

**Proposition 5:
Allows Local Bonds for Affordable Housing and Public
Infrastructure with 55% Voter Approval**

Initiative Constitutional Amendment

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I. EXECUTIVE SUMMARY

Proposition 5 is a constitutional amendment proposed by the California Legislature, which would reduce the vote threshold necessary to approve local infrastructure and housing bonds from two-thirds (or 66.7%) to 55% of the voting locality.¹

Proposition 5 has three main provisions. First, the measure would amend the California Constitution and allow local bonds for affordable housing for low and middle-income Californians, or for public infrastructure including roads, water, and fire protection, to be approved by 55% of voters rather than the current two-thirds approval requirement.² Second, the approved bonds would need to include specific accountability measures, including a citizens oversight committee and annual independent financial and performance audits.³ Third, the measure would allow local governments to assess property taxes above the current 1% cap to repay affordable housing and infrastructure bonds if approved by 55% of voters instead of the current two-thirds approval requirement.⁴

A “YES” vote on Proposition 5 means supporting amendments to the California Constitution that allow certain local bonds and related property taxes to be approved with a 55 percent vote of the local electorate rather than the current two-thirds approval requirement. The measure would only apply to local bonds relating to affordable housing and a host of “public infrastructure” projects, including those for water management, local hospitals and police stations, broadband networks, and parks.⁵

A “NO” vote means opposing any changes to the California Constitution. Accordingly, local bond measures relating to affordable housing and public infrastructure and related property taxes would still be subject to the current two-thirds supermajority vote requirement.⁶

II. THE LAW

A. Background

1. *What are General Obligation Bonds?*

Bonds are a way for local governments to borrow money and then repay it plus interest over time.⁷ Counties, cities, and school districts use general obligation bonds to finance the acquisition, construction, or completion of projects involving real property such as hospitals,

¹ Cal. Proposition 5 § 18(b)(2) (2024).

² *Id.*

³ *Id.* at § 4(A)(iv)-(ix).

⁴ *Id.* at § 4(A).

⁵ *Proposition 5*, LEGISLATIVE ANALYST’S OFFICE, <https://lao.ca.gov/BallotAnalysis/Proposition?number=5&year=2024> (last visited Oct. 13, 2024).

⁶ *Id.*

⁷ CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 5, 2024, at 30, *available* at <https://vig.cdn.sos.ca.gov/2024/general/pdf/complete-vig.pdf> [“NOVEMBER 2024 VOTER GUIDE”].

parks, school buildings, and government housing.⁸ Bond proceeds may not be used for general local government operating expenses, such as teacher salaries and administrative costs.⁹ Local government entities typically pay off general obligation bonds through increases in local ad valorem property taxes.¹⁰

2. *The Affordable Housing Crisis in California*

California home prices have long been—and continue to be—much more expensive than those of the rest of the United States.¹¹ A typical California home currently costs around twice the national average.¹² Similarly, renters in California typically pay about 50 percent more for housing than renters in other states.¹³ The National Low Income Housing Coalition found that, on average, it would take 96 work hours per week at minimum wage (or 2.4 full-time jobs at minimum wage) to afford a one-bedroom rental home at a fair market rental value in California.¹⁴

Statewide, 68% of residents say housing affordability is a big problem in their part of the state, while 63% say homelessness is a big problem.¹⁵ Despite these concerns, the affordability crisis continues to balloon.¹⁶ The State of California projects that the state must plan for more than 2.5 million homes over the next eight-year cycle, and no less than one million of those homes must meet the needs of lower-income households.¹⁷ This represents more than double the housing planned for in the last eight-year cycle.¹⁸

3. *Public Infrastructure in California*

Cities, counties, and special districts face numerous challenges in securing funding for important local public infrastructure projects.¹⁹ In May 2019, the American Society of Civil Engineers (ASCE) reviewed California’s infrastructure across a host of different categories.²⁰

⁸ Nova Edwards, *An Overview of Local Government General Obligation Bond Issuance Trends - 2016 Update*, CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION, <https://www.treasurer.ca.gov/cdlac/issuebriefs/201608.pdf>, (last visited Sep. 25, 2024).

⁹ Mac Taylor, *Understanding California’s Property Taxes*, LEGISLATIVE ANALYST’S OFFICE, <https://lao.ca.gov/reports/2012/tax/property-tax-primer-112912.pdf>, (last visited Sep. 25, 2024).

¹⁰ *Id.*

¹¹ Alex Bentz, *California Housing Affordability Tracker (2nd Quarter 2024)*, LEGIS. ANALYST’S OFF. (Aug. 6, 2024), <https://lao.ca.gov/LAOEconTax/Article/Detail/793> (last visited Oct. 13, 2024).

¹² NOVEMBER 2024 VOTER GUIDE at 30.

¹³ *Id.*

¹⁴ NAT’L LOW INCOME HOUS. COAL., OUT OF REACH, at CA-39 to CA-43 (2024), https://nlihc.org/sites/default/files/2024_OOR.pdf.

¹⁵ *Californians and the Housing Crisis*, PUB. POL’Y INST. OF CAL., <https://www.ppic.org/interactive/californians-and-the-housing-crisis/> (last visited Oct. 13, 2024).

¹⁶ *Statewide Housing Plan*, DEP’T OF HOUS. & CMTY. DEV., <https://statewide-housing-plan-cahcd.hub.arcgis.com/>, (last visited Sep. 25, 2024).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Angela Pontes & Debbie Michel, *ACA 1 – 55% Vote for Local Affordable Housing and Public Infrastructure*, Assembly Fact Sheet, 2023-2024 Reg. Sess. (Cal. 2023), <https://a04.asmdc.org/sites/a04.asmdc.org/files/pdf/ACA%201%20Fact%20Sheet.pdf>.

