

Date of Hearing: June 7, 2023

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Buffy Wicks, Chair

ACA 10 (Haney) – As Introduced March 6, 2023

SUBJECT: Fundamental human right to housing

SUMMARY: Adds a right to housing to the state Constitution. Specifically, **this bill:** Establishes that the state recognizes the fundamental human right to adequate housing for everyone in California. This right is a shared obligation of state and local jurisdictions to respect, protect, and fulfill this right, on a non-discriminatory and equitable basis, with a view to progressively achieve the full realization of the right, by all appropriate means, including the adoption and amendment of legislative measures, to the maximum of available resources.

EXISTING LAW:

- 1) Establishes that it is the policy of the state that every human being has a right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code 106.3)
- 2) Provides that the Legislature finds and declares that the subject of housing is of vital statewide importance to the health, safety, and welfare of the residents of this state, for the following reasons:
 - a) Decent housing is an essential motivating force in helping people achieve self-fulfillment in a free and democratic society;
 - b) Unsanitary, unsafe, overcrowded, or congested dwelling accommodations or lack of decent housing constitute conditions which cause an increase in, and spread of, disease and crime;
 - c) A healthy housing market is one in which residents of this state have a choice of housing opportunities and one in which the housing consumer may effectively choose within the free marketplace; and
 - d) A healthy housing market is necessary both to achieve a healthy state economy and to avoid an unacceptable level of unemployment. (Health and Safety Code (HSC) Section 50001)
- 3) Established the Homeless Housing, Assistance, and Prevention program to provide \$650 million in one-time funding to continuum of care (CoCs), cities, and counties to support regional coordination and expand or develop local capacity to address their immediate homelessness challenges, informed by a best-practices framework focused on moving homeless individuals and families into permanent housing and supporting the efforts of those individuals and families to maintain their permanent housing. (HSC 50216 et al.)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Access to adequate housing is one of the first steps to guarantee a person's physical, emotional, and economic well-being. Despite a patchwork of resources given to cities and counties across the state to provide affordable and accessible housing, California is still struggling to address its worsening housing crisis. That is why adding a right to housing to the California Constitution is crucial at this time. ACA 10 recognizes that every Californian has the fundamental human right to adequate housing on an equitable and nondiscriminatory basis. Putting this commitment to housing in our constitution brings it up in comparison to other rights that we've said are nonnegotiable for us. This constitutional amendment simply says housing is the highest priority and value in our state."

United Nations (U.N.) Right to Adequate Housing: This bill amends the state Constitution to establish a human right to adequate housing for everyone in California. If passed and signed by the Legislature, this amendment would need to be ratified by a majority of voters for it to take effect.

ACA 10 establishes a right to "adequate" housing modeled after international law. Adequate housing was recognized as part of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights and in the 1966 International Covenant on Economic, Social and Cultural Rights. The U.N. Committee on Economic, Social and Cultural Rights has underlined that the right to adequate housing should not be interpreted narrowly. Rather, it should be seen as the right to live somewhere in security, peace and dignity. Several key aspects of a right to adequate housing include a right to protection from forced evictions, equal and nondiscriminatory access to housing, and that housing must be adequate. Adequate housing is defined as housing with security of tenure; availability of services, materials, facilities, and infrastructure; affordability, habitability, accessibility; a location that is not inadequate, and cultural adequacy.

A right to housing does not require the state or local governments to provide housing to every person, nor does it allow people to automatically demand housing from the government. According to the U.N., the right to adequate housing covers measures that are needed to prevent homelessness, prohibit forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that everyone's housing is adequate.

This ACA further defines the right as a shared right of the state and local jurisdictions to respect, protect, and fulfill on a non-discriminatory and equitable basis, with a view to progressively achieve the full realization of the right, by all appropriate means, including the adoption and amendment of legislative measures, to the maximum of available resources.

Respect, Protect, and Fulfill: The language of ACA 10 also includes a requirement that local and state government, "respect, protect, and fulfill the right to housing in a nondiscriminatory way." This construction is also modelled after U.N. Right to Housing:

"The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to adequate housing. For example, States should refrain from carrying out forced evictions and demolishing homes; denying security of tenure to particular groups; imposing discriminatory practices that limit women's access to and control over housing, land and property infringing on the right to privacy and protection of the home;

denying housing, land and property restitution to particular groups; or polluting water resources.

