

Date of Hearing: July 1, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Brian Maienschein, Chair  
SB 710 (Galgiani) – As Amended June 23, 2015

**SENATE VOTE:** 39-0

**SUBJECT:** Joint exercise of powers.

**SUMMARY:** Authorizes California joint powers authorities to issue bonds and enter into loan agreements to finance or refinance projects located outside this state. Specifically, **this bill:**

- 1) Allows, until January 1, 2022, a joint powers authority (JPA) to issue or cause to be issued bonds and enter into a loan agreement, as specified, for the financing or refinancing of a project that is situated in another state, including working capital related to that project, if all of the following apply:
  - a) The project is owned, developed, or operated by a private entity;
  - b) The issuance of bonds by the JPA and the financing of the project is approved by resolution, order, or other official action of the city, county, or other public body with land use planning authority over the project, or of the state in which the project is situated. This provision does not apply to the issuance of refunding bonds if a prior financing or refinancing of the project was approved by the city, county, public body, or state;
  - c) The JPA has at least 25 local agency members and has issued bonds and entered into loan agreements to finance at least 25 separate projects;
  - d) The JPA finds, based on the facts and circumstances attendant to the project or the financing or refinancing of the project, that the issuance of the bonds or the financing or refinancing of the project will result in a substantial public benefit to this state because one or more of the following is satisfied:
    - i) At least 20% of the net proceeds of the issue are allocated to the financing of one or more projects, including working capital related thereto, located in this state;
    - ii) The borrower of the bond proceeds has its principal place of business in this state and, if that borrower is subject to income or franchise tax in this state or any other state, that borrower has paid to this state for the most recent tax year income or franchise tax of at least \$50,000 or one-half of its total income or franchise tax liability to all states, whichever is less. If the borrower has little or no assets other than the project to be financed and is owned by another company or companies, then the company or companies that own a majority of interest in the borrower shall have its or their principal place of business in this state;
    - iii) The borrower of the bond proceeds or a controlled group of which it is a member has at least 50 full-time equivalent employees in this state;

- iv) The borrower of the bond proceeds or a controlled group of which it is a member has paid to this state for the most recent tax year income or franchise tax of at least \$100,000; or,
  - v) In the case of the financing of one or more multifamily rental housing projects, the developer of that project or projects has its principal place of business in this state, and any such developer subject to personal or corporate income tax in California or other states has paid to this state for the most recent tax year income or franchise tax of at least \$50,000 or one-half of its total income or franchise tax liability to all states, whichever is less; and,
  - e) The JPA authorizes the issuance of the bonds in a public meeting subject to the Ralph M. Brown Act (Brown Act) or the Bagley-Keene Open Meeting Act (Bagley-Keene Act), as those acts are applicable to any member of the JPA, including any applicable public notice requirement.
- 2) Requires the finding required by 1)d), above, to be conclusive and incontestable 30 days following the adoption of a resolution of the JPA containing this finding.
  - 3) Prohibits proceeds of bonds issued, pursuant to this bill, other than those amounts required to pay bond issuance or administration fees of the JPA, from being used to finance any working capital of the JPA.
  - 4) Provides that the interest on bonds issued, pursuant to this bill, shall not be exempt from income taxation, and shall be included in gross income under the state's personal income tax law and corporation income tax law, as specified.
  - 5) Requires any JPA created, pursuant to the Joint Exercise of Powers Act (JPA Act), to comply with the California Public Records Act (CPRA), the Brown Act, and the Bagley-Keene Act, to the extent those acts are applicable to any member of the JPA, and states that this provision is declaratory of existing law.
  - 6) Prohibits any JPA created, pursuant to the JPA Act, from utilizing any funds derived from bonds issued, pursuant to 1), above, as that provision of law read on the effective date of this bill, for political purposes, including, but not limited to, lobbying.
  - 7) Requires, on or before January 1, 2021, the Legislative Analyst to prepare and submit to the Legislature a report on the issuance of bonds and the financing of projects, pursuant to 1) through 3), above. No later than July 1, 2020, JPAs that issue bonds, pursuant to 1) through 3), above, shall provide information concerning those bonds, the projects financed, the public benefits accruing to this state, and such other information requested by the Legislative Analyst's Office (LAO) for the purpose of preparing the report. The report may include recommendations for modifying or extending the application of 1) through 3), above.
  - 8) Provides that this bill is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

