

File No. 170827

Committee Item No. _____

Board Item No. 59

COMMITTEE/BOARD OF SUPERVISORS

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Committee: _____
Board of Supervisors Meeting

Date: _____
Date: July 18, 2017

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OTHER

- California State Assembly Bill 943 - June 28, 2017
- Senate Elections and Constitutional Amendments Analysis -
July 10, 2017
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Prepared by: Brent Jalipa
Prepared by: _____

Date: July 13, 2017
Date: _____

1 [Opposing California State Assembly Bill 943 (Santiago) - Land Use Regulations: Local
2 Initiatives: Voter Approval]

3 **Resolution opposing California State Assembly Bill 943, authored by Assembly**
4 **Member Miguel Santiago, which would impose a supermajority voting requirement of**
5 **55% on all ballot measures in cities and counties with populations of 750,000 or more**
6 **that are qualified for the ballot by citizen petition and are designated by the county**
7 **counsel or city attorney in those cities and counties to inhibit unchecked development.**

8
9 WHEREAS, Article II, Section 1 of the California Constitution recognizes that “all
10 political power is inherent in the people. Government is instituted for their protection, security,
11 and benefit, and they have the right to alter or reform it when the public good may require”;
12 and

13 WHEREAS, The people of the City and County of San Francisco voted in 1898 to
14 amend the City Charter to make San Francisco the first city in the nation to recognize the right
15 of citizens in municipal jurisdictions to be able to qualify an initiative ordinance measure for
16 the ballot by gathering sufficient petition signatures from fellow citizens; and

17 WHEREAS, Initiative ordinances qualified for the ballot by citizen petition gathering
18 have long been an important part of the local democratic process in San Francisco; and

19 WHEREAS, Assembly Member Santiago has authored Assembly Bill 943 which would
20 impose a supermajority voting requirement of 55% on all ballot measures in cities and
21 counties with populations of 750,000 or more that are qualified for the ballot by citizen petition
22 signature gathering and are designated by the county counsel or city attorney in those cities
23 and counties to “reduce density or stop development or construction of any parcels located
24 less than one mile from a major train stop”; and

1 WHEREAS, Had the 55% supermajority requirement been in effect in San Francisco in
2 previous years, critical ballot measures that closed loopholes in rent control and strengthened
3 tenant protections, established reasonable limits on downtown office development and
4 required the creation of a Waterfront Land Use Plan, would all have failed to become law,
5 counter to the will of the voters; now, therefore, be it

6 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
7 oppose Assembly Bill 943; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
9 Francisco urges the members of the State Legislative Delegation to oppose Assembly Bill
10 943; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
12 Francisco directs the Clerk of the Board to transmit copies of this resolution to the City
13 Lobbyist and the respective offices of the State Legislative Delegation upon its passage.

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AMENDED IN SENATE JUNE 28, 2017
AMENDED IN ASSEMBLY MAY 25, 2017
AMENDED IN ASSEMBLY MAY 11, 2017
AMENDED IN ASSEMBLY MAY 4, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 943

Introduced by Assembly Member Santiago
(Coauthors: Assembly Members Burke, Daly, Gloria, McCarty,
and Steinorth)
(Coauthor: Senator Wilk)

February 16, 2017

An act to add Section 65863.15 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 943, as amended, Santiago. Land use regulations: local initiatives: voter approval.

The Planning and Zoning Law, among other things, authorizes the legislative body of any county or city to adopt ordinances to regulate land use. Existing law also establishes procedures by which city or county ordinances may be enacted or amended by initiative, including requiring that an ordinance proposed by the voters of the city or county be approved by a majority of the votes cast on the ordinance.

This bill, in the case of an ordinance or an amendment of an ordinance that would reduce density or stop development or construction of any parcels located less than one mile from a major transit stop, as defined, within a city, county, or city and county that is proposed by the voters

of the city, county, or city and county in accordance with specified law, would require that the proposed ordinance or amendment of an ordinance receive 55% of the votes cast on the ordinance in order to become effective. *The bill would exclude from this requirement the proposal and submission to the voters of an ordinance or amendment of an ordinance by the legislative body of the city, county, or city and county and the adoption or amendment of a city, county, or city and county charter, and would limit application of this requirement to a county or city and county that had a population of 750,000 or more, or a city located within such a county, as of January 1, 2017.* The bill would require the county counsel for the county or city and county in which the proposed ordinance or amendment of an ordinance would apply, or the city attorney of the city in which the proposed ordinance or amendment of an ordinance would apply, to determine whether the proposed ordinance or amendment of an ordinance would reduce density or stop development or construction of any parcels located less than one mile from a major transit stop within the city, county, or city and county. The bill would declare that it addresses a matter of statewide concern and would therefore apply to charter cities and charter counties.

