April 30, 2018

The Honorable Lorena Gonzalez Fletcher
Chair, Assembly Appropriations Committee
California State Assembly
State Capitol Building, Room 2114
Sacramento, CA 95814

RE: **<u>AB 1912 (Rodriguez). Public Employees' Retirement: Joint Powers Agreements: Liability.</u>**
Notice of Opposition *(as amended)*

Dear Assembly Member Gonzalez Fletcher:

On behalf of the League of California Cities and the undersigned organizations, we must respectfully oppose Assembly Bill (AB) 1912 relating to retirement liabilities of Joint Powers Authorities (JPA).

JPA's play a vital role in addressing public needs that cannot be effectively achieved by a local agency acting on its own. Local agencies face unique local challenges and limited budgets, but we continue to innovate in order to obtain expertise and provide high quality services through the use of JPAs.

As amended, AB 1912 places substantial burdens and costly unworkable requirements on local agencies **as well as the state of California by <u>applying retroactive</u>** as well as prospective joint and several liability for all retirement related obligations to any current or former member of a JPA throughout its existence. Such obligations include active employee normal pension costs, retiree unfunded accrued liabilities (UAL) as well as both active and retiree healthcare and other post-employment retirement benefits (OPEB)—for all public retirement systems. According to the State Controller's Office most recently available data, the unfunded liability of California's 130 state and local government pension plans stand at $241.3 billion and $125 billon for retiree healthcare costs. These costs and their impact on local governments cannot be overstated. According to the Assembly PERS analysis CalPERS alone has 167 joint-powers authority agencies under contract. This does not include any other retirement system in the state and those corresponding active or retired employees. According to the Author, the motive from this measure, (LA Works) had approximately 200 active and retired employees constituting approximately $19 million in **<u>unfunded retirement liabilities</u>** (non-safety), it is reasonable to assume that the other JPA's—especially those for fire and police service JPA's would be significantly higher.

Additionally, the measure would mandate that a public retirement agency file suit against all agencies that have ever been a member of a terminated JPA for all retirement related obligations and prohibits any retirement system from approving a new JPA without express joint and several liability provisions. The provisions in AB 1912 creates constitutional, fiscal and operational challenges, which would effectively eliminate the ability for use to create or maintain the use of most JPA's. Specifically AB 1912:

Conflicts with Provisions of the California State Constitution:

The California constitutional debt limit prohibits an agency from incurring indebtedness beyond the agency's ability to pay the debt back from revenues received in the same fiscal year without the approval of two-thirds of its voters (*Cal Const. art XVI, §18).* These safeguards were placed in the State's constitution to avoid a situation in which bond issuers might compel an increase in taxes or foreclose on local government assets (*City of Redondo Beach v Taxpayers, Property Owners, Citizens & Electors (1960) 54 C2d 126, 131; County of Shasta v County of Trinity (1980) 106 CA3d 30, 35*).

By applying retroactive joint and several liability to existing contracts, we have strong concerns that local agencies will incur significant debts that may exceed our annual revenue without receiving voter approval—thus violating the sighted provision.

Further, it can be argued that retroactively incurring debts of another agency violates article XVI, §6 of the California Constitution which prohibits an agency from giving or lending public funds to any person, public or private entity. A JPA is an independent governmental body whereby the local agency has no legal, statutory oversight or managing authority. Liabilities from such entities retroactively applied to each member agency would constitute a gift of public funds to an individual(s) and/or public entity.

Gives Retirement Agency Authority to Increase the Amount Owed Through Assumption Changes and/or Investment Losses:

Retirement obligations are unlike other forms of traditional debts and liabilities. Unfunded retirement liabilities are particularly volatile and can grow to insurmountable costs based on no fault of the agencies who contract with a retirement system for health and pension benefits. It is estimated that in fiscal year 2008-2009 the California Public Employee Retirement System (CalPERS) lost approximately $100 billion dollars in assets resulting in a gross loss of 34.75 percent of the fund's total value. According to CalPERS (CL#200-004-17) employer contributions are projected to double by fiscal year 24-25. Additionally, those numbers are poised to grow even more in the short term when factoring CalPERS recent decision to modify its amortization schedule from 30 years to 20.

The measure would hold all agencies of a JPA accountable for the investment shortfalls, future discount rate reductions, and other assumptions changes made by the retirement agencies even if the agencies are able to pay the lump sum amount of the current unfunded liability from the JPA.

Gives Retirement System Agency Authority to Apportion "Joint and Several" Liability:

As stated in SEC 6 subsection (d), AB 1912 would grant exclusive authority to the public retirement system agency to unilaterally assign liabilities to all current and former agencies of a JPA "*in an equitable manner.*" As an initial matter, "joint and several" liability is a legal term of art that allows a plaintiff to sue for and recover the full amount of recoverable damages from any defendant, regardless of a particular defendant's percentage share of fault. If the legislative intent is to create "several" liability that is apportioned among JPA members, this should be clarified so that individual JPA member are not held liable for the full amount.

JPA's have been in existence in California for nearly 100 years with state and local agencies. Some JPAs have as many as 500 members entering and exiting as service demands shift and evolve. It would be virtually impossible for the JPA's governmental body, let alone a retirement system, to retroactively assign "equitable" retirement specific liabilities to potentially hundreds of agencies. This is especially concerning when you factor in the various assumption changes outlined in the section above.

Even as amended, the difficulty of assigning "equitable" liability amongst current and former JPA members will remain. Additionally, if the parties cannot agree, which is likely, the retirement system agency still retains the right to unilaterally assign the liabilities.

This vague and ambiguous direction demonstrates a fundamental misunderstanding of the formation, management and purpose of a JPA which will inevitability lead to a perpetual cycle of protracted and costly litigation contesting the retirement agency's discretion of proportional liability.

<u>Creates Funding and Operational Impairments:</u>

The Governmental Accounting Standards Board (GASB) issued regulations (GASB 68, 2012 and 76, 2015) that require each state and local agency to report all financial liabilities associated with public pension and OPEB liabilities. These reporting standards play a vital role in assessing the fiscal health and viability of an agency. Incurring retroactive debt would require each originating agency of a JPA to report these liabilities as debts impacting an agency's net financial position. A drastic spike in liability could contribute to the downgrading of an agency's credit rating, which in turn would make issuing and servicing future bonds more costly through higher interest costs and additional required insurance.

JPAs are tools state and local government agencies use to address service demands and infrastructure needs in a cost effective manner. Removing this tool makes it that much more problematic to address statewide critical issues such as housing, transportation, water, air quality, workforce development, public safety, and much more.

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Please do not hesitate to contact us with any questions on our position. To reach us, please contact Dane Hutchings (LOCC) 916-658-8200, Dorothy Johnson (CSAC) at 916-650-8133, Dillon Gibbons (CSDA) at 916-442-7887 Jolena Voorhis at 916-327-7531, Faith Lane Borges at 916-441-5050 or Jean Kinney Hurst (Riverside County) at 916-245-3445.

Sincerely,

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cc: The Honorable Freddie Rodriguez
Members, Assembly Appropriations Committee
Jay Dickenson, Principal Consultant, Assembly Appropriations Committee
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