

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2735 (Blanca Rubio) – As Amended April 1, 2024

SUBJECT: Joint powers agreements: water corporations.

SUMMARY: Allows a water corporation to enter into a joint powers agreement (JPA) with a public agency for the purpose of insurance risk pooling. Specifically, **this bill:**

- 1) Allows a water corporation and one or more public agencies, via a JPA, to provide insurance and to be coinsured under a master policy and the total premium to be prorated among those entities, as specified.
- 2) Provides that the pooling of self-insured claims or losses shall not be considered insurance nor be subject to regulation under the Insurance Code, as specified.
- 3) Provides that any liability or loss under a JPA for the pooling of self-insured claims or losses authorized by this bill may be reinsured to the same extent and the same manner as insurance provided by an insurer.
- 4) Provides, where a JPA authorized by this bill provides for the pooling of self-insured claims or losses among entities, if any peril insured or covered under contract has existed, and the JPA or other parties to the pool have been liable for any period, however short, the agreement may provide that the party insured or covered under contract is not entitled to the return of premiums, contributions, payments, or advances so far as that particular risk is concerned.
- 5) Allows a water corporation to enter into a JPA with any public agency for the purpose of jointly exercising any power common to the contracting parties.
- 6) Allows a water corporation and one or more public agencies to enter into a joint powers agreement for the purpose of risk-pooling, as specified, provided that the agreement shall ensure that no participating public agency becomes responsible for the underlying debts or liabilities of the joint powers agency, and shall indemnify any participating public agency against those debts and liabilities.
- 7) Requires a joint powers agency established pursuant to this bill to solely utilize any revenues it generates through the insurance provided to its members for its necessary operating expenses, and to provide technical support, continuing education, safety engineering, operational and managerial advisory assistance to its members for the purpose of reducing risk liabilities and furthering the technical managerial and financial capacity of those members.
- 8) Defines “water corporation” to include every corporation or person owning, controlling, operating, or managing any water system for compensation within this State.

EXISTING LAW:

- 1) Specifies that any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes or for domestic use must be known as a mutual water company. [Corporations Code (CORP) § 14300]
- 2) Defines a “public water system” to mean a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system includes the following:
 - a) Any collection, treatment, storage, and distribution facilities under control of the operator of the system that are used primarily in connection with the system;
 - b) Any collection or pretreatment storage facilities not under the control of the operator that are used primarily in connection with the system; and,
 - c) Any water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption. [Health and Safety Code (HSC) § 116275.]
- 3) Requires each mutual water company operating as a public water system to, no later than December 31, 2012, submit to the Secretary of State and the local agency formation commission (LAFCO) a map depicting the boundaries of the property that the company serves. (CORP § 14301.1)
- 4) Requires a mutual water company that operates a public water system, if the LAFCO or a county department requests information, to provide within 45 days of a request all reasonably available, non-confidential information and explain, in writing, why any requested information is not reasonably available. (CORP § 14301.1)
- 5) Requires a mutual water company that operates a public water system to maintain a financial reserve fund to be used for repairs and replacements to its water productions, transmission and distribution facilities at a level sufficient for continuous operation of facilities in compliance with the federal Safe Drinking Water Act. (CORP § 14301.3)
- 6) Authorizes a LAFCO to approve with or without amendment, wholly, partially, or conditionally or disapprove the annexation of territory served by a mutual water company operating as a public water system to a city or special district. [Government Code (GOV) § 56375]
- 7) Authorizes a LAFCO, in conducting a service review, to include a review of whether the agencies under review, including any public water system, are in compliance with the California Safe Drinking Water Act (SDWA). (GOV § 56430)
- 8) Authorizes a LAFCO to request information, as part of a service review, from identified public or private entities that provide wholesale or retail supply of drinking water, including mutual water companies and private utilities. (GOV § 56430)

