

JPA Member Agencies May Be Liable for JPA Pension Obligations Under New Law

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ATTORNEYS

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Public agency members of Joint Powers Authorities ("JPAs") that contract with a public retirement system (including an independent retirement plan) that dissolve the JPA on or after January 1, 2019 will be required to assume a portion of the retirement obligations of the JPA under a new law recently signed by Governor Brown. AB 1912 applies both: 1) retroactively to current or former public agency members of JPAs that have such agreements in existence with a public retirement system board on or before January 1, 2019; and 2) prospectively to all new agreements between a JPA and a public retirement system entered into on or after January 1, 2019. AB 1912 does not apply to JPAs dissolved prior to January 1, 2019.

The Joint Exercise of Powers Act enables two or more public agencies to create a JPA, by agreement, to jointly exercise a common power and to form a separate legal entity. JPAs may participate in or enter into contracts with public retirement systems, such as the Public Employees' Retirement System ("PERS"), to provide defined pension benefits to public employees of the JPA.

Prior to AB 1912, if a public agency agreed to participate in a JPA, the debts, liabilities, and obligations of the JPA would be the debts, liabilities, and obligations of the public agency members of the JPA, unless otherwise specified in the agreement. Many JPA agreements specify that the debts, liabilities, and obligations—including public retirement system obligations—of the JPA are not the debts, liabilities, and obligations of the public agency members of the JPA.

Under AB 1912, if a JPA contracts with a public retirement system and dissolves on or after January 1, 2019, the public agency members of the JPA will be required to assume the retirement liabilities of the JPA, and will no longer be able to agree to otherwise exclude assuming a share of those liabilities. Before a JPA can terminate a contract with a public retirement system, the public agency members must mutually agree to the apportionment of the JPA's retirement obligations that each public agency member must assume. If the public agency members cannot agree on the apportionment, the public retirement system board will apportion the liability of the public agency members before

termination of the contract is allowed. In both scenarios, the apportionment to the public agency members must equal 100 percent of the JPA's retirement liability.

As a result of this change in the law, if a public agency is a current or former member of a JPA that has contracted with a public retirement system, or plans to contract with a public retirement system in 2019 or beyond, and the JPA later dissolves on or after January 1, 2019, the public agency will be required to assume an apportionment of the JPA's retirement obligations.

Public agencies that are current or former members of a JPA that has participated in a public retirement system should prepare for the potential increased retirement obligations that the public agency will incur if the JPA dissolves on or after January 1, 2019, and should consult with legal counsel regarding the consequences of this increased obligation or the possible need to dissolve a JPA prior to January 1, 2019.

If you have any questions about AB 1912 or a Joint Powers Authority, please contact **Candice Lee** or any member of the Firm's **Public Law Department**.