

Date of Hearing: June 15, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1226 (Durazo) – As Amended April 19, 2022

SENATE VOTE: 28-9

SUBJECT: Joint powers agreements: zero-emission transportation systems or facilities.

SUMMARY: Allows, until January 1, 2032, private, nonprofit corporations that provide services to zero-emission transportation systems or facilities to join a joint powers agency (JPA) or enter into a joint powers agreement with one or more public agencies to facilitate the development, construction, and operation of zero-emission transportation systems or facilities that lower greenhouse gases, reduce vehicle congestion and vehicle miles traveled, and improve public transit connections. Specifically, **this bill:**

- 1) Allows one or more private, nonprofit mutual benefit corporations that are organized pursuant to Section 501(c)(3) of the Internal Revenue Code, formed for purposes of providing services to zero-emission transportation systems or facilities, including, but not limited to, finance, design, construction, operation, or maintenance, to join a JPA or enter into a joint powers agreement with one or more public agencies otherwise established pursuant to the Joint Exercise of Powers Act (JPA Law).
- 2) Requires any JPA formed pursuant to a joint powers agreement as described in this bill to be deemed a public entity separate from the parties to the agreement, as described in JPA Law, except that, notwithstanding any other law, the agency shall not have the power to incur debt.
- 3) Provides that the purpose of a JPA or agreement formed pursuant to this bill shall be to facilitate the development, construction, and operation of zero-emission transportation systems or facilities that lower greenhouse gases, reduce vehicle congestion and vehicle miles traveled, and improve public transit connections.
- 4) Requires an agency formed pursuant to this bill to be governed by a board of directors, the composition of which shall be determined by the participating public agency or agencies. The representation of private, nonprofit mutual benefit corporations on the board of directors shall not exceed 50%.
- 5) Requires, for a project undertaken by a joint powers authority formed pursuant to a joint powers agreement as described in this bill, the joint powers authority to obtain an enforceable commitment that any bidder, contractor, or other entity undertaking the project will use a skilled and trained workforce to complete the project.
- 6) Provides that the provision specified in 5), above, does not apply if either of the following are met:
 - a) The joint powers authority has entered into a project labor agreement (PLA) that will bind all contractors and subcontractors performing work on the project to use a skilled and trained workforce.

- b) The bidder, contractor, or other entity has entered into a project labor agreement that will bind all contractors and subcontractors at every tier performing work on the project to use a skilled and trained workforce.
- 7) Requires, for a project undertaken by a bidder, contractor, or other entity that is a private entity under contract to or otherwise performing the work for a joint powers authority formed pursuant to a joint powers agreement as described in this bill, the private entity to do both of the following:
- a) Certify, in writing and under penalty of perjury, to the joint powers authority that either of the following is true:
 - i) The entirety of the project is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.
 - ii) If the project is not in its entirety a public work and the project applicant is not required to pay prevailing wages to all construction workers under Article 2 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code, all construction workers employed on construction of the project will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the project is subject to this requirement, then for those portions of the project that are not a public work all of the following shall apply:
 - (1) The joint powers authority shall ensure that the prevailing wage requirement is included in all contracts for the performance of all construction work.
 - (2) All contractors and subcontractors at every tier shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.
 - (3) Except as provided in (5), below, all contractors and subcontractors at every tier shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying by the joint powers authority and the public as provided by Section 1776 of the Labor Code.
 - (4) Except as provided in (5), below, the obligation of the contractors and subcontractors at every tier to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the project, or by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is

issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

- (5) The provisions of (3) and (4), above, do not apply if all contractors and subcontractors at every tier performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure.
- (6) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.
- b) Certify to the joint powers authority that a skilled and trained workforce will be used to perform all construction work on the project. All of the following requirements shall apply to the project:
- i) The joint powers authority shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to construct the project.
 - ii) Every contractor and subcontractor shall use a skilled and trained workforce to construct the project.
 - iii) Except as provided in ii), above, the private entity shall provide to the joint powers authority, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the joint powers authority pursuant to this provision shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. A private entity that fails to provide a monthly report as required by this provision shall be subject to a civil penalty of \$10,000 per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of \$200 per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the project using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund. This provision shall not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires compliance with the skilled and trained workforce

