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Proposition 1:

Veterans and Affordable Housing Bond Act of 2018

Bond Act

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I. EXECUTIVE SUMMARY

Proposition 1 would authorize the state to issue \$4 billion of state general obligation bonds in order to fund existing housing programs. Of the total amount, \$3 billion would be allocated to various state housing programs through a state-administered competitive process, while \$1 billion would go to home loan assistance to military veterans.

A **YES** vote on this measure means: the government will issue \$4 billion in bonds to fund housing programs.

A **NO** vote on this measure means: the government will not issue the bonds. The housing programs will receive no extra funding.

II. THE LAW

A. Current Law

California Constitution Article XVI, section 1.5 allows the State Legislature to create and establish a General Obligation Bond Proceeds Fund in the State Treasury. California Constitution Article XVI, section 2(a) states that issuance of state bonds shall be submitted to the electors in the form of a bond act or statute. For an overview of general obligation bonds and state bond debt, see the 2018 California Initiative Review analysis of Proposition 4: Children's Hospital Bond Act (Section II.A).

1. State Housing Bonds

Division 31 of the California Health and Safety Code¹ authorize programs to provide assistance for emergency housing, multifamily housing, farmworker housing, home ownership for low-income households, and down payment assistance for first time home buyers. California law also authorizes the state to issue bonds to be used to finance various existing housing programs.² The Housing and Emergency Shelter Trust Fund Acts of 2002 and 2006 are two recent laws passed through the initiative process that authorized housing bonds for that purpose. These bonds have generally funded the following program areas:

Multifamily housing programs: Provide funding for constructing or rehabilitating rental housing projects. They also fund supportive housing for disabled or homeless individuals. Funding generally takes the form of low-interest loans to recipients to partially fund the cost of construction.

Home ownership programs: Encourage home ownership by offering low-interest loans or grants that help low- to moderate-income Californians meet down-payment requirements.

¹ Cal. Health & Safety Code Section 50400, 51100, 52500.

² Cal. Health & Safety Code Sections 53150-53558.

Farmworker housing programs: Provide funding for the construction or rehabilitation of housing for farmworkers and their families. The funds support both rental and owner-occupied housing.

Development programs: Provide funds for parks and for projects that include transportation, water, sewage, traffic mitigation, and brownfield (an abandoned industrial site) cleanup around and near public transportation.

Other housing programs: Programs provide funding for developing emergency homeless shelters and transitional housing, for offering incentives to cities and counties based on the number of new housing units they approve, for providing mortgage insurance for high-risk homebuyers, and for meeting the capital needs of local government agencies responsible for enforcing housing codes.³

a. *Proposition 46: The Housing and Emergency Shelter Trust Fund Act of 2002*

In November 2002, California voters passed the Housing and Emergency Shelter Act of 2002 (Proposition 46). It added Part 11 (commencing with Section 53500) to Division 31 of the Health and Safety Code to provide \$2.1 billion in state bonds to “create housing opportunities for Californians through a variety of new housing investments.”⁴ The bond proceeds were allocated to state housing programs as follows: \$1.1 billion to multifamily housing programs, \$405 million to homeownership programs, \$200 to farmworker housing program, and \$385 million to other housing programs. According to the most recent annual report dated June 30, 2017, Proposition 46 funds have been used “to build, rehabilitate, preserve, or provide incentives for approximately 91,000 affordable homes and apartments, including more than 10,000 shelter and dormitory spaces.”⁵

b. *Proposition 1C: The Housing and Emergency Shelter Trust Fund Act of 2006*

In November 2006, California voters passed the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C). It added Part 12 (commencing with Section 53540) to Division 31 of the Health and Safety Code to provide \$2.85 billion in state bonds to “create more affordable homes for Californians.” The bond proceeds were allocated to state housing programs as follows: \$590 million to multifamily housing programs, \$625 million to homeownership programs, \$135 to farmworker housing program, \$1.35 billion to development programs, and \$150 million to other programs related to affordable housing innovation and emergency housing.⁶ According to the most recent annual report dated June 30, 2017, Proposition 1C funds have been used to “help build, rehabilitate, preserve, or contribute other incentives for

³California State Auditor, *Audit Report 2014-037, California Department of Housing and Community Development: Inconsistent Oversight Has Resulted in the Questionable Use of Some Housing Bond Funds*, at 5 (September 2014) available at <http://www.bsa.ca.gov/pdfs/reports/2014-037.pdf>.

