

ALBANY CALIFORNIA



CITY OF ALBANY
1000 SAN PABLO AVENUE
ALBANY, CA 94706
www.AlbanyCA.org

April 16, 2018

The Honorable Freddie Rodriguez
Chair, Assembly Public Employees, Retirement & Social Security
State Capitol Building, Room 2188
Sacramento, CA 95814
Via Fax: 916-319-2152

RE: AB 1912 (Rodriguez). Public Employees' Retirement: Joint Powers Agreements: Liability.

Notice of Opposition (*as amended 03/19/2018*)

Dear Assembly Member Rodriguez:

The City of Albany must respectfully oppose your Assembly Bill (AB) 1912 relating to retirement liabilities of Joint Powers Authorities (JPA).

JPA's play a vital role in addressing public needs that cannot be effectively achieved by a local agency acting on its own. Our city faces unique local challenges and a limited budget, but we continue to innovate in order to obtain expertise and provide high quality services through the use of JPAs.

The City of Albany is 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 cities by applying retroactive as well as prospective joint and several liability for all retirement related obligations to any current or former member of a JPA throughout its existence. 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 (OPEB). According to the State Controller's Office 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. These costs and their impact on local governments cannot be overstated.

Additionally, the measure would mandate that a public retirement agency file suit against all agencies that have ever been a member of a terminated JPA for all retirement related obligations and prohibits any retirement system from approving a new JPA without express joint and several liability provisions. The provisions in AB 1912 create constitutional, fiscal and operational challenges, which would effectively eliminate the ability for use to create or maintain the use of most JPA's.

Specifically AB 1912:

Conflicts with Provisions of the California State Constitution:

The California constitutional debt limit prohibits an agency from incurring indebtedness beyond the agency's ability to pay the debt back from revenues received in the same fiscal year without the approval of two-thirds of its voters (*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*](#)).

By applying retroactive joint and several liability to existing contracts, we have strong concerns that Albany will incur significant debts that may exceed our annual revenue without receiving voter approval—thus violating the sighted 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 City of Albany has 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 Retirement Agency Authority to Increase the Amount Owed Through Assumption Changes and/or Investment Losses:

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 agencies who contract with a retirement system for health and pension benefits. It is estimated that in fiscal year 2008-2009 the California Public Employee Retirement System (CalPERS) 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 (CL#200-004-17) employer contributions are projected to double by fiscal year 24-25. Additionally, those numbers 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.

The measure 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.

Gives Exclusive Authority to the Retirement Agency to Assign Liability:

As stated in SEC 6 subsection (d), AB 1912 would grant exclusive authority to the public retirement agency to unilaterally assign liabilities to all current and former agencies of a JPA *"in an equitable manner"*. JPA's have been in existence in California for nearly 100 years with state and local agencies—some as many as 500 entering and exiting these governmental bodies as service demands shift and evolve. It would be virtually impossible for the JPA's governmental body, let alone a retirement agency, to retroactively assign "equitable" retirement specific liabilities to potentially hundreds of agencies. This is especially concerning when you factor in the various assumptions changes outlined in the section above.

This vague 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.

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 liabilities. 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.

JPs 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 the City of Albany must strongly Oppose Assembly Bill 1912.

Sincerely,



Peggy McQuaid

Mayor

Albany

cc: Assembly Member Tony Thurmond, assemblymember.thurmond@assemblyca.gov
Senator Nancy Skinner, VIA FAX: (916) 327-1997
Sam Caygill, East Bay Division, League of California Cities, scaygill@cacities.org
Michael Bolden, Chief Consultant, Assembly Committee Public Employees,
Retirement, and Social Security; michael.bolden@asm.ca.gov
Joshua White, Consultant, Assembly Republican Caucus; joshua.white@asm.ca.gov
Meg Desmond, League of California Cities, CityLetters@cacities.org