The obligation to protect requires States to prevent third parties from interfering with the right to adequate housing. States should adopt legislation or other measures to ensure that private actors—e.g., landlords, property developers, landowners and corporations—comply with human rights standards related to the right to adequate housing. States should, for instance, regulate the housing and rental markets in a way that promotes and protects the right to adequate housing; guarantee that banks and financial institutions extend housing finance without discrimination; ensure that the private provision of water, sanitation and other basic services attached to the home does not jeopardize their availability, accessibility, acceptability and quality; ensure that third parties do not arbitrarily and illegally withdraw such services; prevent discriminatory inheritance practices affecting women’s access to and control over housing, land and property; ensure that landlords do not discriminate against particular groups; ensure that private actors do not carry out forced evictions.

The obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing. States must, for instance, adopt a national housing policy or a national housing plan that: defines the objectives for the development of the housing sector, with a focus on disadvantaged and marginalized groups; identifies the resources available to meet these goals; specifies the most cost-effective way of using them; outlines the responsibilities and time frame for the implementation of the necessary measures; monitors results and ensures adequate remedies for violations. Under the obligation to fulfil, States must also, progressively and to the extent allowed by their available resources, prevent and address homelessness; provide the physical infrastructure required for housing to be considered adequate (this would include taking steps towards ensuring universal and non-discriminatory access to electricity, safe drinking water, adequate sanitation, refuse collection and other essential services); or ensure adequate housing to individuals or groups unable, for reasons beyond their control, to enjoy the right to adequate housing, notably through housing subsidies and other measures.”

Implications of a Right to Housing: Should a right to housing be added to the Constitution, local and state governments would have an obligation to proactively ensure that people have access to adequate housing. This could include land use policies that remove barriers to housing production by zoning for more housing, expediting approve of affordable housing, and adopting polices that further fair housing. This could also include enacting tenant protections, regulating the housing market, building and preserving public housing, providing housing subsidies, and implementing progressive tax policies. If a right to housing is added to the state Constitution, a state or local government could be sued to enforce the right to housing and the court could direct the state or local government to take actions to fulfill the right to adequate housing.

Funding: ACA 10 establishes the right to housing as a shared obligation of state and local governments and requires the realization of the right by all appropriate means to the maximum of available resources. The language requires the local and state governments to work “progressively” toward fulfill the right. This is based on a recognition that the state and local government does not have all of the necessary financial resource available to resolve homelessness or the lack of affordable housing. The state has invested significantly in the local homelessness response system and in affordable housing production over the last five years. In

previous years, very little direct General Fund subsidy was allocated to affordable housing production. Tax credits and bonds funded affordable housing production. Affordable housing is not an entitlement and does not receive any ongoing, sustained funding from the state's general fund. Some larger cities and counties have passed local bonds and funding measures to build more affordable housing and respond to homelessness. The state's budget is limited by several factors. Revenues are heavily dependent on volatile sources like personal income taxes which in down economic times are reduced. The state is also constitutionally required to fund schools at a minimum level, slightly more than half of the General Fund revenues. Local government revenues are also highly constrained by Proposition 13. Should housing become a right, there would be limitations on the amount that local and state governments could spend to fulfill the right because of the existing obligations and the constraint on available funds. To be effective, the state would need a sustainable and ongoing funding source to increase the supply of affordable housing, prevent homelessness, and fund services for supportive housing – all necessary components to ensure that a right to housing is a reality.

