



April 19, 2018

The Honorable Mark Stone  
Chair, Assembly Judiciary Committee  
California State Assembly  
State Capitol Building, Room 3146  
Sacramento, CA 95814



**RE: AB 1912 (Rodriguez). Public Employees' Retirement: Joint Powers Agreements: Liability.**  
**Notice of Opposition (*as amended*)**

Dear Assembly Member Stone:

On behalf of the League of California Cities (LOCC), and the undersigned organizations we must respectfully oppose Assembly Bill (AB) 1912 relating to retirement liabilities of Joint Powers Authorities (JPA).

Local governments have a long history of addressing service delivery challenges with creativity, self-reliance and innovation. Unique local challenges and limited resources continue to fuel innovative efforts to obtain expertise and provide high quality services. JPAs play a vital role in promoting regional and, in some cases, statewide collaboration in addressing public needs that cannot be effectively achieved by each local government agency acting on its own. These activities include regional public improvements, local and statewide infrastructure for water and roadways, emergency communications systems, law enforcement, fire protection, emergency medical services, and public financing, among others. We are deeply concerned that JPAs will no longer be a viable tool should AB 1912 become law.

As amended, AB 1912 places substantial burdens and new unworkable requirements on local and state agencies. It applies retroactive as well as prospective joint and several liability for all retirement related obligations to any current or former member of a JPA since inception. Such obligations include active employee normal pension costs, retiree unfunded accrued liabilities (UAL), as well as both active and retiree healthcare and other post-employment retirement benefits (OPEBs). These costs cannot be overstated. According to the State Controller's Office's most recently available data, the unfunded liability of California's 130 state and local government pension plans stand at \$241.3 billion and \$125 billion for retiree healthcare costs.

Additionally, the measure would mandate that a public retirement systems, like California Public Retirement System (CalPERS), 37 Act System, or a city-based retirement systems file suit against all local or state agencies that have ever been a member of a terminated JPA for all retirement related obligations. It also prohibits any retirement system from approving a new JPA without a contract containing express joint and several liability provisions. It should be noted that this massive departure from current law creates a “slippery slope” that must be considered. Given that pension and OPEB liabilities can be a leading cost-driver for local agencies, it’s not unreasonable that lawmakers would seek to include other employer/employee related costs such as PERB findings, impasse procedures, tort liabilities, or other general debts and obligations incurred by a JPA. The provisions set forth in AB 1912 create constitutional, fiscal, and operational challenges, which would effectively eliminate the ability for local and state agencies to create or maintain the use of most JPA’s. Specifically AB 1912:

**Conflicts with Provisions of the California State Constitution:**

California’s constitutional debt limit prohibits a local government from incurring indebtedness beyond its ability to pay back the debt from revenues received in the same fiscal year absent the two-thirds voter approval (*Cal Const. art XVI, §18*). These safeguards were placed in the State’s constitution to avoid a situation in which bond issuers might compel an increase in taxes or foreclose on local government assets (*City of Redondo Beach v Taxpayers, Property Owners, Citizens & Electors (1960) 54 C2d 126, 131; County of Shasta v County of Trinity (1980) 106 CA3d 30, 35*).

AB 1912 seeks to apply retroactive joint and several liability to existing contracts and in doing so, will require local governments to incur significant debts that in many cases will exceed an agency’s annual revenue without receiving voter approval, therefore violating the sighted constitutional provision.

Further, it can be argued that retroactively incurring debts of another agency violates Article XVI, §6 of the California Constitution, which prohibits an agency from giving or lending public funds to any person, public or private entity. A JPA is an independent governmental body whereby the agency members have no legal, statutory oversight or managing authority. Liabilities from such entities retroactively applied to each member agency would constitute a gift of public funds to an individual(s) and/or public entity.

**Gives Authority to Increase the Amount Owed Through Assumption Changes and/or Investment Losses to Retirement System:**

Retirement obligations are unlike other forms of traditional debts and liabilities. Unfunded retirement liabilities are particularly volatile and can grow to insurmountable costs based on no fault of the local governments that contract with a retirement system for health and pension benefits. It is estimated that in Fiscal Year 2008-09 the CalPERS system lost approximately \$100 billion dollars in assets resulting in a gross loss of 34.75 percent of the fund’s total value. According to CalPERS (Circular Letter #200-004-17) employer contributions are projected to double by Fiscal Year 2024-25. Additionally, those costs are poised to grow even more in the short term when factoring CalPERS recent decision to modify its amortization schedule from 30 years to 20. As outlined in SEC 6. Section 20575:

*“...the board shall enter into an agreement with the governing body of a terminated agency or the governing body of the member agency in order to ensure ...(2) **related necessary adjustments in the employer’s contribution rate are made from time to time by the board prior to the date of termination to ensure that benefits are adequately funded or any other actuarially sound payment technique, including a lump-sum payment at termination is agreed to by the governing body of the terminating agency and the board”.***

AB 1912 would hold all agencies of a JPA accountable for the investment shortfalls, future discount rate reductions, and other assumptions changes made by the retirement agencies even if the agencies are able to pay the lump sum amount of the current unfunded liability from the JPA. They would also be on the hook for decisions made after a local government left a JPA. As noted in the Assembly Committee on Public Employees, Retirement, and Social Security (Assembly PERS) Analysis, retirement agencies already have this authority as a provision of the agreement made with the a public agency. However, there is a significant difference between a retirement agency having that discretionary authority as a condition of the agreement when both parties *mutually agree* upon such provisions at the time they entered the contract versus, (as what is proposed in Ab 1912) granting that same authority to the retirement agency for debts and liabilities from employees *that at no time* were employees of said public agency.

**Gives Retirement System Agency Authority to Apportion “Joint and Several” Liability:**

As stated in SEC 6 subsection (d), AB 1912 would grant exclusive authority to the public retirement system agency to unilaterally assign liabilities to all current and former agencies of a JPA *“in an equitable manner.”* As an initial matter, “joint and several” liability is a legal term of art that allows a plaintiff to sue for and recover the full amount of recoverable damages from any defendant, regardless of a particular defendant’s percentage share of fault. If the legislative intent is to create “several” liability that is apportioned among JPA members, this should be clarified so that individual JPA member are not held liable for the full amount.

JPA’s have been in existence in California for nearly 100 years with state and local agencies. Some JPAs have as many as 500 members entering and exiting as service demands shift and evolve. It would be virtually impossible for the JPA’s governmental body, let alone a retirement system, to retroactively assign “equitable” retirement specific liabilities to potentially hundreds of agencies. This is especially concerning when you factor in the various assumption changes outlined in the section above. The broad and ambiguous direction demonstrates a fundamental misunderstanding of the formation, management, and purpose of a JPA which will inevitably lead to a perpetual cycle of protracted and costly litigation contesting the retirement agency’s discretion of proportional liability.

Even if the bill is amended as stated in the Assembly PERS Committee analysis, the difficulty of assigning “equitable” liability amongst current and former JPA members will remain. Additionally, if the parties can’t agree, which is likely, the retirement system agency still retains the right to unilaterally assign the liabilities.

**Creates Funding and Operational Impairments:**

The Governmental Accounting Standards Board (GASB) issued regulations (GASB 68, 2012 and 76, 2015) that require each state and local agency to report all financial liabilities associated with public pension and OPEB costs. These reporting standards play a vital role in assessing the fiscal health and viability of an agency. Incurring retroactive debt would require each originating agency of a JPA to report these liabilities as debts, impacting an agency's net financial position. A drastic spike in liability could contribute to the downgrading of an agency's credit rating, which in turn would make issuing and servicing future bonds more costly through higher interest costs and additional required insurance.

JPA's are tools state and local government agencies use to address service demands and infrastructure needs in a cost effective manner. Removing this tool makes it that much more problematic to address statewide critical issues such as housing, transportation, water, air quality, workforce development, public safety, and much more. While the intended goals of your measure are laudable, for the reasons stated above we must strongly oppose Assembly Bill 1912. Please do not hesitate to contact us with any questions on our position. To reach us, please contact Dane Hutchings (LOCC) 916-658-8200, Dorothy Johnson (CSAC) at 916-650-8133, Dillon Gibbons (CSDA) at 916-442-7887 Jolena Voorhis at 916-327-7531, Faith Lane Borges at 916-441-5050 or Jean Kinney Hurst (Riverside County) at 916-245-3445.

Sincerely,



Dane Hutchings  
Legislative Representative



Dorothy Johnson  
Legislative Representative



Jean Kinney Hurst  
Legislative Representative



Dillon Gibbons  
Senior Legislative Representative



Jolena Voorhis  
Executive Director



Faith Lane Borges  
Legislative Advocate

cc: Members, Assembly Judiciary Committee  
Thomas Clark, Staff Counsel, Assembly Judiciary Committee  
Joshua White, Consultant, Republican Caucus