²⁰ ASCE INFRASTRUCTURE REPORT CARD, https://www.infrastructurereportcard.org/wp-content/uploads/2018/10/ASCE_Brochure%E2%80%9494CA2019_FINAL.pdf, (last visited Sep. 25, 2024).

These categories include the state’s water supply, flood control infrastructure, roads, public parks, and energy infrastructure.²¹ According to ASCE, “each category evaluated in this report indicates currently available funding to state and local agencies is not adequate to maintain sustainable and safe California infrastructure systems.”²²

B. Existing Law

1. *Approval of Local Bonds Under the California Constitution*

Under the California Constitution, voters must approve general obligation bonds, whether issued by the state or local governments.²³ While the state can issue general obligation bonds by majority voter approval, since 1879, local governments have been unable to incur additional debt or liability from general obligation bonds “without the assent of *two-thirds* of voters of the public entity voting at an election to be held for that purpose.”²⁴

a.) Proposition 39 (2000)

In 2000, California voters enacted Proposition 39 (2000).²⁵ Proposition 39 was an amendment to the state constitution, which authorized bonds for repair, construction, or replacement of school facilities if approved by 55 percent of the local vote instead of the two-thirds vote requirement.²⁶ Proponents of the measure sought to return control of school construction to local voters by making it easier for school districts to borrow money instead of relying on inadequate state funding for school facilities.²⁷ Since the measure’s adoption in 2000, bonds for school facilities have increased dramatically from pre-Proposition 39 levels.²⁸ Between 2006 and 2015, 88.4 percent of general obligation bonds were issued for education purposes.²⁹ Furthermore, a 2022 study found that bond funding in school districts increased by \$58–\$66 per student following Proposition 39, a more than 100 percent increase.³⁰

²¹ *Id.*

²² *Id.*

²³ CAL. CONST. art. XVI, § 18.

²⁴ *Id.* (emphasis added).

²⁵ *California Proposition 39*, BALLOTPEDIA

[https://ballotpedia.org/California_Proposition_39,_Decrease_Supermajority_from_Two-Thirds_to_55%25_for_School_Bonds_Amendment_\(2000\)](https://ballotpedia.org/California_Proposition_39,_Decrease_Supermajority_from_Two-Thirds_to_55%25_for_School_Bonds_Amendment_(2000)) (last visited Oct. 13, 2024).

²⁶ *Voter Information Guide for 2000, General Election (2000)*, UC HASTINGS SCHOLARSHIP REPOSITORY, http://repository.uchastings.edu/ca_ballot_props/1186, (last visited Sep. 25, 2024).

²⁷ CAL. BUDGET PROJECT, CALIFORNIA’S SCHOOLS & PROPOSITION 39 (Budget Brief Aug. 2000), <https://calbudgetcenter.org/app/uploads/000701prop39.pdf>.

²⁸ Edwards, *supra* note 8, at 6.

²⁹ *Id.*

³⁰ Michael Grosz & Ross T. Milton, *Relaxing Electoral Constraints in Local Education Funding* (Annenberg Inst. at Brown Univ., Working Paper No. 22-524, 2022), <https://edworkingpapers.com/sites/default/files/ai22-524.pdf>.

2. Property Tax Restrictions Under the California Constitution

a.) Proposition 13 (1978)

On June 6, 1978, California voters overwhelmingly approved Proposition 13 (1978), a property tax limitation initiative.³¹ Proposition 13 rolled back most local real property assessments to 1975 market value levels, limited the property tax rate to 1 percent, and limited future property tax increases.³² Additionally, Proposition 13 provided that local governments could levy ad valorem property tax rates above the 1 percent rate—to pay for indebtedness (i.e. general obligation bonds) *approved by voters prior to 1978*.³³ However, the one percent cap limited local governments' ability to finance facilities with locally-generated property tax revenues post-1978 and prevented the imposition of additional tax rates dedicated to the repayment of debt.³⁴

b.) Proposition 46 (1986)

Proposition 46 (1986) was a legislatively-referred constitutional amendment approved by voters on June 3, 1986.³⁵ Almost eight years after the passage of Proposition 13, Proposition 46 amended the state constitution to add an exception to the 1 percent limit on ad valorem property taxes for bond repayment by local governments.³⁶ With its enactment, the 1 percent limit on ad valorem property taxes no longer applies to bonds that are approved by a two-thirds supermajority of voters and used exclusively to purchase or improve land and buildings.³⁷

c.) Proposition 39 (2000)

As mentioned above, Proposition 39 (2000) sought to make it easier for local governments to issue bonds for a specific purpose, namely education.³⁸ The measure amended the constitution to lower the voting requirement for passage of education-related bonds to 55 percent.³⁹ In addition, the initiative authorized the repayment of these bonds through property taxes in excess of the 1 percent limit by a vote of 55 percent of the voting locality, rather than the two-thirds necessary under Proposition 46 (1986).⁴⁰ There has not been a comprehensive study detailing the exact effects of Proposition 39 on property tax revenues. However, in 2000, the Legislative Analyst's

³¹ CAL. STATE BD. OF EQUALIZATION, CALIFORNIA PROPERTY TAX - AN OVERVIEW (No. 29, 2018) <https://www.boe.ca.gov/proptaxes/pdf/pub29.pdf>.

³² *Id.*

³³ Taylor, *supra* note 9.

³⁴ CALIFORNIA BUDGET PROJECT, *supra* note 27.

³⁵ *Proposition 46*, BALLOTEDIA, [https://ballotpedia.org/California_Proposition_46_Authorize_Local_Tax_Increases_for_Bond_Repayment_Amendment_\(June_1986\)](https://ballotpedia.org/California_Proposition_46_Authorize_Local_Tax_Increases_for_Bond_Repayment_Amendment_(June_1986)), (last visited Sep. 25, 2024).

³⁶ *Voter Information Guide for 1986, Primary*, UC HASTINGS SCHOLARSHIP REPOSITORY, https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1971&context=ca_ballot_props, (last visited Sep. 25, 2024).