- requirement and provides for enforcement of that obligation through an arbitration procedure.
- 8) Provides the following definitions for the purposes of this bill:
 - a) “Project” means any zero-emission transportation system or facility that is developed, constructed, or operated by a joint powers authority formed pursuant to this bill.
 - b) “Project labor agreement” has the same meaning as defined in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.
 - c) “Skilled and trained workforce” has the same meaning as defined in subdivision (d) of Section 2601 of the Public Contract Code and as described in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.
 - 9) Provides that this bill shall remain in effect only until January 1, 2032, and as of that date is repealed.
 - 10) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this bill creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

EXISTING LAW:

- 1) Authorizes, under the JPA Law, two or more public agencies by agreement to jointly exercise any power common to the contracting parties, including, but not limited to, the authority to levy a fee, assessment, or tax, even though one or more of the contracting agencies may be located outside the state.
- 2) Authorizes some private entities to enter into joint powers agreements with public agencies for specified purposes.
- 3) Allows public agencies to also use the JPA Law and the related Marks-Roos Local Bond Pooling Act to form bond pools to finance public works, working capital, insurance needs, and other public benefit projects. JPAs can issue one large Marks-Roos Act bond and then loan the capital to local agencies, thus creating a “bond pool.” Bond pooling saves money on interest rates and finance charges. It also lets smaller local agencies enter the bond market. Because JPAs are entities separate from its members, and so are not bound by the same limitations on debt issuance, voters need not approve bonds JPAs issue.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Bill Summary.** This bill allows private, nonprofit corporations that provide services (including finance, design, construction, operation, or maintenance) to zero-emission transportation systems or facilities to join a JPA or enter into a joint powers agreement with one or more public agencies to facilitate the development, construction, and operation of zero-emission transportation systems or facilities that lower greenhouse gases, reduce vehicle congestion and vehicle miles traveled, and improve public transit connections.

This bill prohibits such a JPA from having the power to incur debt, and requires it to be governed by a board of directors to be determined by the participating public agency or agencies. The representation of private, nonprofit mutual benefit corporations on the board of directors shall not exceed 50%.

This bill requires a JPA formed pursuant to the bill to obtain an enforceable commitment that any bidder, contractor, or other entity undertaking a project on behalf of the JPA to use a skilled and trained workforce to complete the project, and contains additional labor provisions. This bill sunsets on January 1, 2032.

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "California is a leader in the global effort to address the devastating impacts of climate change and has established ambitious emissions reduction goals. To meet our goals, we must continue to address the most significant sources of emissions in the transportation sector. Apart from private vehicles, California must also build out green public transportation infrastructure to lower greenhouse gas emissions, reduce vehicle congestion, and improve access and quality of our public transportation.

"While there are interests, ideas, and resources intended to pursue such projects, there is a need to provide additional opportunities to bring public and private partners together to facilitate these green transportation projects. To help meet our zero-emission goals, SB 1226 will contribute to building out green public transportation by facilitating public-private-nonprofit partnerships through a Joint Power Authorities structure to create and finance green public transportation infrastructure projects."

- 3) **Joint Exercise of Powers Act.** Joint powers are exercised when 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 are called member agencies, and a JPA can only exercise powers that each member agency independently possesses.

A joint powers agreement is a formal, legal agreement between two or more public agencies that wish to exercise joint powers. Some joint powers agreements are administered by one of the participating agencies. Others are administered by a new, legally independent government entity (called a JPA or a joint powers authority) that the member agencies create.

The new entity need not even call itself a JPA. JPAs are not special districts, although such agencies can enter into joint powers agreements.

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.

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..."