- 9) Requires each board member of a mutual water company operating as a public water system to complete a four-hour course regarding the duties of board members within six months of taking office, as specified. (CORP § 14301.2)
- 10) Establishes, pursuant to the Mutual Water Company Open Meeting Act, increased transparency requirements for mutual water companies that operate a public water system, and allows mutual water companies to impose liens to collect unpaid charges. (CORP § 14305)
- 11) Allows, pursuant to the Joint Exercise of Powers Act (JPA Act), two or more public agencies by agreement to jointly exercise any power common to the contracting parties, as specified, if authorized by their legislative or other governing bodies. (GOV § 6500 et seq.)
- 12) Defines, for purposes of the JPA Act, public agency to mean “the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to the JPA Act by any of these agencies.” (GOV § 6500)
- 13) Allows a mutual water company to enter into a JPA with any public agency for the purpose of jointly exercising any power common to the contracting parties. (GOV § 6525)
- 14) Allows a mutual water company and a public agency to enter into a JPA for the purpose of risk-pooling, provided that the agreement shall ensure that no participating public agency becomes responsible for the underlying debts or liabilities of the joint powers agency, and shall indemnify any participating public agency against those debts and liabilities. (GOV § 6525)
- 15) Requires a JPA established pursuant to 14), above, to solely utilize any revenues it generates through the insurance provided to its members under this section for its necessary operating expenses, and to provide technical support, continuing education, safety engineering, operational and managerial advisory assistance to its members for the purpose of reducing risk liabilities and furthering the technical managerial and financial capacity of those members. (GOV § 6525)
- 16) Allows two or more local public entities, or a mutual water company and a public agency, via a JPA, to provide insurance coverage or self-insurance, or to obtain insurance coverage by means of a reciprocal or inter-insurance exchange. (GOV § 990.8)
- 17) Provides that the pooling of self-insured claims or losses among local public entities shall not be considered insurance nor be subject to regulation under the Insurance Code. (GOV § 990.8)
- 18) Allows any liability or loss under a JPA for the pooling of self-insured claims or losses to be reinsured to the same extent and the same manner as insurance provided by an insurer. (GOV § 990.8)

- 19) Provides that, where a JPA provides for the pooling of self-insured claims or losses among entities, if any peril insured or covered under contract has existed, and the JPA or other parties to the pool have been liable for any period, however short, the agreement may provide that the party insured or covered under contract is not entitled to the return of premiums, contributions, payments, or advances so far as that particular risk is concerned. (GOV § 990.8)

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill adds water corporations to provisions of law allowing mutual water companies to enter into a JPA with a public agency for the purpose of risk-pooling and providing insurance. This bill is sponsored by the California Water Association and the California Association of Mutual Water Companies.

According to the author, "All water utilities in California are struggling to keep rates affordable with the ever-increasing cost of insurance. AB 2735 will allow a water corporation to join a joint powers authority (JPA) for risk pooling, which provides more affordable insurance so long as there is at least one local agency member in the JPA. Because the pooling of self-insured claims or losses among entities participating in a JPA is not subject to regulation under the Insurance Code and is not subject to premium taxes, the JPA can set lower premiums and offer broader coverage than would be available through the private marketplace. As such, this bill will help to keep water utility costs down for consumers."

- 2) **Background.** Public water systems that deliver domestic water generally fall into three categories:
- a) Local agencies (cities and special districts). LAFCOs control the cities and special districts' boundaries and local officials are responsible to their voters for their water rates.
 - b) Investor-owned public utilities. The California Public Utilities Commission (PUC) controls the companies' service areas and their water rates.
 - c) Mutual water companies. These private entities, formed under statutes governing corporations, respond to their shareholders, usually the landowners who receive water service. Neither LAFCOs nor the PUC regulate mutual water companies, although LAFCOs have limited oversight over mutual water companies.

The State Department of Public Health and some county health departments monitor the quality of drinking water delivered to most households, regardless of the type of public water system that delivers the water.

