

Assembly Local Government Committee
Informational Hearing

**Developments in the Use of
Joint Powers Authorities & Agreements**

Wednesday, March 21, 2012

I. Introduction and Goal of Hearing

At a time when local governments are under severe financial strain and public agencies are looking for more efficient ways to work together, a collaborative tool like the joint powers agreement (JPA) is becoming increasingly attractive. And despite the fact that JPAs have existed in California in some form for nearly 100 years, they remain a relatively obscure and unregulated form of local self-governance.

The goal of this hearing is informational. It aims to provide members of the Committee and staff with a basic overview of joint powers agreements and authorities, and to learn from relevant state agencies what we know about JPAs in California – and what we don't. Of course, while this hearing is not focused on oversight, potential deficiencies in reporting and data collection deserve discussion, as do ideas and suggestions for rectifying those problems.

For more information on how JPAs are organized and operate, see the attached report *Governments Working Together: A Citizen's Guide to Joint Power Agreements*, authored by the Senate Local Government Committee in August 2007, from which this memorandum draws heavily. The text of the Joint Exercise of Powers Act and a partial list of JPA-related legislation are provided as well.

II. An Overview of Joint Powers

Joint powers are exercised when the public officials of two or more agencies agree to establish a joint approach or create another legal entity to work on a common problem, fund a project, or act as a representative body for a specific activity. All manner of federal, state and local public agencies can agree to exercise joint powers. A California agency can even share joint powers with an agency in another state. The common thread is that a confederation of governments work together and share resources for mutual support or common actions. The government agencies that participate in joint powers agreements are called member agencies.

A **joint powers agreement** is a formal, legal agreement between two or more public agencies that share a common power and want to jointly implement programs, build facilities, or deliver services. Officials from those public agencies formally approve a written cooperative arrangement.

A **joint powers agency** or **joint powers authority** is simply a new government entity created by the member agencies, but is legally independent from them. Like a joint powers agreement in which one agency administers the terms of the agreement, a joint powers agency or authority exercises powers common to the member agencies, and those powers are outlined in the joint powers agreement. The new entity need not even call itself a JPA. JPAs are not special districts, although such agencies can enter into joint powers agreements.

Examples of areas where JPAs are commonly used include: groundwater management, road construction, habitat conservation, airport expansion, redevelopment projects, stadium construction, mental health facilities construction, educational programs, employee benefits services, insurance coverage, and regional transportation projects.

Public officials sometimes establish JPAs specifically to arrange capital financing by selling bonds. These bonds secure the capital needed to finance construction of public facilities. Public officials sometimes call this type of JPA a joint powers authority or a public financing authority (PFA).

III. Structure and Powers

The Joint Exercise of Powers Act (Government Code Sections 6500-6536) provides the basic legal authority for public entities to create and use JPAs.

Some important points to remember:

- JPAs are formed voluntarily by action of their member agencies, not by signatures on petitions or a vote of the people.
- JPAs can exercise only those powers that are common to their member agencies.
- A JPA's meetings are open to the public and subject to the Ralph M. Brown Act.
- JPAs must follow the Public Records Act, the Political Reform Act, and other public interest laws that ensure political transparency.
- As a legally separate public agency, the JPA can sue or be sued, hire staff, obtain financing to build public facilities, and manage property.
- Joint powers agreements usually include provisions that protect their member agencies and officers from a JPA's debts or other liabilities.
- JPAs are not 'special districts', and are not subject to LAFCO oversight or control.
- JPAs cannot levy new taxes or assessments (although their member agencies could do so and contribute the revenues to the JPA's operation). However, they can issue bonds without voter approval.

Public agencies authorized to enter into joint powers agreements include "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...".

Special legislation can also authorize certain nongovernmental organizations to participate in joint powers agreements, even though they are not public agencies. For instance, to help nonprofit hospitals keep pace with changes in the health care industry, the Legislature has allowed them to enter joint powers agreements to provide health care services in Fresno, Contra Costa, Kings, Tuolumne, San Diego, and Tulare counties. Another enacted bill allowed mutual water companies to enter joint powers agreements with public water agencies.

