

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: May 15, 2018

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No.: 18-0002-S54
Assignment No.: 18-05-0437

SUBJECT: Resolution (Wesson – Englander) in opposition to AB 1912 (Rodriguez)

CLA RECOMMENDATION: Adopt Resolution (Wesson – Englander) to include in the City’s 2017-2018 State Legislative Program opposition to AB 1912, which would prohibit the California Public Employees’ Retirement System (CalPERS) Board of Administration from contracting with any joint powers authority (JPA) unless the JPA’s member agencies are jointly and severally liable for all of the JPA’s obligations to CalPERS.

SUMMARY

Under existing law, government agencies can form a public agency known as a joint powers authority (JPA) to exercise powers common to the member agencies. AB 1912 (Rodriguez), as amended, would require that the parties to a joint powers agreement (former and current) mutually agree to the apportionment of retirement obligations if the JPA contracts with a public retirement system. The bill would prohibit the California Public Employees’ Retirement System (CalPERS) Board of Administration from contracting with any JPA unless the JPA’s member agencies are jointly and severally liable for all of the JPA’s obligation to CalPERS.

Per the bill, a terminating JPA or its member agencies can enter into an agreement with the CalPERS board to ensure final compensation of benefits are calculated and adequately funded. Whereas a terminated JPA with an agreement with the CalPERS board is liable for any retirement funding deficits and the CalPERS board holds a lien on the terminated JPA’s assets for retirement obligations and costs of collection, AB 1912 expands this liability and lien to the member agencies. Moreover, if either the terminating JPA or the member agencies fail to enter into such an agreement with the CalPERS board, then the member agencies will assume the retirement obligations of the terminated JPA. Finally, AB 1912 would require that the CalPERS board consider and exhaust all options in taking action against member agencies of a terminated JPA for retirement obligations prior to imposing reductions on a terminated plan.

According to Resolution (Wesson – Englander), introduced on May 1, 2018, AB 1912 would eliminate parties’ to a joint powers agreement ability to separately contract for or assume responsibility for specific debts, liabilities, or obligations of the JPA. Further, it would require that member agencies to a JPA be held jointly and severally liable for any obligations to CalPERS, preventing them from determining liability otherwise. The Resolution seeks an official position of the City to oppose AB 1912.

BACKGROUND

Under existing law, it is assumed that the debts, liabilities, or obligations of a JPA will become the debts, liabilities, and obligations of the JPA's member agencies unless the joint powers agreement "specifies otherwise." It is, therefore, common for joint powers agreements to "specify otherwise" in determining the liabilities of a JPA and its member agencies. Thus, if a JPA is terminated, its debts and obligations do not necessarily become the debts and obligations of its member agencies. While under current law a terminating JPA with retirement obligations to CalPERS may request an agreement with the CalPERS board to determine the funding of any remaining retirement obligations, the CalPERS board is not required to consider such requests from member agencies separately.

As it was introduced, AB 1912 would have made all current and former member agencies of a JPA jointly and severally liable for a JPA's retirement obligations; however, this language has been amended to only require that current and former members mutually agree on the apportionment of the agency's retirement obligations. AB 1912 also initially included language requiring the CalPERS board to bring civil action against all member agencies of terminated JPAs to compel payment of any remaining retirement obligations, but this requirement of civil action has been removed. All references to "community choice aggregators" have also been removed from the bill in its current form.

The City is a member of a number of JPAs, many of which contract with CalPERS including the Los Angeles Memorial Coliseum Commission, the Alameda Corridor Transportation Authority, the Southern California Association of Governments, and the League of California Cities. AB 1912 would discourage public agencies from including pension benefits for JPA employees in future agreements.

The author of AB 1912 has stated this bill was motivated due to an incident in LA County where the East San Gabriel Valley Human Services Consortium, a JPA formed by the cities of Azusa, Covina, Glendora, and West Covina, dissolved resulting in a 63 percent reduction of over 170 former employees' pension benefits. CalPERS attempted to collect money from the terminated JPA and from the member agencies, but ultimately reduced the pension benefits of the employees after failing to collect.

Supporters of AB 1912 include the Association of California State Supervisors, California State Retirees, and the Retired Public Employees Association. The author argues that the bill is intended to prevent what happened with the East San Gabriel Valley Human Services Consortium from happening again. According to the author, "approximately 170 JPAs currently [are] contracting with CalPERS covering approximately 25,000 employees and retirees that could see a similar occurrence if the JPA becomes financially distressed or insolvent."

The California Association of Joint Powers Authority, the California Contract Cities Association, the California Special Districts Association, the California State Association of Counties, and the League of California Cities all oppose AB 1912. The League of California Cities argues AB 1912 "places substantial burdens and new unworkable requirements on local and state agencies by applying retroactive as well as prospective joint and several liability for all retirement related obligations." The League of California Cities also argues that AB 1912 violates the California

constitution provisions prohibiting a public agency from incurring debt beyond its ability to pay from revenues received in the same fiscal year without approval of a two-thirds vote by its voters by imposing the unfunded liability of government pension plans and retiree healthcare costs onto member agencies of JPAs.

BILL STATUS

1/23/18	Read first time.
3/15/18	Referred to Com. on P.E., R., & S.S. and JUD.
3/19/18	Amended.
3/20/18	Re-referred to Com. on P.E., R., & S.S.
4/18/18	Amended. Passed Com. on P.E., R., & S.S. (5-0). Re-referred to Com. on JUD.
4/19/18	Amended.
4/23/18	Re-referred to Com. on JUD.
4/24/18	Passed Com. on JUD (7-2). Re-referred to Com. on APPR.
5/09/18	Amended.
5/10/18	Re-referred to Com. on APPR.



Matthew Shade
Analyst

Attachments: 1. Resolution (Wesson – Englander)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the Joint Exercise of Powers Act authorizes two or more public agencies to jointly exercise any common power through a Joint Powers Agreement (JPA); and

WHEREAS, if the agency, formed pursuant to the JPA, is a public entity, commission, or board, the debts, liabilities, and obligations of the agency are the debts, liabilities and obligations of the parties to the agreement, unless otherwise specified under the JPA; and


WHEREAS, AB 1912 (Rodriguez) would eliminate parties to a JPA's authorization to separately contract for, or assume responsibilities for, specific debts, liabilities, or obligations of the agency, and would specify that if an agency to a JPA participates in a public retirement system, all parties, both current and former to the agreement, would be jointly and severally liable for all obligations to the retirement system, and would eliminate the authority of those parties to agree otherwise with respect to the retirement liabilities of the agency; and

WHEREAS, AB 1912 would prohibit the California Public Employees' Retirement System (CalPERS) Board of Administration from contracting with any public agency formed under the Joint Exercise of Powers Act for benefits provisions unless all the parties to the JPA are jointly and severally liable for all of the public agency's obligations to the public retirement system; and

WHEREAS, AB 1912 would require that if the governing bodies of a terminating agency formed under a JPA or the governing bodies of its member agencies do not enter into an agreement with CalPERS to terminate its membership in the Public Employees' Retirement System, the member agencies would assume the retirement obligations for their retirement systems.

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017-18 State Legislative Program OPPOSITION to AB 1912 (Rodriguez) which would hold all current and former parties of a public agency formed under a Joint Powers Agreement jointly and severally liable for all obligations to the public retirement system.

PRESENTED BY:



HERB J. WESSON, JR.

Councilmember, 10th District

MAY 01 2018



SECONDED BY:



ORIGINAL