Most mutual water companies are organized pursuant to the General Corporation Law or the Nonprofit Mutual Benefit Corporation Law. Shareholders in a mutual water company hold a right to purchase water from the company. Stock in a company is usually linked to the ownership of a parcel served by the company and transfers with the land when the parcel is

sold to successive owners. This type of corporate structure allows landowners to establish, essentially, a customer-owned water provider to serve their properties.

Governance of a mutual water company is generally limited to shareholders, or members, of the company. While the details of any particular company's governing structure are determined by its articles and bylaws, most mutual water companies allow only shareholders and members to vote on organizational matters and serve on the company's governing board.

- 3) **Joint Exercise of Powers Act.** JPAs have existed in California for nearly 100 years, and were originally created to allow multiple local governments in a region to pool resources to meet common needs. The Act authorizes federal, state and local agencies to create and use a joint powers agreement, which is a legal document that allows the contracting parties to exercise powers that are common to all of the contracting parties. A joint powers agreement can be administered by one of the contracting agencies, or it can be carried out by a new, separate public entity called a joint powers authority.

Joint powers agreements are an attractive tool for local governments because they facilitate more efficient service provision through collaboration, and they allow local entities to issue bonds without voter ratification. There are a few, limited instances in JPA law allowing non-governmental entities to join a JPA with a public agency partner.

- 4) **JPAs and Mutual Water Companies.** Existing law allows a mutual water company to enter into a JPA with any public agency for the purpose of jointly exercising any power common to the contracting parties. This authority was established by AB 2014 (Cortese), Chapter 250, Statutes of 1994. According to the Assembly concurrence analysis, "The (bill is) sponsored by the Association of California Water Agencies. The Association feels this authority will facilitate arrangements among water entities to improve the management of the state's water resources, such as groundwater management, development of water conservation or reclamation programs, or compliance with water quality regulatory requirements."

At that time, the proposal was considered unusual. According to an analysis of the bill by the Senate Committee on Agriculture and Water, "The proposed joint powers agreements between public and private entities appear to be without substantial precedent and may raise uncertain issues regarding access to public moneys by private companies and the applicability of open meeting laws which, in general, do not apply to private concerns."

Nonetheless, the bill became law, and mutual water companies have the authority to form a JPA with any public agency for the purpose of jointly exercising any power common to the contracting parties.

- 5) **Insurance/Risk-Pooling, JPAs and Local Agencies.** Existing law allows two or more local public entities, by a JPA, to provide insurance coverage or self-insurance, or to obtain insurance coverage by means of a reciprocal or inter-insurance exchange (risk-pooling). JPAs offer self-insurance coverage on a pooled basis for a variety of purposes, including liability (malpractice and officers and directors coverage), workers' compensation, health insurance and property coverage.

The law also allows a nonprofit hospital corporation affiliated with a hospital district to participate in a self-insurance pool formed by two or more hospital districts to pool their self-

insurance claims or losses. In addition, two or more local public entities having the same governing board may be coinsured under a master policy, with the total premium to be prorated among those entities.

Any liability or loss under a JPA for the pooling of self-insured claims or losses can be reinsured to the same extent and the same manner as insurance provided by an insurer. When a JPA provides for the pooling of self-insured claims or losses, if any peril insured or covered under contract has existed, and the JPA or other parties to the pool have been liable for any period, the agreement may provide that the party insured or covered under contract is not entitled to the return of premiums, contributions, payments, or advances so far as that particular risk is concerned.

Pooling of self-insured claims or losses among local public entities is not considered insurance and is not subject to regulation under the Insurance Code.

- 6) **AB 656 of 2016.** AB 656 (Christina Garcia), Chapter 250, Statutes of 2015, allowed a mutual water company and a public agency to do the following:
- a) Form a JPA for risk-pooling provided that the agreement must ensure that no participating public agency becomes responsible for the underlying debts or liabilities of the joint powers agency, and must indemnify any participating public agency against those debts and liabilities.
 - b) Form a JPA to provide insurance by methods specified in state law.
 - c) Be coinsured under a master policy and to prorate the total premium among JPA members.