³⁷ *Id.*

³⁸ CAL. BUDGET PROJECT, *supra* note 27.

³⁹ NOVEMBER 2000 VOTER GUIDE, *supra* note 26.

⁴⁰ *Id.*

Office concluded that districts approving bond measures that otherwise would not have been approved would necessarily have increased debt costs to pay off the bonds.⁴¹

III. PATH TO THE BALLOT

A. Legislation

In 2022, Proposition 5 was introduced by Assemblymember Cecilia Aguiar-Curry as Assembly Constitutional Amendment (ACA) 1.⁴² On September 6, 2023, the amendment passed in the California Assembly with 55-12 votes.⁴³ On September 14, 2023, the amendment passed in the California Senate with 29-10 votes.⁴⁴

In 2024, Assemblymember Aguiar-Curry introduced Assembly Constitutional Amendment 10 to remove and amend specific provisions of ACA 1.⁴⁵ On June 24, 2024, ACA 10 passed the California Assembly with 58-8 votes.⁴⁶ On June 27, 2024, ACA 10 passed the California Senate with 31-8 votes.⁴⁷

ACA 1 and 10 were placed on the ballot for approval by California voters as Proposition 5 in June of 2024.⁴⁸

B. Ballot Label Litigation

On August 1, 2024, Jon Coupal, President of the Howard Jarvis Taxpayers Association and opponent of the measure, brought a petition for writ of mandate in Sacramento County Superior Court challenging the ballot label for Proposition 5 (2024).⁴⁹ Pursuant to its statutory obligation, the Attorney General is tasked with preparing and submitting to the Secretary of State a title and summary, including a ballot label for each qualified ballot measure.⁵⁰ The ballot label prepared for Proposition 5 states in pertinent part that Proposition 5 “[a]llows approval of local infrastructure and housing bonds for low- and middle-income Californians with 55% vote.”⁵¹ Challengers claimed that the ballot label was misleading and prejudicial in that it did not accurately describe

⁴¹ *Proposition 39*, LEGIS. ANALYST’S OFF., https://lao.ca.gov/ballot/2000/39_11_2000.html (last visited Oct. 13, 2024).

⁴² *ACA 1: Local Government Financing: Affordable Housing and Public Infrastructure: Voter Approval*, CALMATTERS: DIGITAL DEMOCRACY, https://digitaldemocracy.calmatters.org/bills/ca_202320240aca1 (last visited Oct. 13, 2024).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *ACA 10: Local Government Financing: Affordable Housing and Public Infrastructure: Voter Approval*, CALMATTERS: DIGITAL DEMOCRACY, https://digitaldemocracy.calmatters.org/bills/ca_202320240aca10 (last visited Oct. 13, 2024).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Verified Petition for Writ of Mandate, *Coupal. v. Weber*, Super. Ct. No. 24WM000115

⁵⁰ CAL. ELEC. CODE. §§ 9050, 9051 (2023).

⁵¹ CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA PRIMARY ELECTION, TUESDAY NOVEMBER 5, 2024, at 30, available at <https://vig.cdn.sos.ca.gov/2024/general/pdf/complete-vig.pdf> [“NOVEMBER 2024 VOTER GUIDE”].

the character and purpose of the amendment because it did not specify that current law requires approval by two-thirds of voters.⁵² The Superior Court agreed, concluding that the ballot label failed “to inform the voters of the chief purpose of Proposition 5.”⁵³ Consequently, the Court entered a judgment that directed the Attorney General to revise the ballot label and include additional language.⁵⁴

Subsequently, the Attorney General challenged the Superior Court’s decision in the California Court of Appeal, Third Appellate District. On August 13, 2024, the Appellate Court reversed the Superior Court’s order, concluding that “the Attorney General is afforded considerable latitude” in creating ballot labels.⁵⁵ The Appellate Court disagreed with challengers’ arguments, stating that “not only is the language in the ballot label factually accurate, but [the Court] fail[s] to perceive how a voter would not correctly construe the purpose or the proposition even if only reading the ballot label in isolation.”⁵⁶ Accordingly, the Superior Court’s order was vacated, blocking any changes to Proposition 5’s originally-prepared ballot label.⁵⁷

IV. PROPOSED LAW

A. Assembly Constitutional Amendment 1

In 2022, Assemblymember Aguiar-Curry introduced ACA 1, a legislatively-initiated constitutional amendment.⁵⁸ ACA 1 amends Cal. Const. Art. XVI, § 18, by adding a provision that local governments can issue bonds for the construction, reconstruction, rehabilitation, or replacement of **public infrastructure, affordable housing**, or permanent supportive housing for persons at risk of chronic homelessness, including persons with mental illness, or the acquisition or lease of real property for public infrastructure, affordable housing, or permanent supportive housing for persons at risk of chronic homelessness, including persons with mental illness, with approval from 55 percent of the voters of the local government voting on the proposition.⁵⁹

1. *Definition of “Public Infrastructure”*

ACA 1 defines “public infrastructure” to include: projects to provide water or protect water quality, sanitary sewer, treat wastewater or reduce pollution from stormwater runoff; the protection of property from impacts of sea level rise; public buildings, including fire and police facilities; parks, open space, and recreation facilities; improvements to transit and streets and highways; flood control; public library facilities; broadband expansion in underserved areas; local hospital construction; and public safety buildings, facilities, and equipment.⁶⁰

⁵² *Bonta v. Superior Ct. of Sacramento Cnty.*, 104 Cal. App. 5th 147, 152 (3rd. Dist. 2024).

⁵³ *Id.* at 402.

⁵⁴ *Id.*

⁵⁵ *Id.* at 404.

⁵⁶ *Id.*

⁵⁷ *Id.* at 406.

⁵⁸ ACA 1, 2023 Leg., 2023–2023 Reg. Sess. (Cal. 2023).