State law generally limits membership in JPAs to public agencies (federal, state, and local governments). However, legislation has authorized some types of private entities to enter into joint powers agreements with public agencies for specified purposes. For example, state law allows a mutual water company to enter into a joint powers agreement with any public agency for the purpose of jointly exercising any power common to the contracting parties provided that the agreement ensures that no participating public agency becomes responsible for the underlying debts or liabilities of the JPA (AB 2014, Cortese, 1994). Similarly, state law allows nonprofit hospitals to enter into JPAs to provide health care services in Fresno County (AB 1785, Reyes, Chapter 55, Statutes of 2002); Contra Costa County (AB 3097, Campbell, Chapter 148, Statutes of 1996); Tulare, Kings, and San Diego Counties (SB 850, Kelley, Chapter 432, Statutes of 1997); and Tuolumne County (AB 2717, House, Chapter 227, Statutes of 2000). These hospital JPAs specify that a nonprofit hospital that participates in one these JPAs cannot levy any tax or assessment.

Most recently, the Legislature enacted SB 1403 (Maienschein), Chapter 188, Statutes of 2015. SB 1403 allows, until January 1, 2024, one or more private, nonprofit 501(c)(3) corporations that provide services to homeless persons for the prevention of homelessness to form a JPA, or enter into a joint powers agreement with one or more public agencies. The JPA must be a public entity, but cannot have the power to incur debt. JPAs formed under this provision are to encourage and ease information sharing between public agencies and nonprofit corporations to identify the most costly and frequent users of publicly funded emergency services, provide frequent user coordinated care housing services, and prevent homelessness. The participating public agencies must determine the composition of the board of directors, but the representation of nonprofit 501(c)(3) corporations cannot exceed 50% of the board membership.

- 4) **Arguments in Support.** The Bay Area Council writes in support, "California needs to do more to meet its ambitious goals for reducing to 1990 levels emissions of greenhouse gases (GHG). Recognizing that more than 40% of California's GHG emissions come from the transportation sector, Governor Newsom initiated an aggressive strategy for achieving the state's ambitious zero-emission vehicle goals; Executive Order N-79-20 stipulates 100% of in-state sales of new passenger cars and light-duty trucks will be zero-emission by 2035 and 100% of medium- and heavy-duty vehicles sales must be zero-emission by 2045 where feasible.

“To further prioritize and accelerate zero-emissions transportation projects to meet our GHG emissions targets, SB 1226 (Durazo) provides more tools to match funding with project sponsors, thereby expanding the menu of clean transit and other zero-emission transportation opportunities. There is currently no mechanism in California law that formally fosters collaboration and investment in transit or other zero-emission projects between public agencies, nonprofits, and the private sector; public agencies cannot access private capital to complete projects, nonprofits lack the governance structure or capacity to complete large infrastructure projects, and private entities that want to invest in these projects have no ability to guide their investment.

“While California law currently authorizes two or more public agencies by contractual agreement to jointly exercise any power common to the contracting parties, by forming a joint powers agency (JPA), such collaborative models are mostly limited to just public agencies. SB 1226 (Durazo) adds a new section to California’s JPA law, authorizing one or more private, nonprofit mutual benefit corporations that are organized pursuant to Section 501(c)(3) of the Internal Revenue Code, formed for purposes of providing services to zero-emission transportation systems or facilities, including but not limited to finance, design, construction, operation or maintenance, to join a joint powers agency or enter into a joint powers agreement with one or more public agencies otherwise established pursuant to the overarching JPA law. The purpose of a JPA formed pursuant to this bill would be to facilitate and accelerate the development, construction, and operation of zero-emission transportation systems or facilities that lower greenhouse gases, reduce vehicle congestion and vehicles miles traveled, and improve public transit connections.

“A variety of nonprofit organizations have been working with the private sector and with public agencies to develop new and innovative solutions to meet California’s zero-emission targets. Private investment opportunities may be available for transit and other zero-emission transportation projects, contingent on control over their investment in a public sphere.”

5) **Arguments in Opposition.** None on file.

6) **Double-Referral.** This bill is double-referred to the Transportation Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council
California Special Districts Association
Calstart INC.
City of Long Beach
Climate Resolve
Los Angeles County Business Federation

Opposition

None on file

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