Not a Right to Shelter: ACA 10 is a right to adequate housing and not a right to shelter. A right to shelter is a legal mandate that requires local governments to provide emergency shelter to anyone experiencing homelessness. This approach to homelessness has had decidedly mixed results. According to the latest Point in Time count for the City of New York, which has operated under a legal right to shelter framework since a state Supreme Court decision and consent decree in *Callahan v. Carey* (No. 79-42582 (Sup. Ct. N.Y. County, Cot. 18, 1979)) obligated the city to provide the right to shelter, the city's unsheltered population is 4,294 out of 91,897 homeless people. Although many people are housed in New York, they are still experiencing homelessness because they are living in temporary shelters or transitional housing. Some people have been living in shelters for years with no solution for permanent housing. This approach is also expensive and requires that resources that should be used for permanent housing instead go toward maintaining emergency shelters and not toward building supportive housing, housing with services for people who are chronically homeless, or for affordable housing. New York City spends \$1.7 billion a year to maintain its shelter system, which is \$30,000 per individual per year. In addition to the City of New York, the City of Portland and Multnomah County as well as the state of Massachusetts have adopted a right to shelter.

This ACA would declare a right to housing. Unlike a right to shelter, a right to housing would mean housing is provided across the continuum of need and not exclusively within the shelter system. According to the Department of Housing and Community Development and the California Housing Partnership, the state needs an additional 1.2 million units affordable to lower-income households to meet demand, and more than 80 percent of existing housing units are unaffordable or unavailable to extremely low-income families.

Housing First: California is a housing first state. This requirement would also ensure that a right to housing is not interpreted as a right to shelter. Decades of research demonstrate that evidence-based approaches like supportive housing – affordable housing coupled with wrap-around services – resolves homelessness for most individuals. The state's Housing First policy prioritizes providing permanent housing to people experiencing homelessness, thus ending their homelessness and serving as a platform from which they can pursue personal goals and improve their quality of life. Over more than a decade, dozens of studies conducted across the world demonstrate that the costs of delivering supportive housing using a Housing First model are offset in large part by reductions in the use of crisis services, including shelters, jails, ambulances, and hospitals. Many state and local programs effectively utilize these evidence-

based approaches to address homelessness; however, the number of people falling into homelessness continues to overwhelm the response system and surpasses the affordable housing stock in many communities. These factors lead to persistently high rates of homelessness despite recent state and local investments. Other strategies, such as rental assistance and help with identifying and securing housing (housing navigation) can also help with those individuals who need prevention tools to avoid homelessness.

Despite the overwhelming data and evidence that Housing First works to end homelessness, there is a growing national movement to roll back Housing First policies. This short-sighted and misleading push fails to recognize that Housing First is not the root cause of continued increases in homelessness; rather, it is the lack of affordable housing for lower income households. The federal government recently reasserted its commitment to Housing First in “All In: the Federal Strategic Plan to End Homelessness” and emphasized the need to focus on data-driven solutions like permanent housing linked to wrap-around services that end homelessness.

Arguments in Support: According to the ACLU, “It is clear that Californians support a right to housing. A 2020 poll showed that 66% of all Californians support a state constitutional amendment guaranteeing the human right to housing. California voters have approved more than 500 constitutional amendments, including adding new fundamental civil rights, and legislators have enacted new rights-based laws in a variety of areas. For example, under California's right to education, the government must provide equal access to public education and the right requires state and local governments to fund public schools. Another comparable right is California's right to water statute, which requires consideration of the human right to water by government agencies when making decisions related to water access. These rights provide important precedents for a right to housing. Rights are different from policies because they receive more protection from courts and are harder to take away. Recognizing a right to housing is essential to meaningfully address the housing crisis. Such a right is a guarantee that Californians’ housing security is protected from the whims and uncertainties of politics, the charitable sector, or the private market.”

Arguments in Opposition: None on file.

Related Legislation:

SCA 9 (Gonzalez) of 2022 would have established a fundamental right to housing. This bill was referred to the Senate Housing Committee but not heard by the committee.

ACA 10 (Bonta) of 2020 would have established a fundamental right to housing enforceable through a private right of action. This bill was referred to Assembly Housing and Community Development Committee but not heard by the committee.

AB 2405 (Burke) of 2020 would have established a policy that every Californian has a right to safe, decent, and affordable housing in the state. This bill was vetoed by the Governor. Veto message:

I am returning Assembly Bill 2405 without my signature.

This bill would declare a state policy that every individual in California has the right to safe,

decent, and affordable housing. The bill would also require state departments and agencies to consider this policy when revising or adopting policies, regulations, and grant criteria.