⁵⁹ ACA 1, 2023 Leg., 2023–2024 Reg. Sess. (Cal. 2023).

⁶⁰ *Id.*

2. *Definition of “Affordable Housing”*

ACA 1 defines “affordable housing” and “supportive housing” to include: housing developments that provide workforce housing affordable to households earning up to 150 percent of countywide median income; housing developments that provide housing affordable to lower, low, or very low-income households, as those terms are defined in state law; targeted housing that is linked to services that assist residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.⁶¹

3. *Accountability Requirements*

ACA 1 specifically requires that the proceeds from the sale of the bonds be used only for the above-mentioned purposes.⁶² Furthermore, local governments are required to conduct an annual, independent performance audit to ensure that the funds have been expended pursuant to affordable housing or public infrastructure programs.⁶³ These audits must be submitted to the California State Auditor for review and then published in a manner that is easily accessible to the public. In addition to performance audits, the local government entity must appoint a citizens’ oversight committee to ensure that bond proceeds are expended only for the purposes described in the measure approved by the voters.⁶⁴ Members appointed to the oversight committee must receive financial educational training.⁶⁵ Lastly, an entity owned or controlled by a local official that votes on whether to put a proposition on the ballot will be prohibited from bidding on any work funded by the proposition.⁶⁶

4. *Property Taxes*

ACA 1 also creates an additional exception to the 1 percent ad valorem tax limit established by Proposition 13 (1978).⁶⁷ This exception would amend Article 13 of the California Constitution,⁶⁸ authorizing local governments to levy an ad valorem tax above the 1 percent limit to service bonded indebtedness incurred to fund the “construction, reconstruction, rehabilitation, or replacement of public infrastructure, [and] affordable housing...” if the proposition proposing that tax is approved by 55 percent of the voters of the applicable local government entity, and the proposition includes specified accountability requirements similar to the ones mentioned above.⁶⁹ ACA 1 also prohibits local governments from placing a proposition on the ballot until all funds from a previous similar proposition are committed to their respective projects.⁷⁰

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ ACA 1, 2023 Leg., 2023–2024 Reg. Sess. (Cal. 2023).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ CAL. CONST. art. XIII A, § 1.

⁶⁹ *Id.*

⁷⁰ *Id.*

5. *Special Taxes*

Under the California Constitution, a “Special Tax” means any tax imposed for specific purposes, which is placed into a general fund.⁷¹ Like general obligation bonds, special taxes must be approved by a two-thirds majority of the qualified voters in the service area, which is usually the jurisdictional area of the local government agency that initiates the special tax.⁷² Significantly, ACA 1 allows local governments to impose special taxes, in addition to local general obligation bonds, for the purposes of funding the “construction, reconstruction, rehabilitation, or replacement of public infrastructure, affordable housing, or permanent supportive housing for persons at risk of chronic homelessness...with approval from 55% of the voters in the local jurisdiction,” if both of the following conditions were met: (1) the proposition is approved by a majority of the membership of the governing board of the local government, and (2) the proposition contains similar accountability requirements as mentioned above.⁷³

B. Assembly Constitutional Amendment 10

After the passage of ACA 1 in 2023, Assemblymember Aguiar-Curry introduced ACA 10 to amend and remove various provisions of ACA 1.⁷⁴

1. *Removal of the Special Tax Provision*

ACA 10 removed the provisions of ACA 1 relating to special taxes.⁷⁵ ACA 1, as drafted, gave local governments the authority to issue general obligation bonds AND impose special taxes with a 55% voter threshold.⁷⁶ However, ACA 10 removed from ACA 1 the authority for local governments to impose special taxes with a 55 percent voter threshold, maintaining the two-thirds vote threshold currently required under Subdivision (d), Section 1, Article XIII C of the California Constitution.⁷⁷

2. *Changes to the Definition of “Affordable Housing”*

ACA 10 expanded the definition of affordable housing to also include first-time homebuyer programs and associated facilities used to serve residents of affordable housing.⁷⁸ The measure now provides that “affordable housing” shall include:

- Housing developments, or portions of housing developments, that are affordable to individuals, families, seniors, people with disabilities, veterans, or first-time homebuyers, who are lower-income households or middle-income households earning up to 150 percent of countywide median income, as those terms are defined in state law;

⁷¹ CAL. CONST. art. XIII C, § 1(d).

⁷² *Id.*

⁷³ ACA 1, 2023 Leg., 2023–2024 Reg. Sess. (Cal. 2023).

⁷⁴ ACA 10, CALMATTERS: DIGITAL DEMOCRACY, *supra* note 45.

⁷⁵ ACA 10, 2024 Leg., 2023–2024 Reg. Sess. (Cal. 2024).

⁷⁶ ACA 1, 2023 Leg., 2023–2024 Reg. Sess. (Cal. 2023).

⁷⁷ ACA 10, 2024 Leg., 2023–2024 Reg. Sess. (Cal. 2024).

⁷⁸ *Id.*

- Capitalized operating reserves, as the term is defined in state law;
- Down Payment assistance programs;
- First-time homebuyer programs;
- Permanent supportive housing, including, but not limited to, housing for persons at risk of chronic homelessness, including, but not limited to, persons with mental illness; and
- Associated facilities, if used to serve residents of affordable housing.⁷⁹

3. *Changes to the Definition of “Public Infrastructure”*

In addition, ACA 10 revises and replaces the definition of “public infrastructure,” expanding the list of facilities and services that fall under the purview of the measure’s lower vote threshold. Under ACA 10, “public infrastructure” shall include:

- Facilities or infrastructure for the delivery of public services, including education, police, fire protection, parks, recreation, open space, emergency medical, public health, libraries, flood protection, streets or highways, public transit, railroad, airports, and seaports; Utility, common carrier or other similar projects, including energy-related, communication-related, water-related, and wastewater-related facilities or infrastructure;
- Projects identified by the State or local government for recovery from natural disasters;
- Equipment related to fire suppression, emergency response equipment, or interoperable communications equipment for direct and exclusive use by fire, emergency response, police, or sheriff personnel;
- Projects that provide protection of property from sea level rise;
- Projects that provide public broadband internet access service expansion in underserved areas;
- Private uses incidental to, or necessary for, the public infrastructure; and
- Grants to homeowners for the purposes of structure hardening of homes and structures, as defined in state law.⁸⁰

4. *Retroactivity Provision*

ACA 10 clarified that the 55 percent vote threshold for general obligation bonds covered by this measure applies to any local proposition that is submitted at the same election as ACA 1 or at a later election held after the effective date of ACA 1.⁸¹ In other words, if Proposition 5 is passed by voters at the November 5, 2024 statewide general election, any local measure to approve bonds for affordable housing or public infrastructure on the November 5, 2024 ballot would only need to pass by 55 percent of the local vote, instead of the current two-thirds vote requirement.⁸²

⁷⁹ *Id.*

⁸⁰ ACA 10, 2024 Leg., 2023–2024 Reg. Sess. (Cal. 2024).

⁸¹ *Id.*

⁸² *Id.*

For example, on the November 2024 ballot, voters in the City and County of San Francisco will vote on Proposition B, a community health and medical facilities bond measure.⁸³ If approved, the measure would allow the City to issue up to \$390 million in general obligation bonds to fund projects related to community health and medical facilities, street safety, public spaces, and interim housing to reduce family homelessness.⁸⁴ Normally, this bond would need a two-thirds vote of the local electorate to pass. However, because the subject of the bond is “public infrastructure”, the measure would only need 55 percent to pass if voters also approve Proposition 5 (2024).

5. *Subsequent Legislative Amendments*

ACA 1 would authorize the Legislature, subject to a two-thirds vote, to enact laws establishing additional accountability measures, as well as laws imposing additional conditions or restrictions on the acquisition or lease of real property that are consistent with the purposes and intent of ACA 1.⁸⁵ The measure would also require that any repeal of those conditions or restrictions be subject to a two-thirds vote.⁸⁶ In addition, the Legislature may, by majority vote, enact laws that regulate downpayment assistance programs.⁸⁷

C. Assembly Bill 2813

Assembly Bill (AB) 2813 (2024) is a companion measure to ACA 1, which will only take effect if Proposition 5 is passed and approved by the voters.⁸⁸ AB 2813 clarifies the technical implementation provisions of ACA 1, clarifies terms and project eligibility, and builds upon guardrails to ensure local transparency, oversight, and accountability. AB 2813 was also part of a compromise that induced the California Association of Realtors to remove their opposition to Proposition 5.

1. *Limiting the Definition of Affordable Housing*

AB 2813 provides that ACA 1’s definition of affordable housing includes the following if they are affordable to households earning up to 150 percent of countywide median income: rental housing; ownership housing; interim housing; and affordable housing programs including down payment assistance, first-time homebuyer programs, and owner-occupied affordable housing rehabilitation programs.⁸⁹ However, in order to prevent the California Association of Realtors from opposing the measure, AB 2813 provides that local agencies cannot use ACA 1 bonds to acquire or lease real property that has been improved with one to four dwelling units at the time of

⁸³ *Proposition B: Community Health and Medical Facilities, Street Safety, Public Spaces, and Shelter to Reduce Homelessness Bond*, CITY AND COUNTY OF SAN FRANCISCO, <https://www.sf.gov/information/proposition-b-community-health-and-medical-facilities-street-safety-public-spaces-and>, (last visited Oct. 13, 2024) (for a list of local bond measures on the November 2024 ballot that would be affected by Proposition 5, see Fiscal Effects, *infra* pt. VIII).

⁸⁴ *Id.*

⁸⁵ ACA 10, 2024 Leg., 2023–2024 Reg. Sess. (Cal. 2024).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ AB 2813, 2024 Leg., 2023–2024 Reg. Sess. (Cal. 2024).

⁸⁹ *Id.*

acquisition or lease.⁹⁰ In other words, AB 2813 prevents local governments from using the bond money to buy up existing homes to convert them into affordable units. The ballot measure would still allow local bond issues to provide funds for the construction of smaller, affordable units.⁹¹ The ban applies to purchasing existing homes— notably, one of the ways that realtors make money.”⁹²

2. *Limitations on Bonds for Public Infrastructure*

AB 2813 would require that local governments ensure that any project that is funded with ACA 1 bonded indebtedness has an estimated useful life of at least 15 years, or five years if the funds are for specified public safety facilities, infrastructure, and equipment.⁹³ The bill would also define public infrastructure to exclude the construction, reconstruction, rehabilitation, or replacement of a sports stadium or arena where the majority of the use of the facility is for private ticketed activities.⁹⁴

3. *Accountability and Transparency*

AB 2813 would establish various requirements regarding the appointment and function of a citizens oversight committee.⁹⁵ Specifically, the bill would require a local government to appoint a citizens oversight committee within 90 days of certifying an election that approves ACA 1 bonded indebtedness.⁹⁶ The citizens oversight committee must consist of at least 7 members who serve for a minimum term of 2 years without compensation.⁹⁷ The bill would also prohibit an employee or official of the local government and any vendor, contractor, or consultant of the local government from being appointed to the citizens oversight committee.⁹⁸ Furthermore, all citizens oversight committee proceedings must be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board of the local government.⁹⁹

V. DRAFTING ISSUES

Proposition 5 includes broad definitions of “affordable housing” and “public infrastructure” in the text of the measure.¹⁰⁰ Both of these definitions are similarly drafted: both start with the phrase “shall include,” followed by a list of specific examples that fall within the

⁹⁰ Ben Christopher, *California Real Estate Group Won’t Fight Affordable Housing Measure, For a Price*, CALMATTERS (June 21, 2024), <https://calmatters.org/housing/2024/06/california-housing-realtors-ballot-measure/> (last visited Oct. 13, 2024).