The formation of a JPA begins when public officials negotiate a formal agreement that spells out the member agencies' intentions, the powers that they will share, and other mutually acceptable conditions that define the intergovernmental arrangement. The terms of a joint powers agreement

will describe the size, structure, and membership of the JPA's governing board and documents the JPA's powers and functions. Each member agency's governing body then approves the joint powers agreement.

As a separate agency, a JPA must appoint a treasurer and an auditor. The treasurer may be an employee of a member agency, the county treasurer where the JPA operates, or a certified public accountant. The JPA's auditor must arrange for an annual audit, although many public agencies audit their own JPAs.

IV. Filing Requirements

According to the Joint Exercise of Powers Act, if a joint powers agreement creates a new joint powers agency or amends an existing agreement, the JPA must file a notice of joint powers agreement or amendment with the Secretary of State within 30 days, along with a \$1 filing fee. The Secretary of State must also forward a copy of the notice to the State Controller's office. The notice must contain the name of each party to the JPA, the effective date, a statement of purpose or power to be exercised, and a description of any amendments. JPAs that fail to file these notices may not issue bonds, incur debt, liabilities or obligations, or otherwise exercise their powers until the filing is complete. The filing entity must file a complete copy of the agreement itself and any amendments with the Controller. The JPA must also complete an annual financial audit and file those audits as public records with the county auditor.

According to the Secretary of State's office, approximately 2,199 JPAs have filed formation documents as of June 2011 (with 1,938 amendments filed). However, the number of JPAs currently on file with the Controller's office is much lower: 771. It should be noted that the Controller's office collects data only on those JPAs it considers "special districts", which may be a partial cause of the disparity. Some JPAs may also be moribund and non-operational. According to the Controller's office, in 2006 it reviewed the Secretary of State's JPA filings in an attempt to reconcile the disparity, and found filings for 660 agencies that may be required to file with the Controller but do not do so (that number has since increased). However, staffing constraints have prevented the Controller's office from conducting any analysis of the collected data to determine which JPAs, if any, are not properly filing with the Controller's office.

V. External Oversight & Audits

The public agencies that set up JPAs have a continuing responsibility to monitor their creations. Although no state agency directly oversees all JPAs, two collect reports and data on certain JPA activities in addition to the Secretary of State's office: the State Controller's office and the California Debt and Investment Advisory Commission (CDIAC) within the State Treasurer's Office.

The Office of the State Controller, which is the state's "independent fiscal watchdog", receives all JPA agreement and amendment notices from the Secretary of State. The JPAs themselves are also required to provide the full text of all agreements and amendments to the Controller directly, although they do not always comply. For those JPAs that the Controller's office deems to be a "special district", they must also provide the Controller with annual financial reports, annual audits, and salary and compensation information.

CDIAC serves as the state's clearinghouse for public debt issuance information, and assists state and local agencies with the monitoring, issuance, and management of public debt. CDIAC maintains the most comprehensive database of California debt issuance in existence going back to 1982. All issuers of state and local government debt are required to submit issue-related information to the CDIAC before and after the proposed sale. The information reported to CDIAC includes the sale date, the name of the issuer, the type of sale, the principal amount, the type of debt instrument, the source(s) of repayment, the purpose of the financing, the rating of the issue, and the members of the financing team. CDIAC also engages in research related to emerging trends in public finance, as well as the integrity and viability of the public finance market.

At the county level, JPAs must share their annual audits with the county auditor's office, and civil grand juries may examine the records of JPAs operating in that county. The California Grand Jurors' Association lists 15 individual grand jury reports focused on JPAs in various counties between 2003 and 2008, with more recent reports available via their website. Notably, a recent report from the Legislative Analyst's Office (*Letter to Assembly Member Dickinson Regarding Small Special Districts and Local Agency Formation Commissions*, dated January 5, 2012) recommended that the Legislature consider expanding JPA oversight authority to Local Area Formation Commissions (LAFCOs), which have county-by-county jurisdiction over special districts.

The Bureau of State Audits has not performed an audit specifically on a JPA for at least the past twelve years, although it is currently conducting an audit of the California Statewide Communities Development Authority and the California Municipal Finance Authority related to their conduit financing activities, with the results being released later this year.

It is also worth noting that there is apparently no statewide trade association for all forms of JPAs, although there is at least one entity focused on a particular subset (such as insurance based risk-pools, in the case of the California Association of Joint Powers Authorities).