⁴California Department of Housing and Community Development, *Annual Report for the Fiscal Year 2016-2017*, at 10 (2017) available at http://www.hcd.ca.gov/policy-research/plans-reports/docs/HCD_2016-17_Annual-Report_Final.pdf.

⁵*Id.*

⁶California State Auditor, *Audit Report 2014-037, California Department of Housing and Community Development: Inconsistent Oversight Has Resulted in the Questionable Use of Some Housing Bond Funds*, at 6 (September 2014).

approximately 114,000 affordable homes and apartments, including nearly 3,000 shelter spaces.”⁷

The California State Auditor reported in September that out of the total \$4.39 billion housing bond funds that have been allocated to the California Department of Housing and Community Development (HCD), \$3.87 billion have been awarded, \$320 million have been expended for statewide costs and administrative costs, and only \$200 million still remains for award allocation and reserves.⁸

2. *Veterans Housing Bonds*

The Veterans’ Farm and Home Purchase Act of 1974, known as the Cal-Vet loan program, provides veteran with the opportunity to acquire farms and homes.⁹ The program is administered by the California Department of Veterans Affairs. Through the program the department finances the purchase of new and existing single-family homes, condominiums, farms and mobile homes, the construction of dwellings, and the making of home improvements. The program has generally been financed through state bonds. The Veterans’ Bond Act of 2008 provided \$900 million in state bonds to fund the Cal-Vet loan program. The Veterans Housing and Homeless Prevention Bond Act of 2014 later repurposed some of the authorized bonds from 2008 to fund veterans’ affordable housing.

a. *Proposition 12: Veterans’ Bond Act of 2008*

In November 2008, California voters passed the Veterans’ Bond Act of 2008 (Proposition 12). It added Article 5x (commencing with Section 998.400) to Chapter 6 of Division 4 of the Military and Veterans Code to provide low-interest loans to California veterans who buy homes and farms in the state through the Cal-Vet loan program.¹⁰ The program is self-sustaining since the principal and interest on the bonds is covered entirely by the borrowers. However, in theory, taxpayers are still on the hook since the bonds are backed by the state. If there is a shortfall in revenue from the bonds, the general fund will be used to cover it.

b. *Proposition 41: Veterans Housing and Homeless Prevention Bond Act of 2014*

In June 2014, California voters passed the Veterans Housing and Homeless Prevention Bond Act of 2014 (Proposition 41). It added Article 5y (commencing with Section 998.400) to Chapter 6 of Division 4 of the Military and Veterans Code to repurpose \$600 million in unused homeownership bond funds from the Veteran’s Bond Act of 2008 to help veterans rent affordable apartments.¹¹ HCD, California Department of Veterans Affairs, and California Housing Finance

⁷ California Department of Housing and Community Development, *Annual Report for the Fiscal Year 2016-2017*, at 8 (2017).

⁸ California State Auditor, *Audit Report 2018-037, California Department of Housing and Community Development: Its Oversight of Housing Bond Funds Remain Inconsistent*, at 8 (2018).

⁹ Cal. Mil. & Vet. Code §987.50-987.93

¹⁰ David M. Marchiano and David Wiessman, *Proposition 12: Veterans’ Bond Act of 2008*, CAL. INIT. REV. (Fall 2008) available at https://www.mcgeorge.edu/documents/Publications/Prop_12_2008.pdf.

¹¹ California Department of Housing and Community Development, *Annual Report for the Fiscal Year 2016-2017*, 13 (2017).

Authority developed the Veterans Housing and Homelessness Program to implement Proposition 41.¹² As of June 2017, \$62.4 million in funds have been awarded, funding 659 units of housing.¹³

B. Proposed Law

The proposed initiative was introduced in the California Senate as the Affordable Housing Bond Act of 2018 (SB 3). The initial proposal only authorized a \$3 billion bond for the affordable housing programs, infill development¹⁴, and housing-related parks. It was subsequently amended in the Assembly to increase bond authorization by \$1 billion for the Cal-Vet loan program and renamed Veterans and Affordable Housing Bond Act of 2018. The legislature passed SB 3 and put it on the ballot for voter approval as Proposition 1.