⁹¹ *Id.*

⁹² *Id.*

⁹³ AB 2813, 2024 Leg., 2023–2024 Reg. Sess. (Cal. 2024).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ AB 2813, 2024 Leg., 2023–2024 Reg. Sess. (Cal. 2024).

¹⁰⁰ Cal. Proposition 5 (2024)).

definition of the term.¹⁰¹ Notwithstanding these definitions, it is not clear whether other uses or projects that are NOT explicitly listed in the given examples can also constitute “affordable housing” or “public infrastructure.”

When interpreting legislative-initiated constitutional amendments, courts begin with the plain, commonsense meaning of the language used by the Legislature.¹⁰² However, if the language of the statute is ambiguous, a court can look to legislative history and to rules or maxims of construction to resolve the ambiguity.”¹⁰³ As a basic principle of statutory construction, courts have generally found that the word “include” is used as a word of enlargement and not of limitation.¹⁰⁴ Thus, where the word “include” is used to refer to specified items, it may be expanded to cover other items.¹⁰⁵

Should the Court clarify that the definitions provided in Proposition 5 are not exclusive, local governments may be able to circumvent the two-thirds vote requirement for general obligation bonds and the one percent property tax limitation by labeling projects as “public infrastructure” or “affordable housing.” Until a court clarifies the scope of these terms, local bond measures that do not fall within the definitions provided in Proposition 5 may be at an increased risk of litigation.

VI. CONSTITUTIONAL ISSUES

Under the California Constitution, the Legislature is required to prepare and submit each proposed amendment to the California Constitution so that “it can be voted on separately.”¹⁰⁶ The “separate-vote provision” restricts state legislative authority to package disparate proposed constitutional amendments in a single measure.¹⁰⁷ The purpose of the provision is to prohibit proposed measures that might otherwise cause voter confusion or constitute “logrolling,” the practice of combining two or more unrelated provisions in one measure.¹⁰⁸

According to California courts, the separate-vote provision is interpreted consistently with the single-subject rule.¹⁰⁹ Under this test, amendments in a single measure must be “reasonably germane to a common theme, purpose, or subject.”¹¹⁰ Hence, if the Legislature proposes a resolution that presents in a single measure multiple changes to the California Constitution that are not reasonably germane to a common theme, purpose, or subject, the presentation of that measure to the voters will violate the separate-vote provision.¹¹¹

¹⁰¹ See e.g. Cal. Proposition 30 § 4(E)(i)(I) (“‘public infrastructure’ shall include: Facilities or infrastructure for the delivery of public services, including education, police, fire protection, parks....”)

¹⁰² *Sutter's Place, Inc. v. Cal. Gambling Control Comm'n*, 101 Cal. App. 5th 818, 832 (1st Dist. 2024).

¹⁰³ *Id.*

¹⁰⁴ *Rea v. Blue Shield of Cal.*, 226 Cal. App. 4th 1209, 1227 (1st Dist. 2014).

¹⁰⁵ *Id.*

¹⁰⁶ CAL. CONST. art. XVIII, § 1

¹⁰⁷ *Californians for an Open Primary v. McPherson*, 38 Cal. 4th 735, 743 (2006).

¹⁰⁸ *McPherson*, 38 Cal. 4th at 781.

¹⁰⁹ *Id.* at 763.

¹¹⁰ *Id.*

¹¹¹ *Id.*

In both ACA 1 and ACA 10, the Legislature drafted two separate constitutional amendments to be approved by voters in a single measure.¹¹² First, the measure would amend Cal. Const. Art. XVI, § 18, by lowering the vote threshold for approval of certain local bonds.¹¹³ Proposition 5 also amends Cal. Const. Art. XIII A § 1, authorizing local governments to levy an ad valorem tax above the 1 percent limit to pay off these bonds if the proposition proposing that tax is approved by 55 percent of the voters of the applicable local government entity, and the proposition includes specified accountability requirements.¹¹⁴ Thus, in order for these amendments to appear on the ballot as one measure, they must be “reasonably germane to a common theme, purpose, or subject.”¹¹⁵

The Court has stated that this standard should be “construed liberally.”¹¹⁶ Here, a court would likely find that the common theme or purpose of the amendments is bond indebtedness, or the local general obligation bond approval process. Because property taxes are the main source of revenue to pay off bond liability, lowering the threshold for the implementation of property taxes goes hand-in-hand with the approval of local general obligation bonds. Accordingly, a court would likely find that Proposition 5 does not violate the separate-vote provision in the California Constitution.

VII. PUBLIC POLICY ISSUES

A. Arguments of Proponents

Several groups have formed the "Yes on 5" campaign, which include the California Democratic Party, the California Teachers Association, the League of Women Voters of California, Habitat for Humanity, California Professional Firefighters, and the League of California Cities.¹¹⁷

Proponents argue that Proposition 5 gives local voters more power to address the affordable housing and public infrastructure needs in their communities.¹¹⁸ Assemblymember Cecilia Aguiar-Curry (D –Winters), the sponsor of the amendment, said, "ACA 1 will level the playing field and create parity between school districts and cities, counties, and special districts so that all local governments have a variable financing tool to address community needs."¹¹⁹ Proposition 5 shifts local public policy decisions and spending priorities away from state government, giving local voters and taxpayers more tools, more power, and greater autonomy to address those issues in their own communities.¹²⁰ By making it easier to win voter approval for issuing bonds, Proposition 5

¹¹² ACA 1, 2023 Leg., 2023–2023 Reg. Sess. (Cal. 2023); ACA 10, 2024 Leg., 2023–2023 Reg. Sess. (Cal. 2024).

¹¹³ Cal. Proposition 5 (2024).

¹¹⁴ *Id.*

¹¹⁵ *McPherson*, 38 Cal. 4th at 781.