AB 656 required a JPA established pursuant to its provisions to solely utilize any revenues it generates through the insurance provided to its members for its necessary operating expenses, and to provide technical support, continuing education, safety engineering, operational and managerial advisory assistance to its members for the purpose of reducing risk liabilities and furthering the technical managerial and financial capacity of those members.

According to the author of AB 656, “Over 400 mutual water companies in California were once eligible for insurance coverage provided by the Association of California Water Agencies Joint Powers Insurance Authority (ACWA-JPIA). This structure afforded mutual water companies relatively inexpensive insurance, as well as resources through ACWA that were made possible by residuals of revenue that are exempt from taxes, and that would have otherwise been assessed through regular market-based insurance. Due to IRS regulations, several years ago, the ACWA-JPIA determined that mutual water companies were no longer eligible to participate in ACWA-JPIA’s insurance programs, and thus mutual water companies were excluded from the coverage and benefits they once enjoyed.

“Mutual water companies are not-for-profit public water systems organized under the state Corporations Code. The vast majority of mutual water companies in California are small, with many serving less than 3,000 connections and/or less than 3,000 residents. Many mutual water companies serve ‘economically disadvantaged’ areas and do not have access to low

cost insurance and other services, such as those available to special districts under ACWA-JPIA or other joint powers agency insurance programs. Today, mutual water companies must purchase higher cost insurance in the open market, and many are not provided the opportunity to easily obtain other services that could assist them in building operational and managerial capacity.”

According to the sponsor of AB 656, the California Association of Mutual Water Companies, the authorization was being sought because a JPA is not subject to insurance regulations or premium taxes, so it can set more competitive premiums and offer expanded coverage. Funds that would otherwise pay for insurance regulatory compliance and taxes would remain as “residuals” to be used for support services for the JPA’s members.

- 7) **Legislative History: Mutual Water Companies.** In response to concerns that some mutual water companies lacked capital to pay for needed water quality improvements and the managerial capacity to operate successful public water systems, the Legislature passed AB 54 (Solario), Chapter 512, Statutes 2011. AB 54 established training requirements for mutual water districts’ board members regarding the duties of board members, made mutual water companies liable for specified fines and penalties for violating the California Safe Drinking Water Act, and expanded LAFCOs’ authority to review matters related to mutual water companies.

AB 240 (Rendon), Chapter 633, Statutes of 2013, increased transparency requirements for mutual water companies by enacting the Mutual Water Company Open Meeting Act. The bill also allowed mutual water companies to impose liens to collect unpaid charges. While the bill’s requirements opened the meetings of mutual water companies to “eligible persons,” these requirements are far more limited than the requirements of the Ralph M. Brown Act (Brown Act).

AB 1077 (Holden), Chapter 669, Statutes of 2015, made a number of changes to the Mutual Water Company Open Meeting Act, including allowing the use of teleconferencing to provide access for eligible persons to attend meetings, and specifying requirements for executive sessions.

- 8) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Slippery Slope?** While this is not the first instance of a non-governmental body being allowed to form or join a JPA, it is the first time private utilities regulated by the PUC – in this case, private water corporations – have been proposed for inclusion in JPA law. While arguments can be made in favor or against this proposal, it represents a potential “slippery slope” that could lead to similar proposals in the future for other private utilities or other private corporations.
 - b) **Just for Insurance?** The proponents of this bill have argued for the need to obtain more affordable (or any) insurance. While this bill allows for this, it also contains language allowing a water corporation “to enter into a JPA with any public agency *for the purpose of jointly exercising any power common to the contracting parties.*” (Emphasis added). The Committee may wish to consider if this provision is necessary to accomplish the stated intent of this bill.