Proposition 1 would add Part 16 (commencing with Section 54000) to Division 31 of the Health and Safety code, which would authorize \$3 billion of state general obligation bonds to fund existing affordable housing programs, infill development, and housing-related parks. Bond proceeds would be allocated to the following programs:

1. \$1.5 billion to the Multifamily Housing Program to assist in the construction, rehabilitation, and preservation of permanent and transitional rental housing for persons with incomes of up to 60% of the area median income.¹⁵
2. \$150 million to the Transit-Oriented Development Implementation Program for transit-oriented development and for state incentive programs, including loans and grants.¹⁶
3. \$300 million to the Infill Incentive Grant Program to finance grants for new construction and rehabilitation of infrastructure that supports high-density affordable and mixed-income housing in locations designated as infill. Funds can be used for parks, water, sewer, transportation improvements, and traffic mitigation.¹⁷
4. \$150 million to the California Self-Help Housing Program to assist low- and moderate-income families to build or rehabilitate their own homes.¹⁸
5. \$300 million to the Joe Serna, Jr. Farmworker Housing Grant Program for farmworker housing.¹⁹
6. \$300 million for matching grants to the Local Housing Trust Matching Grant Program to provide matching grants to local governments and non-profits that raise money for affordable housing.²⁰

¹² *Id.*

¹³ *Id.*

¹⁴ Infill development project sites are located within an urbanized area that has been previously developed or vacant sites largely surrounded by development (Cal. Health & Safety Code Sections 53545.12).

¹⁵ Assembly Floor, Committee Analysis of SB 3, at 1 (August 31, 2017).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Assembly Floor, Committee Analysis of SB 3, at 2 (August 31, 2017).

²⁰ Senate Floor, Committee Analysis of SB 3, at 4 (September 15, 2017).

7. \$300 million for the CalHome Program to provide direct, forgivable loans and mortgage assistance of which \$30,000 shall be used towards the rehabilitation or replacement of existing mobile homes.²¹

Any Proposition 1 bond funds allocated to the programs above that have not encumbered by November 6, 2028 would revert for general use in the Multifamily Housing Program.

The proposed initiative includes a provision that would authorize the Legislature to amend the housing program to align it with the category of funds that have been allocated by the bond act, to improve the efficiency and effectiveness of the program, or to further the goals of the program. The provision would also allow the Legislature to reallocate the proceeds of the bonds among the aforementioned seven programs as necessary to effectively promote the development of affordable housing in the state.

The proposed initiative would also allow HCD to provide technical assistance to counties, cities, or developers of affordable housing to facilitate the construction of housing for the following programs: Multifamily Housing Program, Joe Serna Jr. Farmworker Housing Program, and the CalHome Program. It would also allow HCD to use \$360,000 total for technical assistance and to provide no more than \$30,000 to one county or city. Technical assistance would include engineering assistance and environmental review related to an affordable housing project and reimbursement for administrative costs related to developing a grant proposal.

In addition to the \$3 billion state housing bond, Proposition 1 would also add Article 5z (commencing with Section 998.600) to Chapter 6 of Division 4 of the Military and Veterans Code, which would authorize \$1 billion of state general obligation bonds to finance for farm, home, and mobile home purchase assistance for veterans.²²

The Legislative Analyst's Office estimates the cost to repay the \$3 billion bond for the State Housing Programs would average about \$170 million annually over the next 35 years to be paid by general tax revenue for a total cost of \$5.9 billion. It estimates no direct state bond costs for the Veterans Housing Program. Monthly loan payments to the state from the loans have always covered the amount owed on the bonds.²³

III. DRAFTING ISSUES / STATUTORY ISSUES

There do not seem to be any significant drafting issues associated with Proposition 1. The language of the initiative was drafted as a bill by Legislative Counsel. The Legislative Counsel is a nonpartisan public agency that drafts all legislative proposals.²⁴ The agency ensures that all bills have the appropriate wording and are properly integrated with existing law.

²¹ Assembly Floor, Committee Analysis of SB 3, at 2 (August 31, 2017).

²² SB 3, 2017 Leg, 2017-2018 Reg. Sess. (Cal. 2017).

²³ CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 6, 2018, at 15, available at <https://vig.cdn.sos.ca.gov/2018/general/pdf/complete-vig.pdf> ["NOVEMBER 2018 VOTER GUIDE"].