¹¹⁶ *Fair Political Practices Com. v. Superior Ct.*, 25 Cal. 3d 33, 38 (1979).

¹¹⁷ NOVEMBER 2024 VOTER GUIDE at 30.

¹¹⁸ *Id.*

¹¹⁹ ASSEMB. LOC. GOV'T COMM., ASSEMBLY THIRD READING ACA 1, ASSEMB. B. FLOOR ANALYSIS, 2023–2024 Reg. Sess. 6 (Cal. 2023),

https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240ACA1#.

¹²⁰ NOVEMBER 2024 VOTER GUIDE at 30.

will empower local governments to address immediate priorities without having to wait for state and federal funding.¹²¹

Specifically, Proponents suggest that Proposition 5 gives local communities more tools to make housing more affordable, including: providing first-time homebuyers' programs; building new housing, including affordable for-sale ownership and rental housing, for low-and middle-income Californians, seniors, veterans, and homeless families; and renovating and repairing existing affordable housing.¹²² In addition to affordable housing, Proponents argue that Proposition 5 makes it easier for local voters to invest in safety repairs and improvements to bridges, roads, public transportation, water systems, and other critical public infrastructure as they see fit.¹²³

Proponents also claim that Proposition 5 does not raise taxes.¹²⁴ Instead, they contend that it simply gives voters more power to address the unique needs of their communities without relying on the state, which has not met the challenges facing most California families.¹²⁵ Relatedly, Proposition 5 protects local tax dollars by implementing strict accountability requirements such as a "clear list" of the specific types of projects to be funded and oversight by an independent citizens committee.¹²⁶

B. Arguments of Opponents

Opponents include the Howard Jarvis Taxpayers Association, California Taxpayers Association, the National Federation of Independent Businesses, the California Hispanic Chambers of Commerce, and the Women Veterans Alliance.¹²⁷

According to Jon Coupal, President of the Howard Jarvis Taxpayers Association, "Proposition 5 makes it easier for cities, counties, and special districts to increase property taxes to pay for our already massive debt levels in California. Higher property taxes mean higher house payments for homeowners, higher rents for renters, higher costs to farmers, and higher prices for everything we buy since local businesses will have to pass their higher property taxes on to consumers."¹²⁸ Opponents argue that Californians already struggle with the highest cost of living in the nation.¹²⁹ With the highest income, sales, and gas taxes in the country, opponents contend that Proposition 5 will lead to higher costs for everyone.¹³⁰

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ NOVEMBER 2024 VOTER GUIDE at 30.

¹²⁷ *Id.* at 31

¹²⁸ Interview with Jon Coupal, President, Howard Jarvis Taxpayers Ass'n (August 26, 2024).

¹²⁹ *Id.*

¹³⁰ *Id.*

In addition, opponents criticize the Legislature for attempting to overturn long-standing constitutional limitations on bond indebtedness.¹³¹ According to opponents, the two-thirds vote requirement predates the 1879 California Constitution and was first inscribed during the state’s inaugural constitutional convention three decades earlier.¹³² Accordingly, opponents argue that today’s legislature thinks it knows better by making changes to constitutional requirements that have existed for 145 years.¹³³

Lastly, opponents contend that the drafters of the measure “snuck in a provision buried in the fine print that would make it retroactive— meaning that any bond passed this November would only need a lower vote total to pass.”¹³⁴ Normally, when voters approve a measure on the ballot, it does not go into law until after the election results are certified. Opponents suggest that by making Proposition 5 retroactive, proponents hope to saddle taxpayers with billions in new taxes and debt immediately.¹³⁵

VIII. FISCAL EFFECTS

A. Certain Bond Measures are More Likely to Pass

According to the Legislative Analyst’s Office (LAO), “a lower voter approval requirement would make it easier to pass local general obligation bonds for housing assistance and public infrastructure.”¹³⁶ The LAO also claims that recent local election results suggest that an additional 20 percent to 50 percent of local bond measures would have passed under Proposition 5’s lower voter approval requirement.¹³⁷ While the LAO does not clarify how they established this percentage range, one reason for the 30 percent uncertainty may be the difficulty in accurately determining whether previous local bonds, as drafted, fall within the definitional ambit of Proposition 5. Nonetheless, a lower voter approval requirement would likely mean local governments propose more measures.¹³⁸

1. *Affordable Housing and Public Infrastructure Bond Measures on the November 2024 Ballot*

The following table includes local bond measures on the November 2024 ballot that fall under the “public infrastructure” or “affordable housing” definitions of Proposition 5. If Proposition 5 passes in November, these bond measures would only need 55 percent of the vote of the local jurisdiction to become effective, rather than the current two-thirds vote requirement.¹³⁹

¹³¹ Susan Shelley, *Want Property Taxes Go Up? Why California Should Reject Ballot Measure Easing Bond Votes*, CALMATTERS (Aug. 16, 2024), <https://calmatters.org/commentary/2024/08/vote-threshold-bonds-proposition-5/> (last visited Oct. 13, 2024).

¹³² *Id.*

¹³³ NOVEMBER 2024 VOTER GUIDE at 30.

¹³⁴ *Id.*

¹³⁵ Interview with Jon Coupal, *supra* note 128

¹³⁶ *Proposition 5*, LEGIS. ANALYST’S OFF., *supra* note 5.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Cal. Proposition 5 (2024).