By requiring local officials to determine whether a proposed ordinance or amendment of an ordinance would reduce density or stop development or construction of any parcels located less than one mile from a major transit stop within a city, county, or city and county, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 65863.15 is added to the Government
- 2 Code, to read:
- 3 65863.15. (a) (1) Notwithstanding any other law, including
- 4 Sections 9122 and 9217 of the Elections Code, and except as

1 otherwise provided in paragraph (2), if an ordinance or amendment
2 of an ordinance proposed by the voters of a city, county, or city
3 and county pursuant to Article 1 (commencing with Section 9100)
4 of Chapter 2 of Division 9 of the Elections Code, Article 1
5 (commencing with Section 9200) of Chapter 3 of Division 9 of
6 the Elections Code, or procedures adopted by a city, county, or
7 city and county organized under a charter pursuant to Article XI
8 of the California Constitution, that are consistent with any
9 applicable statutes governing local initiatives, would reduce density
10 or stop development or construction of any parcels located less
11 than one mile from a major transit stop, as defined by Section
12 21064.3 of the Public Resources Code, within a city, county, or
13 city and county, the proposed ordinance or amendment of an
14 ordinance shall be enacted only if it is approved by at least 55
15 percent of the votes cast on it at the election.

16 (2) (A) This section shall not apply in either of the following
17 circumstances:

18 (A)

19 (i) The proposal and submission to the voters of an ordinance
20 or amendment of an ordinance by the legislative body of the city,
21 county, or city and county.

22 (B)

23 (ii) The adoption or amendment of a city, county, or city and
24 county charter.

25 (B) *This section shall only apply to a county or city and county*
26 *that had a population of 750,000 or more, or a city located within*
27 *a county that had a population of 750,000 or more, as of January*
28 *1, 2017.*

29 (b) The county counsel for the county or city and county in
30 which the proposed ordinance or amendment of an ordinance would
31 apply, or the city attorney of the city in which the proposed
32 ordinance or amendment of an ordinance would apply, shall
33 determine whether the proposed ordinance or amendment of an
34 ordinance would reduce density or stop development or
35 construction of any parcels located less than one mile from a major
36 transit stop, as defined by Section 21064.3 of the Public Resources
37 Code, within the city, county, or city and county.

38 (c) Notwithstanding any other law, including Section 9247 of
39 the Elections Code, the Legislature finds and declares that this
40 section addresses a matter of statewide concern and shall therefore

1 apply equally to all cities and counties, including charter cities and
2 charter counties.
3 SEC. 2. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

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**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Henry Stern, Chair
2017 - 2018 Regular.

Bill No: AB 943 **Hearing Date:** 7/12/17
Author: Santiago
Version: 6/28/17
Urgency: No **Fiscal:** Yes
Consultant: Darren Chesin

Subject: Land use regulations: local initiatives: voter approval

DIGEST

This bill requires a 55% voter approval threshold for initiatives that reduce density or stop development or construction in certain cities and counties, as specified.

ANALYSIS

Existing law:

- 1) Provides, pursuant to the California Constitution, that an initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.
- 2) Provides, pursuant to the California Constitution, that initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide.
- 3) Requires a county or a city, when it receives an initiative petition that is signed by the required number of voters to qualify for the ballot, to do one of the following:
 - a) Adopt the initiative without alteration;
 - b) Submit the initiative to the voters, 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.
- 4) Provides, in general, if a majority of the voters voting on a proposed local ordinance vote in its favor, the ordinance becomes effective in that city or county. However, the California Constitution imposes higher vote thresholds on some types of local ballot measures, specifically:
 - a) Proposition 13 (1978) required counties, cities, and special districts to receive the approval of two-thirds of voters in order to impose any special taxes (taxes to be spent on a specific purpose).

- b) Proposition 46 (1986) allowed local governments to raise the property tax rate to finance infrastructure bonds if approved by two-thirds of local voters.
 - c) Proposition 62 (1986) required general taxes (taxes not raised for a specific purpose) to be approved by a simple majority of voters, but it did not apply to charter cities.
 - d) Proposition 218 (1996) required certain property-related fees and charges to be approved by property owners prior to being imposed, among other provisions, but also allowed local governments to impose those property-related fees and charges upon approval by two-thirds of voters.
 - e) Proposition 39 (2000), lowered the vote requirement needed to raise property tax rates to pay for certain school facilities bonds from a two-thirds vote to a 55% vote requirement.
- 5) Defines "major transit stop" as a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

This bill:

- 1) Provides, notwithstanding any other law, if a city or county ordinance placed on the ballot via initiative would reduce density or stop development or construction of any parcels located less than one mile from a major transit stop within a city or county, the measure will be enacted only if it is approved by at least 55% of the votes cast on it at the election.
- 2) Provides that the 55% vote threshold requirement shall not apply in the following circumstances:
 - a) A measure placed on the ballot by the legislative body of the city or county.
 - b) The adoption or amendment of a city or county charter.
 - c) Within a county that had a population less than 750,000 as of January 1, 2017.
- 3) Requires the county counsel for the county in which the proposed measure would apply, or the city attorney of the city in which the proposed measure would apply, to determine whether the proposed ordinance would reduce density or stop development or construction of any parcels located less than one mile from a major transit stop, as defined, within the city or county.
- 4) Provides, notwithstanding any other law, that the Legislature finds and declares that the provisions of this bill address a matter of statewide concern and shall therefore apply equally to all cities and counties, including charter cities and charter counties.