²⁴ *Firm Overview*, State of California Office of Legislative Counsel <https://legislativecounsel.ca.gov/firm-overview> (last visited Oct. 17, 2017).

The state constitution requires that funds from selling bonds be paid to a General Obligation Proceeds Fund in the state treasury, set up by the Legislature.²⁵ Proposition 1 creates the Affordable Housing Bond Act Trust Fund of 2018 within the State Treasury.²⁶ Proposition 1 is building on an already-established statute and existing programs set up as a result of the 2006 Proposition 1C. There are likely no issues with the drafting of Prop. 1, nor will it likely conflict with any existing statutes.

IV. CONSTITUTIONAL ISSUES

A. State Constitution

Since Proposition 1 is a bond act that went through the legislative process and not a voter initiated measure, it must meet the Separate Vote Requirement under California Constitution Art. XVIII, Sec. 1. The section states that when a state constitutional amendment or revision has been voted on by two-thirds of the legislature, “[e]ach amendment shall be so prepared and submitted that it can be voted on separately.”²⁷ In order to meet this requirement, every provision in the proposed amendment must be “germane to a common theme, purpose, or subject.”²⁸

It is likely that Proposition 1 meets the Separate Vote requirement. Every provision of Proposition 1 deals with the common theme of affordable housing. There is nothing in Proposition 1 that does not in some way deal with constructing, planning, funding, or authorizing housing and housing programs. Since every provision in Proposition 1 is germane to a common theme, purpose, or subject, it meets the Separate Vote Requirement under the California Constitution.

The state constitution also requires that all of the funds that come out of the state treasury be spent for the benefit of organizations under the state’s control. Article XVI, Sec. 3 reads: “No money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution.”²⁹ Prop. 1 will inevitably benefit private developers and contractors by paying them to build new affordable housing units. However, California courts have ruled that the restriction in the state constitution is broad and that “the state may pay its legal liabilities, make contracts supported by consideration, and spend money for duly determined public purposes.”³⁰ Building affordable housing is a duly determined public purpose, so Proposition 1 would not be in violation of Article XVI, Section 3, if the funds from the bonds are spent for that purpose.

²⁵ Cal. Const. Art. XVI §1.

²⁶ Affordable Housing Bond Act of 2018, Chapter 2, 54006.

²⁷ Cal. Const. Art. XVIII §1.

²⁸ *Californians for an Open Primary v. McPherson*, 38 Cal. 4th 735, 738 (2006).

²⁹ Cal. Const. Art. XVI §3.

³⁰ *People v. Honig*, 48 Cal. App. 4th 289, 352 (1996).

B. Federal Constitution

Proposition 1 will not create any issues under the Federal Constitution. The federal government works with state housing programs for veterans and low income individuals through the Department of Veterans Affairs and the Department of Housing and Urban Development.³¹ The VA and HUD do not preempt state efforts to aid veterans or low income individuals looking for housing. In fact, the federal government welcomes supplemental programs that assist people in finding housing.

V. PUBLIC POLICY CONSIDERATIONS

A. Proponents Main Arguments

The arguments for Proposition 1 center on the housing crisis and the lack of affordable housing for families, individuals with disabilities, and veterans. The housing crisis is harming the health, safety, and welfare of Californians across the state. There is an extreme housing shortage with 2.2 million low income and very low income renter households competing for only 664,000 affordable rental homes.³² More than 4 in 10 households in California are dealing with housing costs that are 30% or more of household income.³³ The rising cost of housing has been a significant factor in the increase in homelessness.³⁴ An average California home costs 2.5 times the national average while average monthly rent is 50% higher than the rest of the country.³⁵ In 2014, the US Census reported that around 12,000 of the 50,000 homeless veterans in the United States live in California.³⁶

Proposition 1 would allow the state to borrow more money to build affordable housing and provide supportive housing for Californians who need it. In addition, \$1 billion would be dedicated solely to veterans' housing through the Cal-Vet loan program that has helped 423,000 veterans and their families. The official argument also notes that Proposition 1 would help make it affordable for hard working Californians to live in the communities where they work. The proponents have asserted that passing Proposition 1 will create 137,000 new jobs and pump \$23.4 billion in California's economy.³⁷ Investing in existing housing programs will benefit California's homeless and low income earners, as well as foster and at-risk youth, persons with developmental and physical disabilities, farmworkers, the elderly, and survivors of domestic violence.³⁸

³¹ Department of Housing and Urban Development, *HUD and VA Secretaries Announce Housing Initiatives to Support Homeless Veterans*. (Oct. 3, 2018).