Local Measure	Purpose	Cost
Beach Cities Health District, California, Measure BC, Heath Bond Measure (November 2024) ¹⁴⁰	Public Infrastructure	\$30,000,000 in bonds, requiring an estimated property tax levy of \$3 per \$100,000 in assessed value.
Fairfax, California, Measure J, Road Repairs Bond Measure (November 2024) ¹⁴¹	Public Infrastructure	\$18,000,000 in bonds, levying approximately \$30 per \$100,000 of assessed value
San Francisco, California, Proposition B, Community Health and Medical Facilities Bond Measure ¹⁴²	Public Infrastructure and Affordable Housing	Up to \$390,000,000 in bonds, levying approximately \$6.90 per \$100,000 of assessed valuation.
Sunnyvale, California, Measure E, Sunnyvale Main Library General Obligation Bonds (November 2024) ¹⁴³	Public Infrastructure	\$290,000,000 in bonds at legal interest rates with a maximum levy of \$27.47 per \$100,000 of assessed value
Santa Clara, California, Measure I, Public Facilities and Infrastructure Bond (November 2024) ¹⁴⁴	Public Infrastructure	\$400,000,000 in bonds, funded by levying an estimated \$19 per \$100,000 of assessed value

2. *Previous affordable housing bond measures that did not meet the 2/3 vote requirement*

The following table includes local ballot measures in three jurisdictions between 2020 and 2023 that sought to issue bonds to fund housing projects.¹⁴⁵ All three measures were defeated because they did not meet the two-thirds supermajority requirement. However, if Proposition 5 had been in effect during these elections, all three measures would have been passed.

¹⁴⁰ *Measure BC: The Beach Cities Health District Community Health & Wellness Measure*, BEACH CITIES HEALTH DIST., <https://www.bchd.org/measurebc> (last visited Oct. 13, 2024).

¹⁴¹ *Measure J*, CNTY. OF MARIN: ELECTIONS, <https://www.marincounty.org/depts/rv/election-info/november-5-2024/page-data/tabs-collection/measures/measure-tab/measure-j-tab>, (last visited Oct. 13, 2024).

¹⁴² *Proposition B*, *supra* note 83.

¹⁴³ *List of Local Measures*, CNTY. OF SANTA CLARA: REGISTRAR OF VOTERS, <https://vote.santaclaracounty.gov/list-local-measures-0> (last visited Oct. 25, 2024).

¹⁴⁴ *Id.*

¹⁴⁵ *Proposition 39*, BALLOTPEDIA, *supra* note 25.

Year	Jurisdiction	Title	Yes vote	No vote
2022	Berkeley	Measure L	59.42%	40.58%
2020	San Diego	Measure A	57.55%	42.45%
2020	East Palo Alto	Measure V	64.66%	35.34%

B. More funding for Affordable Housing and Public Infrastructure

An increase in the approval of local bonds could increase funding available for housing assistance and public infrastructure.¹⁴⁶ However, the amount of this increase is not clear and would vary across local governments.¹⁴⁷

C. Increased Property Taxes

If local voters approve more bonds, they also have more borrowing costs.¹⁴⁸ These costs are paid with higher property taxes.¹⁴⁹ Ultimately, any future bond approval and the corresponding increase in property tax would depend on decisions by local governments and voters.¹⁵⁰

IX. CAMPAIGN FINANCE

A. Proponents

There are three main ballot measure committees in support of Proposition 5: “Yes on 5, Californians for Safe Affordable Communities, sponsored by affordable housing advocates, firefighters, businesses and workers;” “NPH Action Fund (Nonprofit 501(c)(4)), Yes on Prop. 5;” and “Chan Zuckerberg Initiative Advocacy, Yes on 5 (Nonprofit 501(c)(4)).”¹⁵¹ Proponents have raised a total of \$5,393,826.20, with the NPH Action Fund Issues Committee and Chan Zuckerberg Initiative Advocacy Committee each donating \$2,500,000.¹⁵²

B. Opponents

There are also three main ballot measure committees in opposition to Proposition 5: “No on Proposition 5 - Protect Local Taxpayers, sponsored by California Homeowners, Businesses, and Taxpayers;” “Homeowners for Families, sponsored by California Association of Realtors - No on 33;” and “Protect Prop. 13, a project of the Howard Jarvis Taxpayers Association, No on Prop. 5.”¹⁵³ Opponents have raised a total of \$24,351,205.60 for the No on Prop. 5 campaign. It is

¹⁴⁶ *Proposition 5*, LEGIS. ANALYST’S OFF., *supra* note 5.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Cal-Access - Propositions and Ballot Measures*, CAL. SEC’Y OF STATE, <https://cal-access.sos.ca.gov/Campaign/Measures/Detail.aspx?id=1470592&session=2023> (last visited Sept. 25, 2024).

¹⁵² *Id.*

¹⁵³ *Id.*

important to note, however, that the California Association of Realtors, which contributed \$22,000,000 to the campaign in April 2024, is no longer opposing the measure as a result of negotiations with Assemblymember Aguiar-Curry.¹⁵⁴

X. CONCLUSION

Proposition 5 would reduce the voting margin necessary to approve local bonds and property taxes for affordable housing and public infrastructure from 66.7% to 55%.¹⁵⁵ The measure would also require that approved bonds include specific accountability requirements, including a citizens’ oversight committee and annual independent financial and performance audits.¹⁵⁶

A **YES** vote on Proposition 5 means supporting amendments to the California Constitution to allow certain local bonds and related property taxes to be approved with a 55 percent vote of the local electorate rather than the current two-thirds approval requirement.¹⁵⁷ The measure would only apply to local bonds relating to affordable housing and a host of “public infrastructure” projects, including those for water management, local hospitals and police stations, broadband networks, and parks.¹⁵⁸

A **NO** vote means opposing any changes to the California Constitution.¹⁵⁹ Accordingly, local bond measures relating to affordable housing and public infrastructure and related property taxes would still be subject to the current two-thirds supermajority vote requirement.¹⁶⁰

¹⁵⁴ *Id.*

¹⁵⁵ Cal. Proposition 5 (2024).

¹⁵⁶ *Id.*

¹⁵⁷ Cal. Proposition 5 (2024).

¹⁵⁸ *Id.*

¹⁵⁹ *Proposition 5*, LEGIS. ANALYST’S OFF., *supra* note 5.

¹⁶⁰ *Id.*