- c) **Access to Public Agency Benefits.** This bill seeks to grant water corporations the authority to form a JPA, which has (for the most part) been limited to public agencies. However, water corporations are not required to comply with the same transparency and accountability laws that public agencies must follow – such as the Brown Act, the Public Records Act, conflict-of-interest requirements pursuant to Government Code 1090 et al., and the Political Reform Act, including Form 700 filing requirements. Nor do they have to comply with the Mutual Water Company Open Meeting Act or the limited LAFCO oversight that applies to mutual water companies. The Committee may wish to consider if the benefits of JPA law should be extended to water corporations, absent these transparency and accountability requirements.
- d) **Stakeholder Concerns.** The California Association of Joint Powers Authorities (CAJPA) has registered concerns with this bill, stating, “We are not opposing this bill in acknowledgement that (it) is permissive and may help consumers struggling under higher rates due to a lack of affordable commercial coverage available to their service provider. However, we would like to share some concerns related to the precedent of this bill and any related future legislative or regulatory actions pertaining to the public agency risk sharing pooling industry in California caused by allowing investor-owned private water corporations to join or form a risk pool with public entity members.

“JPAs are currently comprised of public agencies which cannot go bankrupt or be sold and are ultimately ‘guaranteed’ by the state. There is a relatively new permission in state law for not-for-profit mutual water companies to join JPAs. This law in application has been limited to one JPA and the full impacts of related cost and risk are relatively unknown. We are concerned that for-profit water corporations are fundamentally different from public water agencies and even not-for-profit mutual water companies and pose substantially increased risk. For example, for-profit water corporations are subject to the will of owners and shareholders and can be sold or go bankrupt. This circumstance would result in a constitutionally prohibited ‘gift of public funds’ by the public agency member(s) of the JPA since JPAs are bound by joint and several liability and share financial risk of all JPA members. In application, a public agency could end up bearing full financial responsibility for the actions or faults of a for-profit member.

“For-profit water agencies may also elect to join or leave JPA coverage based on the circumstances of their bottomline. This contrasts with public agencies which cannot dissolve and the longstanding membership of public agencies within JPAs, many of whom have been members since a pool’s inception in the late 1970s. With retroactive changes in state law, the need to re-assess members for significant historic liabilities that were not reserved for, is another reason permissive flight of members causes concern.”

Government Code Section 6525 (b) (1) provides the following: “Notwithstanding any other provisions of this chapter, a mutual water company and a public agency may enter into a joint powers agreement for the purpose of risk-pooling in accordance with Section 990.8, *provided that the agreement shall ensure that no participating public agency becomes responsible for the underlying debts or liabilities of the joint powers agency, and shall indemnify any participating public agency against those debts and liabilities.* (Emphasis added). It is not clear whether this language is sufficient to address the concerns raised by CAJPA. The Committee may wish to consider whether this bill should be clarified to address CAJPA’s concerns.

- 9) **Committee Amendments.** In order to address the concerns raised in 8)b), above, the Committee may wish to amend this bill as follows:

6525.

(a) Notwithstanding any other provision of this chapter, a mutual water company ~~or a water corporation~~ may enter into a joint powers agreement with any public agency for the purpose of jointly exercising any power common to the contracting parties.

- 10) **Related Legislation.** AB 2293 (Mathis) allows one or more private, nonprofit mutual benefit corporations formed for purposes of providing health care services to join a joint powers authority or enter into a joint powers agreement with one or more public entities established under JPA law. AB 2293 is pending in this committee.

- 11) **Previous Legislation.** AB 656 (Christina Garcia), Chapter 250, Statutes of 2015, allowed a mutual water company and a public agency to enter into a JPA for the provision of insurance and risk-pooling.

AB 1077 (Holden), Chapter 669, Statutes of 2015, made a number of changes to the Mutual Water Company Open Meeting Act, including allowing the use of teleconferencing to provide access for eligible persons to attend meetings, and specifying requirements for executive sessions.