³² Veterans and Affordable Housing Bond Act of 2018, Section 2(a)

³³ Kimberlin, Sarah. *Californians in All Parts of the State Pay More Than They Can Afford for Housing*, *California Budget and Policy Center* (September 2017)

³⁴ Khouri, Andrew. *High cost of housing drives up homeless rates, UCLA study indicates*, THE LOS ANGELES TIMES (June 2018)

³⁵ Legislative Analyst's Office, *Proposition 1: Veterans and Affordable Housing Bond Act of 2018*.

³⁶ United States Census Bureau, *Veteran Statistics* (2014)

³⁷ Yes on Prop 1, September 2018. <https://vetsandaffordablehousingact.org/get-the-facts>

³⁸ Veterans and Affordable Housing Bond Act of 2018, Section 2(g)

It is also noted in the text of the initiative that money that has been borrowed in the past for the purpose of building affordable housing has been completely expended. The funds from Proposition 46 (2002) and Proposition 1C (2006), totaling nearly \$5 billion, have been spent.³⁹ If annual state investment dedicated to housing runs out, housing programs could be left unfunded.

Proposition 1 has very long list of endorsements from unions, statewide organizations, cities, businesses, and veterans' groups.⁴⁰ The official argument found in the state voter information guide was written by Gerald G. Wilson, former state commander of California Disabled American Veterans, Sharon Ellis, chair of Habitat for Humanity of California, and Gary Passmore, president of the Congress of California Seniors.⁴¹ Three committees have been formed in support of Proposition 1, while none have been formed to oppose it.⁴²

B. Opponents Main Arguments

The arguments against Proposition 1 focus on how much debt California already has. California already has \$74.2 billion in debt from general obligation bonds.⁴³ Passing Proposition 1 would result in General Fund debt payments of around \$200 million annually for 35 years; 5% of California's General Fund already goes to paying off debt from bonds that voters have approved.⁴⁴ Opponents have argued that Proposition 1 will only result 15,000 affordable housing units being built at a cost of \$300,000 per unit.⁴⁵ Also, as mentioned above, the money from the last ballot initiatives has not yet run out. Borrowing more money when there is still money left to spend would be irresponsible.

There is little organized opposition to Proposition 1. The Howard-Jarvis Taxpayer Association [HJTA], which frequently stands against any amount of government spending, has not taken an official position against it. However, Jon Coupal, the president of HJTA, has published an article in The San Diego Union Tribune arguing against passing Proposition 1.⁴⁶ The attorney who wrote the official ballot argument against Proposition 1, Gary Wesley, has made it his mission to make sure that no initiative goes unchallenged on the ballot since at least the 1980s.⁴⁷ His objection to Proposition 1 centers on a general concern about the growing bond debt.

³⁹ Veterans and Affordable Housing Bond Act of 2018, Section 2(f)

⁴⁰ Yes on Prop 1, September 2018. <https://www.vetsandaffordablehousingact.org/endorsements>

⁴¹ California Secretary of State, "Official Voter Information Guide November 2018"

⁴² Cal-Access, "Campaign Finance: Proposition 001" <http://cal-access.sos.ca.gov/Campaign/Measures/Detail.aspx?id=1400044&session=2017>

⁴³ California State Treasury: Public Finance Division, July 1, 2018. <https://www.treasurer.ca.gov/bonds/index.asp>

⁴⁴ Coupal, Jon. Proposition 1 Is Not the Way to Address Affordable Housing Problem. SAN DIEGO TRIBUNE (August 1, 2018)

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Soble, Ronald. The Lone Dissenter Rides Again. THE LOS ANGELES TIMES (October 23, 1986)

VI. CONCLUSION

It is undeniable that California is experiencing a housing crisis. This crisis is having a substantial negative effect on many vulnerable populations and several aspects of society. With all bond measures, the question is whether or not this is a solution that is worth the cost. The issuance of \$4 billion in bonds is not a small amount of money, and it will take some time to pay off. However, the return on that \$4 billion has the potential to be greater than the cost itself. Voters will have to decide if Proposition 1 is worth the cost.