

ATTACHMENT B

BILL: ASSEMBLY BILL 1912
AS AMENDED MAY 9, 2018

AUTHOR: ASSEMBLYMEMBER FREDDIE RODRIGUEZ (D- POMONA)

SUBJECT: PUBLIC EMPLOYEES' RETIREMENT: JOINT POWERS
AGREEMENTS: LIABILITY

STATUS: SENATE COMMITTEE ON PUBLIC EMPLOYMENT AND
RETIREMENT
HEARING SCHEDULED: JUNE 11, 2018

ACTION: OPPOSE UNLESS AMENDED

RECOMMENDATION

Staff recommends that the Board of Directors adopt an OPPOSE UNLESS AMENDED position on Assembly Bill 1912 (Rodriguez).

ISSUE

The Metro Board of Directors recently voted to Oppose AB 1912, which would require member agencies of a JPA to be liable for the retirement obligations of the JPA. The bill was recently amended on May 9, 2018. The amended language of the bill still contains provisions of concern to Metro. Staff recommends that the Board modify its position to OPPOSE UNLESS AMENDED and that we seek an amendment to eliminate the retroactivity of the bill.

Specifically, this bill:

- Amends provisions in existing law by removing the ability of an agency that is party to a JPA agreement to not be responsible for the pension debts, liabilities, and obligations of the JPA.
- Requires the member agencies of a JPA to be responsible for and mutually agree as to the apportionment of the JPA's pension obligations if the JPA contracts with CalPERS, or any other public employee retirement system for administration of its retirement benefits.
- Requires current and new JPA contracts with CalPERS to include{sentence incomplete}. Existing contracts must be reopened to include such provisions.
- Prohibits CalPERS from contracting with a JPA, unless all parties to the agreement establishing the JPA are jointly and severally liable for the JPA's pension obligations.
- Requires CalPERS to sue the member agencies of a JPA for recovery of its pension obligations owed to the system if the JPA's contract with CalPERS is terminated.
- Provides that CalPERS shall have a lien on the assets of a terminated contracting JPA, subject only to a prior lien for wages equal to the actuarially

determined deficit for funding for the employee's earned benefits. The assets must be available to pay actual costs, including attorney's fees expended for collection of the lien.

- Permits JPA member agencies or the JPA itself to enter into an agreement with CalPERS to ensure the proper calculation of benefits such that employees and retirees of the terminating agency remain whole, and allows for lump-sum payments at termination, and permits CalPERS to refuse to enter into an agreement if it determines that it is not in the best interests of the retirement system.
- Creates a two-year window in which a JPA must notify CalPERS of its intention to enter into such an agreement before the JPA dissolves. The notification would grant CalPERS sufficient time to ensure that the proposed arrangements are in the best interests of the system. Failure to notify CalPERS within the two-year window would result in the JPA's member agencies adding the beneficiaries to their own retirement system.
- Removes language in existing law regarding CalPERS' discretion in reducing retirement benefits related to terminating agencies.

DISCUSSION

Assemblymember Freddie Rodriguez (D-Pomona) has recently amended AB 1912, which would significantly alter the Public Utilities Code and Government Code related to Joint Powers Authorities (JPAs) and their associated liabilities and agreements. The bill specifically applies to member agencies of JPAs that contract with the California Public Employee Retirement System (CalPERS) to provide post-employment retirement benefits to their employees. Staff finds this bill to be very problematic – in that it assigns liabilities for past, current and future debt and pension obligations to member agencies of JPAs.

Metro is currently a member agency of the Southern California Regional Rail Authority (Metrolink), LOSSAN Rail Corridor Agency, as well as a number of other JPAs. The Metrolink Joint Powers Agreement (JPA) currently specifies that “[t]he debts, liabilities, and obligations of [Metrolink] shall not be the debts, liabilities and obligations of the member agencies.” This bill would completely invalidate that provision. The bill, as proposed would retroactively apply to agreements that were executed prior to the enactment of the legislation. Assuming the liability of the various JPA agreements would substantially increase Metro's liabilities related to pension costs, indemnities and general liabilities.

The bill was recently amended on May 9, 2018, to clarify language in the bill relative to joint and several liability; language that appeared to be conflicting. The bill now requires that member agencies of a JPA must mutually agree as to the apportionment of the pension liability. Another sentence in the bill which clearly stated the bill was retroactive was struck from the bill however, other language in the bill would still make the bill apply retroactively and that issue continues to be of significant concern to staff. Staff proposes that Metro work to include additional amendments to the legislation to remove any reference to retroactivity.

This bill as currently drafted would impede Metro's ability to sell debt, could potentially affect Metro's credit rating and presents a risk to existing debt and future bond sales. Staff is concerned that the language giving CalPERS a "lien on the assets of all parties to the terminating contracting agency, subject only to a prior lien for wages," may subject us to legal action from existing bondholders if this provision is applied retroactively. If the bill were prospective then we believe the risk from the placement of a lien would be minimized because we would have the ability to address the pension costs at the formation of the JPA and would subsequently provide notice of the obligation to future bondholders.

This bill fundamentally changes the structure of JPAs and could represent significant new costs that will be borne by Metro. This has the potential to severely impact Metro's budget and the services we provide. This bill would require that the Board of Directors re-negotiate its Joint Powers Agreements to include a provision that all the member agencies to the Agreement are jointly and severally liable for the JPA's pension obligations.

Staff recommends that the Board adopt an OPPOSE UNLESS AMENDED position on the measure AB 1912 (Rodriguez).

DETERMINATION OF SAFETY IMPACT

There is no determined safety impact due to the enactment of the proposed legislation.

FINANCIAL IMPACT

If the legislation is approved, unfunded pension and general liabilities transferred from dissolved JPAs could impact Metro's budget tremendously.

ALTERNATIVES CONSIDERED

Staff has determined that the Board could opt to take no action on this item; however, without a strong Board adopted position on the proposed legislation, Metro, as a member of several JPAs could be greatly impacted.

NEXT STEPS

Should the Board decide to adopt an OPPOSE UNLESS AMENDED position on this measure; staff will communicate the Board's position to the author and work to seek further amendments to the legislation. Staff will continue to keep the Board informed as this issue is addressed throughout the legislative session.