BACKGROUND

California's Housing Challenges. Most observers agree that California faces a severe housing shortage. In its most recent statewide housing assessment, the California Department of Housing and Community Development (HCD) estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. Recent reports by the Legislative Analyst's Office (LAO) and others point to local approval processes as a major cause of the shortfall in housing production. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members that may not want new neighbors. The LAO also notes that local ballot measures on the coast have limited development. According to the LAO:

"Many significant land use decisions in California's coastal communities are made by voters. More often than not, voters in California's coastal communities vote to limit housing development when given the option. Our review of local elections data between 1995-2011 found that voters in California's coastal metros took a position that limited housing growth -- either by voting 'yes' for a measure constraining growth or voting 'no' for a measure that would allow growth -- about 55 percent of the time. On average, coastal communities as a whole approved five measures per year limiting housing growth (or rejected measures allowing new building). While most major local jurisdictions throughout the country have some form of an initiative and referendum process, California's high degree of voter involvement in land use decisions appears to be unique. One review of election results across the country during the November 2000 election found that just under half of all measures related to land use planning and growth management were in California."

One such voter initiative was Measure S in the City of Los Angeles, which appeared on the ballot at the Los Angeles' municipal primary election on March 7, 2017. Measure S would have imposed a moratorium on construction that increases development density for up to two years, prohibited 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. Measure S failed passage, with more than 70% of voters voting against the measure.

Concerned that future voter initiatives will constrain development, the California Apartment Association, which is sponsoring AB 943, wants to make it more difficult for such initiatives to pass.

COMMENTS

- 1) 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.

- 2) Argument in Opposition. In a letter opposing AB 943, the Ventura County Board of Supervisors state the following:

The California Constitution allows citizens to place measures on the ballot, and then vote to approve or reject these policy and governance measures. These initiatives are approved or rejected on a majority-rule basis, with the only exception being for certain taxes for which voters approved an initiative imposing a 2/3 supermajority vote threshold. AB 943 proposes a legislative restriction on the constitutionally-derived local initiative process for specific land use initiatives, and creates a dangerous and legally questionable precedent by legislatively imposing a supermajority threshold on certain citizen actions.

Ventura County residents have used the initiative process to protect agriculture and open space from development. Known as the Save Our Open Space and Agricultural Resources (SOAR) measures, they require a

vote of the people before unincorporated open space and agricultural land can be rezoned for development. SOAR was initially enacted in the city of Ventura in 1995, and in November 2016, SOAR was overwhelmingly reauthorized countywide. SOAR preserves the economic vitality of the County's agricultural resources and open spaces while promoting infill development within its cities. AB 943 would place a higher burden for approval on SOAR than other citizen initiatives and establish an adverse precedent of undermining the citizens' constitutional right to majority-rule initiatives.

- 3) Constitutional questions. In 1911, California voters amended the Constitution to provide voters the power to enact initiatives and referenda. The voter initiative is a "reserved power," it is not a right granted to them, but a power reserved by them. Accordingly, courts jealously guard the ability of voters to enact laws through initiative. The California Supreme Court notes that "the initiative power must be construed liberally so as to promote the democratic process established by the inclusion of the initiative and referendum in the Constitution," (*Rossi v. Brown* 9 Cal.4th 688). Courts have held that the power of initiative is generally coextensive with the legislative power of a local body, such as a city council or board of supervisors – ordinances that a local legislative body can enact may usually also be modified via initiative and referendum (*Ortiz v. Board of Supervisors*, 107 Cal. App. 3d 866). Furthermore, although Article II, Section 11 allows the Legislature to establish procedures for the exercise of voter initiative and referendum powers, those procedures may not restrict the exercise of that power (*Geiger v. Board of Supervisors*, 48 Cal. 2d 832). Finally, the California Court of Appeals for the Fourth Appellate District concluded that "the adoption of an initiative measure by a majority of the voters is an integral part of the constitutionally reserved power to act through the initiative; that any regulation requiring a greater number of votes to adopt an initiative ordinance is a limitation upon that power; and that a charter provision requiring a two-thirds vote is ineffective," (*Newport Beach Fire & Police Protective League v. City Council of Newport Beach*, 189 Cal. App. 2d 17).