VI. Uses and Functions of a JPA

As tools for collaboration, JPAs are used for a variety of purposes. By sharing resources and combining services, the member agencies - and their taxpayers - save time and money. There are no official categories for the types of JPAs, but their services fall into five broad groups: general public services, financial services, insurance pooling and purchasing discounts, planning services, and regulatory enforcement.

- **General Public Services:** Agencies can create JPAs to deliver more cost-effective services, eliminate duplicative efforts, and consolidate services under a single agency. Counties, cities, and special districts form JPAs to provide services such as fire and police protection and the removal of abandoned vehicles. Local agencies also use JPAs to fulfill mandates from the federal and state government, including solid waste management, special education, regional transportation planning, and hazardous waste monitoring. Other public services provided by JPAs vary from animal control and data storage to flood control and soil conservation.
- **Financial Services:** JPAs use the Revenue Bond Act of 1941 and the Marks-Roos Local Bond Pooling Act of 1985 to generate public capital. Public officials use JPAs to finance the

construction of public works, including schools, city halls, bridges, and flood control projects. Some JPAs finance the purchase of special equipment, such as buses. Financial JPAs with two member agencies, such as a city and its redevelopment agency, are often called public financing authorities (PFAs) or sometimes "captive JPAs". These authorities sell Marks-Roos bonds to finance public improvements, like a new jail, local golf course, or parking lot. CDIAC estimates *that more than half of all JPAs formed since 1985 issue Marks-Roos Act bonds* for public improvements. As an example, the Association of Bay Area Governments (ABAG) is a 107-member JPA that offers financing to its member agencies, such as bond-pooling programs that finance affordable housing, public works, and construction expenses. It is also one of the few JPAs with more than 100 member agencies.

- Insurance Pooling and Purchasing Discounts: JPAs offering insurance-pooling and reduced-price purchasing options usually involve agencies, such as school districts, that want to buy insurance or supplies and equipment for their member agencies. When private insurance companies raised their rates in the 1970s, many schools withdrew from the commercial insurance market and created joint powers agencies to obtain self-insurance by pooling their funds. These JPAs continue to offer school districts and other public agencies a cost-effective alternative to commercial insurance. In this arrangement, each member agency provides money to the JPA, which controls the funds in a collective account. The deposited funds earn interest, which finances the JPA's operations and pays the member agencies' claims. There are more than 50 self-insurance joint powers authorities as of 2007, the Schools Insurance Authority being one.
- Planning Services: Counties and cities also form JPAs for planning purposes and to address topics of regional importance. JPAs created for planning reasons typically work on regional problems that go beyond county and city limits. The JPAs usually bring together experts from several agencies to develop regional or subregional strategies. These JPAs rely on funding from their member agencies and in return provide services to their members. More commonly known as Councils of Government (COGs), these regional planning agencies jointly exercise the planning powers of counties and cities. COGs serve most metropolitan regions, such as ABAG in the San Francisco Bay Area. State law relies on COGs to prepare regional housing needs assessments that direct the housing strategies found in county and city general plans. Many COGs also serve as metropolitan planning organizations for federal transportation plans.
- Regulatory Enforcement: Regulatory joint powers agreements, the least common type, enforce regulations through an independent agency or as an arrangement with other enforcement agencies. These JPAs ensure that member agencies adhere to federal and state laws and procedures by conducting educational seminars, formulating enforcement procedures, and maintaining an oversight role. The State Parole Board, for example, entered into a JPA with Stanislaus County to assist county sheriffs in monitoring parolees and reporting and apprehending violators. Regulatory JPAs also enforce air pollution regulations.

VII. Financial Powers & Bond Authority

As with any government agency, a joint powers agency needs money to operate. Among JPAs there are two popular funding methods: (1) creating a revenue stream, and (2) raising capital by issuing bonds. JPAs enjoy a largely unique and valuable power in that they can legally issue bonds *without the need for voter approval*.

Generally speaking, before counties, cities, and special districts can issue revenue bonds, they need majority-voter approval. If its voters approve, then a local government could sell the revenue bonds to private investors and use the resulting capital to build a public facility, like a parking garage. As the principal and interest on the bonds become due, local officials could repay the private investors with the revenues that they collect from the new parking garage. That's why this type of public debt is known as a revenue bond.

