

ATTACHMENT B

BILL: ASSEMBLY BILL 1912
AS AMENDED APRIL 19, 2018

AUTHOR: ASSEMBLYMEMBER FREDDIE RODRIGUEZ (D- POMONA)

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

STATUS: REFERRED TO ASSEMBLY JUDICIARY COMMITTEE
HEARING SCHEDULED: APRIL 24, 2018
PASSED 5-0 BY ASSEMBLY PUBLIC EMPLOYEES,
RETIREMENT AND SOCIAL SECURITY COMMITTEE

ACTION: OPPOSE

RECOMMENDATION

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

ISSUE

Assemblymember Freddie Rodriguez (D-Pomona) has recently amended Assembly Bill 1912, which would substantially amend sections of the Government Code and Public Utilities Code relating to public agencies, general obligations and pension liability. The bill would require changes to agencies Joint Powers Agreements to make the member agencies be jointly and severally liable for the retirement obligations of the JPA.

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 jointly and severally liable for 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 joint and several liability provisions. 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.
- Makes changes in the Public Utilities Code related to JPA's liability for pension obligations.

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.

LA 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.

As amended on March 19, 2018, Section 2 of AB 1912 would shift all of a JPAs debts, liabilities, and obligations to its member agencies. However, in the Public Employees, Retirement and Social Security Committee which heard the bill on April 18, 2018, the author agreed to an amendment that would limit the bill's provisions to only require that the pension obligations of a JPA are the responsibility of its member agencies. The bill however, continues to apply retroactively, which is of significant concern to staff.

This bill would impede Metro's ability to sell debt, could potentially affect Metro's credit rating and presents a risk to existing and future bond sales. Also pending review by bond counsel 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.

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 position on the measure AB 1912 (Rodriguez) as amended.

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. The estimated financial impact has yet to be determined.

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 JPA's could be greatly impacted.

NEXT STEPS

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