California Apartment Association.

- 2) **Author's Statement.** According to the author, "A March 2015 report by the state's non-partisan Legislative Analyst's Office concludes that the state would need to build millions more homes – including more than a million in Los Angeles County alone – to keep housing prices in line with the rest of the country. Those million construction starts would only just meet the population's demands for housing. An additional, compounded problem is that of housing for families. A report in *Governing* magazine from November 2015 found that in California's largest urban areas, less than 5% of rental units being constructed consist of 3 or more bedrooms.

"In many cities, vacancy rates have dropped dramatically due to the lack of new construction, making it difficult for individuals, students, seniors, and families to find a place to live close to their schools or jobs. In fact, according to CoStar Property Data Systems, the average vacancy rate statewide is 3.8%; a normal vacancy rate is considered to be 5-6%.

"While many local governments are devoting large amounts of energy and attention to the issue of increasing housing production, there are others who have been unable to do so – due

to either a lack of will by the local legislative body or by constituent groups within those localities. In some areas, attempts have even been made to block future housing developments of various kinds.

“A recent article in the *Los Angeles Times* noted that “in some ways, state lawmakers’ hands are tied on boosting housing supply because cities and counties primarily control building and permitting.” AB 943 attempts to loosen those binds on Legislators some by establishing a statewide concern for the development of housing. In doing so, the measure will limit the abilities of those at the local level to implement development moratoriums or to further stymie statewide efforts to lift Californians out of poverty and into better socio-economic circumstances.

“There is precedent in California for a different vote threshold for local measures on issues where the state, as a whole, has developed a specified interest. These issue areas include education bonds, parcel taxes, and general taxes levied by school districts and special districts.”

3) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Growth management.** Cities have a variety of growth management tools at their disposal – the general plan, specific plan, zoning ordinances, urban growth boundaries, infrastructure adequacy ordinances, agricultural land and open space preservation tools, development moratoria, and voter-approved growth boundaries or limitations. Any of these tools could be said to “curb, delay, or deter development” within a city.

For instance, an urban growth boundary can be used by a city to delineate the area beyond which it will not extend municipal services such as sewers and street maintenance, and specify the area within the urban growth boundary that will be made available for urban development. Depending on the perspective, an urban growth boundary could be seen as “detering” development in the outskirts of the city, or instead, seen as a tool to show where that particular jurisdiction intends to focus its growth.

The Committee may wish to consider whether there may be unintended consequences that result from the language in the bill that will be left open to interpretation.

- b) **Vague terminology and implementation concerns.** The terminology contained in the bill for an ordinance that would “curb, delay, or deter development” is not defined for purposes of the bill. According to the League of California Cities, this language could presumably include “ordinances affecting local rent control, inclusionary zoning, big box retail, tribal casinos, protecting farmland, protecting view, historical preservation, improving flood control and many other such issues.”

The bill is also silent on who would make this determination that an ordinance would curb, delay or deter growth. Is it the county elections official? The affected jurisdiction? Some other neutral entity?

The Committee may also wish to consider the potential of litigation that the bill may present.

- c) **Measure S in Los Angeles.** The author points to several examples of local initiatives that would limit growth, including the recent Measure S in Los Angeles. This initiative, known as the Neighborhood Integrity Initiative, would have imposed a moratorium on construction that increases development density for up to two years, prohibiting project-specific amendments to the city's general plan, required a public review of the city's general plan every five years, and required city staff, not developers or project applicants, to perform environmental impact reports. Opponents of Measure S argued that the proposed moratorium and restrictions on project approval would have put a stop to most development projects in the city, resulting in an even greater housing shortage, economic decline, the loss of thousands of jobs, and the loss of millions in tax revenue for education, parks and other city services.

On March 7, 2017, nearly 69% of voters voted against the measure.

- d) **Voter thresholds.** The League of California Cities writes that “numerous voter-imposed two-thirds supermajority vote requirements affecting tax increases have been approved by the state’s voters. A two-thirds requirement used to apply to the state budget. In past debates, many legislators have argued that a two-thirds vote requirement is anti-democratic in that it undermines the will of the majority and vests too much power in the hands of a minority....Supporters of public school construction appreciate the voter’s decisions to reduce the vote threshold for local school construction bonds from two-thirds to 55%. This measure appears contrary to the philosophy behind other measures pending in the Legislature, and supported by the League, that seek to obtain voter approval to reduce the vote requirement from two-thirds to 55%.”
- e) **Trends in Elections for Local Governments.** The Committee may wish to consider the following bills that are moving away from regular municipal elections or local special elections, and instead are consolidating local elections to coincide with a statewide primary or statewide general election:
- i) AB 415 (Hueso), Chapter 235, Statutes of 2015, prohibits a local government, beginning January 1, 2018, from holding an election on any date other than a statewide election date if doing so in the past has resulted in turnout that is at least 25 % below the average turnout in that jurisdiction in the last four statewide general elections, as specified.
 - ii) AB 254 (Roger Hernández, 2015), would have required general law cities, school districts, community college districts, and special districts to hold their general elections and certain special elections at the same time as the statewide primary or statewide general election, or in June or November of odd-numbered years, beginning in 2020. The bill was vetoed by the Governor.
 - iii) AB 765 (Low, 2017) would eliminate the ability of the proponents of a local initiative measure to require the local government to call a special election to vote on the measure, and instead, would generally require that the measure appear on the ballot at a regularly scheduled election in the jurisdiction, as specified, unless the governing body chooses to call a special election for the measure. The measure is currently pending in the Elections and Redistricting Committee.

4) **Committee Amendments.** To address some of the policy considerations above, the Committee may wish to ask the author to accept amendments that would:

- Lower the voter threshold in the bill from two-thirds to 55%.
- Revise language in the bill to instead deal with situations where an initiative “expressly stops development or construction.”
- Assign the county elections official the responsibility of determining whether an initiative expressly stops development.
- Expand the bill to include counties.

Due to timing, amendments will be adopted in the Elections and Redistricting Committee.

5) **Arguments in Support.** Supporters believe that this bill will ensure that cities do not unfairly hinder the development of new housing projects within their boundaries, and that the approach in the bill will strike the appropriate balance of respecting local preferences and reducing the barriers to creating new housing.

6) **Arguments in Opposition.** The League of California Cities has an “Oppose, Unless Amended” position, requests that the author consider amendments that would: (1) Restore the principle of majority vote; (2) Limit the bill to voter-initiated measures; (3) Avoid legal debates over terms such as curb, delay, or deter growth or development, and use more neutral language such as “affecting land use;” (4) Consider why the bill is limited to cities; and, (5) Consider directing such measures to be placed on a general election ballot where more voters have an opportunity to weigh in.

7) **Double-Referral.** This bill is double-referred to the Elections and Redistricting Committee, where it will be heard next, should the bill pass out of this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association [SPONSOR]
California Association of Realtors
California Building Industry Association
California Business Properties Association
CalChamber
California Council for Affordable Housing
California Housing Consortium
California Professional Association of Specialty Contractors
Central City Association of Los Angeles
Downtown Center BID
Downtown Women's Center
Engineering Contractor's Association
Orange County Business Council
Southwest California Legislative Council
Valley Industry and Commerce Association

Opposition

League of California Cities

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