State law allows a JPA to issue revenue bonds without voter approval, provided that each of the JPA's member agencies adopts its own ordinance. For example, a city would need majority-voter approval to self-finance the expansion of its sewer plant with revenue bonds. But if the city and a sanitary district created a JPA, the JPA could issue the revenue bonds without voter approval if the city council and the district's board of directors simply adopted authorizing ordinances. Those ordinances face a 30-day period in which voters can object by signing referendum petitions that trigger an election. If there is no referendum petition or if the petition fails to qualify, the JPA can sell the bonds and use the proceeds to build improvements or buy equipment. In practice, referenda are said to be a rare occurrence.

After California's voters passed Proposition 13 in 1978, local governments saw property tax revenues shrink at the same time their population growth boosted demands for facilities and services. Counties, cities, and special districts had trouble financing courtrooms, city halls, jails, and other public facilities. The Legislature responded by passing the Marks-Roos Local Bond Pooling Act (SB 17, Marks, Chapter 868, Statutes of 1985), which allowed local agencies to form JPAs that can sell one large bond and then loan the money to local agencies. This practice, known as bond pooling, saves money on interest rates and finance charges.

JPAs that provide financing and sell bonds for multiple agencies pay for their operations by collecting fees from their member agencies for the JPA's bond services. Bond transactions are complicated and require skilled financial professionals to ensure that the bond sales meet legal and market requirements. Large JPAs providing financial assistance hire financial experts and sell their services to local agencies that want to issue bonds. JPAs also sell bonds to refinance their member agencies' debts. These JPAs will sell a bond and use the proceeds to pay off a member agency's high-interest debt so it can assume a lower interest debt.

According to CDIAC, as of 2007, JPAs have issued 1,238 bonds for securing more than \$44.5 billion in debt since 1985.

In the 1990s, legislators became worried when a few small cities used the Marks-Roos Act to issue bonds that exceeded their capital needs. As a result, in 1998 the Legislature stopped the practice of allowing so-called "roving JPAs" to issue bonds to pay for developments outside their member agencies' jurisdictions (SB 147, Kopp, Chapter 35, Statutes of 1998). More recently, the Legislature in 2009 imposed greater reporting requirements related to "conduit financing" bond issuances by JPAs because of a lack of transparency in the process (SB 99, Senate Committee on Local

Government, Chapter 557, Statutes of 2009). A list of JPA-related legislation over the last ten years is included in the Appendices.

VIII. Looking Ahead

As a powerful tool for collaboration and financial independence at the local level, we should expect to see the utilization of joint powers agreements increase in the coming years.

And for good reason. JPAs have for decades been a useful tool for localities to structure cooperation, save money, provide better coordinated services, and access desperately needed infrastructure funding, all of which can be a lifeline for public entities in tight budgetary times. Yet JPAs may also be sought after because they permit access to municipal bond proceeds without the complication of local elections, and are relatively less regulated compared to special districts. Moreover, we should expect to continue seeing legislation authorizing certain non-governmental entities to join JPAs. The demise of redevelopment agencies is also likely to drive successor agencies to use JPAs as a new vehicle for development, and there is already legislation pending to that affect (SB 1156 Steinberg).

In that light, continued attention to tracking and overseeing JPAs is an appropriate investment in good government. Data collection on JPAs as a whole appears to be incomplete and under-resourced, filing compliance may be less than ideal, and oversight remains somewhat fragmentary. Non-governmental entities continue to seek access to JPAs, and the Legislature will want to be mindful that private entities do not unduly benefit from the privileges accorded to public entities using JPAs. Many also remain concerned about transparency and potential profiteering in the municipal bond market, and a related audit of two prominent JPAs by the Bureau of State Audits is expected to be released later this year.

As joint powers agreements continue to increase in popularity among local governments, so too should the quality of attention they receive from the oversight community.

IX. Appendices

1. Text of the *Joint Exercise of Powers Act*, Government Code Sections 6500-6536
2. "Governments Working Together: A Citizen's Guide to Joint Powers Agreements", *Senate Local Government Committee* (August 2007)
 - a. <http://sgf.senate.ca.gov/sites/sgf.senate.ca.gov/files/GWTFinalversion2.pdf>
3. 2001-2012 JPA Legislative Summary

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