

Compromise JPA Pension Liability Bill Ready for Governor's Signature

As we reported in our [May 31, 2018 Alert](#), the California Legislature has been considering legislation to prevent joint powers authority (JPA) member agencies from contracting out of liability for the JPA's pension obligations.

Despite significant Assembly amendments we reported in May, AB 1912 still faced stiff opposition from a coalition of public agencies and public agency associations over retroactivity of its apportionment scheme and prospective joint several liability for members of future CalPERS-contracting JPAs.

But AB 1912's sponsor, Assemblyman Freddie Rodriguez (D-Pomona), reached a compromise with opposition groups to secure the bill's passage by both houses (the Senate on August 30 and the Assembly on August 31) after a series of Senate amendments (June 20 and July 3, August 17 and August 24).

Together, those amendments:

- Replace joint and several liability of a JPA's member agencies for its pension obligations (including prospectively for new CalPERS-contracting agencies) with a more equitable apportionment scheme. Under the final bill, JPA member agencies must still mutually agree to apportion 100% of that liability among themselves (may include a former JPA member). If they cannot agree, the retirement system board must apportion that liability among them proportionately based on their respective (1) shares of the JPA's services, or (2) populations.
- Make that JPA pension liability apportionment scheme contingent upon the JPA's notice of termination, dissolution or cessation of operations. Under the final bill, the requirement that JPA member agencies mutually agree to apportion 100% of the JPA's pension liabilities among themselves isn't triggered until right before the JPA's governing body decides to dissolve or cease operations or, in the case of a CalPERS-contracting JPA, the JPA files a notice of termination with CalPERS.
- Clarify that the JPA pension liability apportionment requirement doesn't apply to a JPA that dissolved before January 1, 2019. But under the final bill, that requirement still applies retroactively to JPA agreements in existence on or



by Edward M. Bernard

before January 1, 2019, as well as prospectively to new JPA agreements on or after that date with CalPERS or another California public retirement system.

- Prohibit a JPA from voluntarily terminating its CalPERS contract or dissolving or ceasing operations until its member agencies have mutually agreed to apportion 100% of its pension liabilities among themselves, and it has furnished a copy of that agreement to the retirement system board.
- Give a JPA 60 days after a CalPERS notice of an involuntary termination to file an agreement with CalPERS, signed by all of its member agencies, that apportions 100% of its pension liabilities among those agencies. Otherwise, CalPERS will decide how to apportion those liabilities.
- Give a JPA member agency 30 days to appeal the retirement system board's pension liability allocation. In that case, the appeal will be referred to, and decided by, an arbitrator, who must decide the apportionment within 60 days of referral, and whose decision will be final and binding. Arbitration costs will be shared equally by the JPA member agencies identified in the arbitration decision.
- Require CalPERS to, *consistent with its fiduciary duties*, consider and exhaust all options and take all necessary actions, including whether to bring a civil action against a terminating JPA's member agencies to compel payment of its retirement obligations.

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

For more information, please contact:

Edward M. Bernard, Partner
415-995-5807
ebernard@hansonbridgett.com

Edward M. Bernard, Partner
415-995-5807
ebernard@hansonbridgett.com