



- 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.4<sup>th</sup> 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 who 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 Sonora 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

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