AB 2046 (Gomez) of 2014 would have authorized a JPA to issue bonds and enter into loan agreements for the financing or refinancing of a private project located outside of the state under specified conditions, until January 1, 2021. This bill raised a number of concerns regarding the appropriate purposes and activities of JPAs, such as allowing the issuance of tax-exempt bonds for private projects outside of the state, severing the geographical nexus between a bond-issuing JPA and the jurisdiction in which a local agency project is located, and others. AB 2046 was held in the Senate Appropriations Committee.

AB 240 (Rendon), Chapter 633, Statutes of 2013, increased transparency requirements for mutual water companies by enacting the Mutual Water Company Open Meeting Act.

AB 54 (Solorio), Chapter 512, Statutes of 2011, established training requirements for mutual water companies' board members regarding their duties, made mutual water companies liable for specified fines and penalties for violating the California Safe Drinking Water Act, and expanded LAFCOs' authority to review matters related to mutual water companies.

- 12) **Arguments in Support.** The California Water Association writes, "The California Water Association (CWA) is proud to sponsor Assembly Bill 2735. CWA represents 89 water utilities in California that are regulated by the California Public Utilities Commission. Our members provide safe, reliable, high-quality water service to 15% of the State, approximately 6 million Californians.

"In recognition of increased need to protect consumers from increasing water rates due to the rising costs of insurance, the Legislature passed AB 656 (C. Garcia 2015) to allow insurance risk pooling for mutual water companies. Public water systems that deliver domestic water generally fall into three categories, local agencies, investor-owned utilities, and mutual water

companies. In 2015, investor-owned utilities were not included in AB 656, and as such, our customers have not been able to benefit from affordable insurance coverage.

“AB 2735 will allow an investor-owned utility to join a pooled insurance via a Joint Powers Authority (JPA), which provides pooled insurance so long as there is at least one local agency member in the JPA. Because the pooling of self-insured claims or losses among entities participating in a JPA is not subject to regulation under the Insurance Code and is not subject to premium taxes, the JPA can set lower premiums and offer broader coverage than would be available through the private marketplace.”

- 13) **Arguments in Opposition.** ACWA JPIA states, “Should a new risk pool of largely non-public entities be allowed to form, or a current risk pool absorb a significant number of non-public entity members, and should it fail financially, it jeopardizes the ability to exist for every other risk pool in the State.

“Investor-owned private water corporations are fundamentally different from public entities and – specifically – public water agencies and pose substantially increased risk. (There are) Some key structural and operational elements exclusive to public water agencies that make them a highly desirable risk as compared to investor-owned private water companies are that public water agencies...(while) several key factors with regard to how investor-owned private water corporations are regulated and run pose substantial risk of jeopardizing the current structure and operations of California risk pools...

“Additional considerations are that there are different regulations and rules for private SIGs vs. public risk pools. The current regulatory landscape does not consider the ramifications of combining these two very different types of entities. There are also potential tax ramifications; would private corporations now benefit from paying less taxes because they are part of a public risk pool? Is this potentially a gift of public funds in that you now have public dollars subsidizing the coverages and risks of private corporations?

“We humbly request your support in opposing a bill that could jeopardize the ability of all risk pools in the State to continue to exist within the current operational environment and potentially jeopardizes a long-standing, viable, and thriving mechanism by which most public entities obtain coverage and manage risks and by which public monies have been consistently saved and protected.”

- 14) **Double-Referral.** This bill is double-referred to the Assembly Insurance Committee, where it passed on a 15-0 vote on April 17, 2024.

REGISTERED SUPPORT / OPPOSITION:

Support

Bakman Water Company
 California Association of Mutual Water Companies
 California Water Association
 California Water Service Company
 Golden State Water Company
 Lake Alpine Water Company

Lukins Brothers Water Company
National Association of Water Companies
San Gabriel Valley Water Company
Sierra Park Water Company
Suburban Water Systems

Concerns

The California Association of Joint Powers Authorities

Opposition

ACWA JPIA

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