This is a laudable goal that I share, and undoubtedly, California must continue to do more to address homelessness. Regrettably, however, I cannot support this bill considering the cost implications of such a policy, estimated at over \$10 billion annually.

Moreover, I have always maintained that our efforts must come with greater accountability and better results. Although well-intentioned, this bill is duplicative of existing efforts and may ultimately force us to expend resources without commensurately creating new housing or services for people experiencing homelessness.

I am committed to working with the Legislature and local government partners on a detailed strategy to improve behavioral health outcomes and increase housing opportunities for people experiencing homelessness. To make progress, we need more than policy goals. We need tangible funding strategies and legal requirements - this means challenging accepted norms and rejecting the status quo and identifying necessary revenues.

REGISTERED SUPPORT / OPPOSITION:

Support

Abundant Housing LA (Co-Sponsor)

ACCE Action (Co-Sponsor)

ACLU California Action (Co-Sponsor)

End Poverty in California (EPIC) (Co-Sponsor)

Golden State Opportunity (Co-Sponsor)

Housing Now! (Co-Sponsor)

National Homelessness Law Center (Co-Sponsor)

PowerCA Action (Co-Sponsor)

The Children's Partnership (Co-Sponsor)

Western Center on Law and Poverty (Co-Sponsor)

Acton & Agua Dulce Democratic Club

Affordable Housing Network of Santa Clara County

Aids Healthcare Foundation

Alameda County Democratic Party

BASTA

Bend the Arc: Jewish Action, Southern California

Berkeley Fellowship of Unitarian Universalists, Social Justice Committee

Berkeley Tenants Union

Bet Tzedek

California Calls

California Democratic Party Renters Council

California Housing Partnership Corporation

California Latinas for Reproductive Justice

California Pan - Ethnic Health Network

California Reinvestment Coalition

Care - CLT

Center for Community Action & Environmental Justice

Central Coast Alliance United for a Sustainable Economy
Centro Legal De LA Raza
ChangeLab Solutions
Climate Resolve
Coalition on Homelessness
Community Health Councils
Community Lead Advocacy Program Clap
Congregations Organized for Prophetic Engagement (COPE)
Council of Community Housing Organizations
Courage California
Disability Rights California
Dreher Law Firm
East Bay Alliance for a Sustainable Economy (EBASE)
East Bay Community Law Center
East Bay Permanent Real Estate Cooperative
Esperanza Community Housing Corporation
Evolve California
Faith in the Valley
Family Assistance Program
First Wednesdays San Leandro
Friends Committee on Legislation of California
Glide
Ground Game LA
Healing and Justice Center
Housing Is a Human Right - Orange County
Housing Rights Initiative
Human Rights Watch
Inland Equity Community Land Trusts
Inner City Law Center
John and Marilyn Wells Family Foundation, Stories from the Frontline
Koreatown Immigrant Workers
LA Voice
Latino Health Access
Leadership Council for Justice and Accountability
Legal Aid of Sonoma County
Long Beach Residents Empowered
Making Housing and Community Happen
Mi Familia Vota
National Association of Social Workers, California Chapter
National Housing Law Project
Oakland Tenants Union
Orange County Equality Coalition
Orange County Mobile Home Residents Coalition
Parable of Sower Intentional Community Cooperative
Peace Builders of Orange County
People Organized for Westside Renewal
Physicians for Social Responsibility - Los Angeles
Planting Justice
Pomona United for Stable Housing

Power California
Prevention Institute
Public Interest Law Project
Public Advocates
Public Counsel
Public Health Advocates
Public Health Justice Collective
Regional Asthma Management & Prevention
Resilience OC
Riverside All of Us or None
Sonoma Valley Housing Group
Starting Over
Strategic Actions for a Just Economy
Stronger Women United
T.r.u.s.t. South LA
TechEquity Collaborative
Thai Community Development Center
The Los Angeles Metropolitan Churches
The People's Resource Center
The Santa Monica Democratic Club
U.s Vets Homeless Feeding N Housing Services
Union Station Homeless Services
Venice Justice Committee
Western Regional Advocacy Project
Young Invincibles

Opposition

None on file.

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