AB 943 potentially runs counter to these principles by requiring a higher vote threshold for a voter initiative than for an identical measure put on the ballot by a legislative body, creating a procedural imbalance between the ability of voters and local legislative bodies that could be seen as restricting the voter initiative power. On the other hand, the Legislature's authority to restrict local initiatives may be broader than that of a local charter, and the Constitution only prescribes a majority vote requirement for statewide initiatives. However, given the courts' tendency to protect the power of initiative, it is unclear whether AB 943 would withstand a legal challenge. The author's office has informed the committee staff that they have requested an opinion from the Legislative Counsel regarding this question.

- 4) Goose v. Gander. Supporters of AB 943 argue that cities and counties have professional planning staff and elected representatives whose are specifically delegated the power to make decisions about the future of a community, and that the initiative process takes land use decisions out of their hands. AB 943 attempts to encourage land use proposals to instead go through the traditional local government policy-making process. But the bill doesn't apply equally to all land use decisions; it only applies to measures that would reduce density or stop

development or construction. Yet in some cases developers seek to overturn the recommendations of planning staff or the decisions of elected officials by pursuing their own initiatives that increase growth. For example, in a high-profile case in 2007, Walmart qualified a voter initiative in the City of Sonoma in order to avoid review of the project under the California Environmental Quality Act. Such a pro-growth measure would not be subject to the higher threshold established by AB 943, despite its intent to circumvent the local decision-making process. If the intent of AB 943 is to preserve the discretion of local governments, should it apply equally to all measures that affect land use?

- 5) Charter cities. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. AB 943 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes a legislative finding and declaration that it addresses a matter of statewide concern. However, the Constitution allows charter cities to adopt their own procedures governing voter initiatives, potentially setting up a conflict with AB 943. For example, it is unclear whether AB 943's requirements would prevail over a charter amendment that requires majority approval of growth management initiatives. Ultimately the courts may decide whether AB 943 applies to charter cities.

RELATED/PRIOR LEGISLATION

AB 890 (Medina), which is pending referral in the Senate Rules Committee, takes an opposing approach to voter initiatives that affect land use. AB 890 would prohibit voter initiatives from enacting certain pro-growth land use changes, including allowing more intensive development, approving development agreements, and requiring ministerial approvals for projects.

SB 35 (Weiner), which is pending in the Assembly Housing and Community Development Committee, would establish a ministerial permitting process for housing developments that meet certain affordability requirements, pay a prevailing wage, and comply with a host of other conditions.

SB 540 (Roth), which is pending in the Assembly Natural Resources Committee, would allow local governments to streamline residential permitting in specified portions of their jurisdictions in exchange for planning funding and streamlined environmental review.

PRIOR ACTION

Senate Governance & Finance Committee:	6 - 1
Assembly Floor:	72 - 2
Assembly Appropriations Committee:	16 - 0
Assembly Elections and Redistricting Committee:	6 - 0
Assembly Local Government Committee:	8 - 0

POSITIONS

Sponsor: California Apartment Association

Support: Anaheim Chamber of Commerce
Building Owners and Managers Association of Greater Los Angeles
California Association of Realtors
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Council for Affordable Housing
California Housing Consortium
Central City Association of Los Angeles
Downtown Center Business Improvement District
Downtown Women's Center
Engineering Contractors' Association
Orange County Business Council
Southern California Leadership Council
Southwest California Legislative Council
State Building and Construction Trades Council of California
Valley Industry and Commerce Association

Oppose: City of Thousand Oaks
League of California Cities
Los Angeles County Business Federation
No Wall on the Waterfront
Tenants Together
Ventura County Board of Supervisors

-- END --

Introduction Form

By a Member of the Board of Supervisors or Mayor

SUN FRI 11:30 AM

2017 JUL 14 PM 4:56
Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [redacted] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [redacted] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [redacted]
- 9. Reactivate File No. [redacted]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [redacted]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Supervisor Peskin

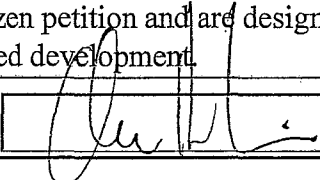
Subject:

[Opposing California State Assembly Bill 943 (Santiago) – Land Use Regulations: Local Initiatives: Voter Approval]

The text is listed:

Resolution opposing California State Assembly Bill 943, authored by Assemblymember Miguel Santiago, which would impose a supermajority voting requirement of 55% on all ballot measures in cities and counties with populations of 750,000 or more that are qualified for the ballot by citizen petition and are designated by the county counsel or city attorney in those cities and counties to inhibit unchecked development.

Signature of Sponsoring Supervisor:



F Clerk's Use Only

