

## Proposed Bill to Make Member Agencies Liable for JPA Pension Obligations

The California Legislature is considering legislation that would, if enacted, prohibit public agencies that form a Joint Powers Authority (JPA) from contracting out of liability for the JPA's pension obligations.

Backed by CalPERS, AB 1912 was introduced early this year partly in response to drastic CalPERS pension cuts for former employees of LA Works, a dissolved job-training JPA. Those cuts were needed because LA Works couldn't meet its CalPERS pension obligations and its member cities didn't share liability for those obligations.

Specifically, AB 1912 would, if enacted:

- Prohibit JPA member agencies from contracting out of liability for the JPA's pension obligations under *any* public retirement system, including independent retirement systems, not just CalPERS. But on May 9, 2018, the Assembly significantly amended the bill to remove a joint and several liability requirement that would have otherwise made each member agency liable for all of the JPA's pension obligations. Instead, the amended bill would only require member agencies to mutually agree to apportion the total liability among themselves. If the member agencies can't agree, the amended bill would require the retirement system board to apportion liability based on each member agency's population or share of the JPA's services. But this provision would still apply retroactively to all member agencies, both current and former, to the JPA agreement.
- Start the running of any statute of limitations for a claim against a JPA or member agency based on a judgment against them for breach of the JPA's pension obligations to the retirement system when the judgment is rendered.
- Prohibit CalPERS from contracting with any JPA unless all of its member agencies are jointly and severally liable for its CalPERS pension obligations. Notably, on May 9, 2018, the Assembly amended the bill to replace a provision that would have made this prohibition effective retroactively with a January 1, 2019, effective date, eliminating the need to add joint and several liability provisions to existing noncompliant CalPERS-contracting JPA agreements. Under the amended bill, however, CalPERS could still retroactively require



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member agencies to agree to apportion the total liability for the JPA's pension obligations among themselves or mandate apportionment as described above if they can't agree.

- Extend a CalPERS-terminating JPA's liability for its unfunded CalPERS benefits and the related CalPERS lien on the JPA's assets under current law to all of the JPA's member agencies. Current law permits a CalPERS-contracting agency to terminate its participation in CalPERS, but only makes the terminating agency, itself, liable for any benefit underfunding. Current law also gives CalPERS a lien for that liability, but only on the assets of the terminating agency.
- Generally require CalPERS to enter into a terminating agency agreement with a CalPERS-terminating JPA or any of its member agencies upon their request, unless it determines that doing so is not in the system's best interest. Further, if neither the JPA nor any of its member agencies enter into such an agreement, the member agencies would assume the JPA's retirement obligations on their retirement systems. Current law only requires CalPERS to enter into a terminating agency agreement with the CalPERS-terminating agency, itself, upon that agency's request, unless it determines that doing so is not in the system's best interest. The agreement is to ensure that (1) the terminating agency's final compensation calculations aren't affected by the termination, and (2) sufficient adjustments are made to the terminating agency's contribution rates to assure that benefits are adequately funded.
- Eliminate a provision under current law permitting CalPERS to elect not to reduce, or impose a lesser reduction on, benefits under a terminating plan, if it has (1) made all reasonable efforts to collect the amount necessary to fully fund the plan's liabilities, and (2) found that not reducing benefits or reducing them less won't impact the terminated agency pool's actuarial soundness. Instead, the bill would require CalPERS to consider and exhaust all options and take all necessary actions, including suing a CalPERS-terminating JPA's member agencies to compel payment of the JPA's pension obligations, before reducing member benefits to satisfy the terminating agency's pension obligations as permitted under existing law. The bill would also provide that CalPERS is entitled to recover reasonable attorney's fees in addition to other costs.

Notably, CalPERS appears to be more concerned with retroactive rather than future application of these JPA financial liability requirements. This is because CalPERS can already refuse to contract with an employer if neither the state nor a political subdivision is liable for its debts. The Public Agency Applicant Questionnaire – implemented by CalPERS in 2013 in response to IRS issuance of the [Advance Notice of Proposed Rulemaking Regarding the Definition of a Governmental Plan](#) in 2011 – asks whether the state, county or city is liable for the applicant's debts.

Members of JPAs that participate in a retirement system should consider reviewing their JPA agreements now to determine how this new legislation could affect the allocation of pension liabilities under those agreements should it become law. For questions about the new legislation, please contact the Hanson Bridgett Employee Benefits Group.

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