



EXPEDITED CITY COUNCIL ACTION REQUEST

Department(s): CMO	Date: 6/13/18	Coordination: City Attorney's Office, Office of Employee Relations	Dept. Approval: /s/ Lee Wilcox
			CMO Approval:

SUBJECT: AB 1912 (Rodriguez): Joint Powers Agreements – Public Employee Retirement Liability

RECOMMENDED POSITION: Oppose

RECOMMENDED ACTION:

1. Pursuant to the City's streamlined bill process for responding quickly to legislative proposals, re-affirm an oppose position for AB 1912 (Rodriguez).
2. Recommend a one-week turnaround to the City Council so that the City's legislative representative can continue to advocate the City's opposition to AB 1912.

BILL SYNOPSIS:

Under State law, public agencies may, by contract, form a separate legal entity known as a joint powers authority (JPA). JPAs are formed to provide various public services. The State JPA law provides that the debts, liabilities, and obligations of the agency shall be debts, liabilities, and obligations of the parties to the agreement, unless the agreement specifies otherwise. For JPAs that participate in or contract with a public retirement system (including the California Public Employees' Retirement System (CalPERS), independent retirement plans and county retirement systems) to provide retirement benefits to the JPA employees, AB 1912 would require member agencies of that JPA to mutually agree on how to apportion the JPA's retirement obligations.

If the member agencies are not able to come to a mutual agreement, then the Board of the applicable public retirement system would distribute the retirement liability amongst member agencies based on the share of service received from the JPA or the population of each member agency. Former members of a JPA are still liable for retirement benefits of the JPA employees.

AB 1912 also includes provisions specific to CalPERS:

- Starting on January 1, 2019, CalPERS cannot contract with any JPA unless all the JPA members are jointly and severally liable for all the JPA's retirement obligations.
- For JPAs that enter into an agreement with CalPERS to terminate its participation in CalPERS, the JPA's liability for the unfunded benefits is extended to all of the JPA members.
- Requires CalPERS to enter into a terminating agency agreement with a JPA or any of the JPA's members, unless CalPERS determines it would not be in its best interest. If neither the JPA nor any of its members enter into the terminating agency agreement, then the member agencies assume the JPA's obligations on their retirement systems.
- Prior to reducing benefits of an employee of a terminating JPA, CalPERS must consider and exercise all options, including suing the JPA and its member agencies to pay the JPA's pension obligations. The bill provides that CalPERS is entitled to recover its attorney fees and costs.

IMPACTS TO CITY OF SAN JOSE:

AB 1912 was introduced in response to a case in LA where a JPA - LA Works – went out of business. CalPERS determined that there was not enough money in the JPA’s account to honor the retirement obligations for LA Works employees. Those employees took roughly a 60% cut in their retirement pensions and benefits.

The City is a member of many JPAs. At this point, staff has not identified every JPA of which the City is a member that participates in a public retirement system. Staff has obtained a list of JPAs that participate in CalPERS. The City is a member or associate member of two of these JPAs: the Association for Bay Area Governments (ABAG) and the Western Riverside Council of Governments (WRCOG). The bylaws for ABAG and the JPA agreements for WRCOG include the provision that the JPA members are not liable for the debts of the JPA.

ABAG is a regional planning agency for the Bay Area that among other things, spearheads the Regional Housing Needs Allocation (RHNA) process to determine how many affordable homes each jurisdiction in the Bay Area have to plan for. As of June 30, 2017, ABAG’s pension and retiree health care liability was \$15 million.

The City is also an associate member in WRCOG, which administers a Residential Property Assessed Clean Energy (PACE) program for San José residents. The PACE program provides financing for green programs like solar and water conservation. As of June 30, 2017, WRCOG’s pension liability was \$2.3 million and as of June 30, 2016, its unfunded actuarial liability (UAAL) for retiree health care benefits (OPEB) was \$659,579. If AB 1912 were to pass, the City’s previous agreements with ABAG and WRCOG would be superseded by state law. It is possible that the City is a member of other JPAs that participate in a public retirement system. For each of these JPAs, the City would have to mutually agree with the other JPA members on how to divide pension and retiree benefit obligations. If the City were not able to reach an agreement with the other member agencies, then the applicable public retirement board would be able to assign obligations among the agencies.

There are concerns on how the public retirement system board assigns obligations when the member agencies cannot agree. It would be hard to measure the proportion of service we get from these JPAs and their associated value. For example, how would San José’s benefits from participating in ABAG compared to other ABAG members be quantified? If the board assigns obligations by population, San José, as the largest city in the Bay Area and the third largest city in the state, will often bear a larger share of the JPA’s retirement obligations.

The City has been diligently working to reduce its own pension obligations. However, an unfunded pension liability remains. Assuming a significant portion of the pension obligation for each JPA to which the City belongs would substantially increase the City’s financial obligations.

POLICY ALIGNMENT:

The recommendation to oppose AB 1912 aligns with the Council adopted 2018 Legislative Guiding Principles: Protect and Increase Local Funding; No Unfunded Mandates.

SUPPORTERS/OPPONENTS:

Support

Association of California State Supervisors
California Association of Professional Scientists
California State Retirees
LIUNA Local 792
Orange County Professional Firefighters Association, IAFF Local 3631
Professional Engineers in California Government
Retired Public Employees Association

Opposition

California Association of Joint Powers Authority
California Contract Cities Association
California Special Districts Association
California State Association of Counties
City of Glendora
City of La Canada Flintridge
County of Riverside
League of California Cities*
Urban Counties of California

*The League's opposition letter identifies more than 80 cities and other public agencies opposed to AB 1912.

STATUS OF BILL:

This bill is scheduled to be heard in the Senate Public Employment and Retirement Committee on June 25, 2018 and the Senate Judiciary Committee on June 26, 2018.

FOR QUESTIONS CONTACT:

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