*In order to timely provide essential bonding authority for the funding of multistate, public-private projects that are necessary to ensure California's national and international competitiveness and public benefits in this state, it is necessary that this act take effect immediately.*

- 9) Provides the following definitions:
- a) "Controlled group" means a group of corporations, partnerships, limited liability companies or other persons that are wholly owned or controlled by a single corporation, partnership, limited liability company, or other person;
  - b) "Developer" means a corporation, partnership, limited liability company, or other person that is the initial controlling party within the legal entity that owns the multifamily rental housing project to be financed with proceeds of the bonds and that undertakes the development or rehabilitation of the project;
  - c) "Financing" shall include refinancing of bonds of the JPA or of bonds issued by any other state or local entity located within this state;
  - d) "Issue" shall have the same meaning as in United States Treasury Regulations Section 1.150-1(c), as in effect on July 1, 2014;
  - e) "Net proceeds of an issue" means the aggregate principal amount of that issue, less the amount of that issue allocated to original issue discount, issuance costs, reserve funds, and credit enhancement costs; and,
  - f) "Principal place of business" of an entity means the principal place from which the trade or business of the entity is directed or managed.

**EXISTING LAW:**

- 1) Allows, pursuant to the 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.
- 2) Allows JPAs to issue bonds, including, at the option of the JPA, bonds bearing interest, to pay the cost of any public capital improvement, working capital, or liability or other insurance program. In addition, for any purpose for which a JPA may execute and deliver or cause to be executed and delivered certificates of participation in a lease or installment sale agreement with any public or private entity, the JPA, at its option, may issue or cause to be issued bonds, rather than certificates of participation, and enter into a loan agreement with the public or private entity.
- 3) Allows JPAs to issue revenue bonds for specified purposes and provides that these bonds and the interest thereon or income therefrom are exempt from all taxation in this state other than gift, inheritance and estate taxes.
- 4) Establishes the Marks-Roos Local Bond Pooling Act of 1985 (Marks-Roos), which finds and declares that:

- a) There is a critical need within the state to expand, upgrade, and otherwise improve the public capital facilities of local government necessary to support the rehabilitation and construction of residential and economic development; and,
  - b) It is the intent of the Legislature to assist in the reduction of local borrowing costs, help accelerate the construction, repair, and maintenance of public capital improvements, and promote greater use of existing and new financial instruments and mechanisms, such as bond pooling by local agencies.
- 5) States, pursuant to Marks-Roos, that it is the Legislature's intent that Marks-Roos be used to assist local agencies in financing public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits for taking that action. For the purposes of Marks-Roos, "significant public benefits" means any of the following benefits to the citizens of the local agency:
- a) Demonstrable savings in effective interest rate, bond preparation, bond underwriting, or bond issuance costs;
  - b) Significant reductions in effective user charges levied by a local agency;
  - c) Employment benefits from undertaking the project in a timely fashion; or,
  - d) More efficient delivery of local agency services to residential and commercial development.
- 6) Provides that a JPA, or any entity acting on behalf of or for the benefit of a JPA, may not authorize bonds to construct, acquire, or finance a public capital improvement, except as specified, unless all of the following conditions are satisfied with respect to each capital improvement to be constructed, acquired, or financed:
- a) The JPA reasonably expects that the public capital improvement is to be located within the geographical boundaries of one or more local agencies of the JPA that is not itself a JPA;
  - b) A local agency that is not itself a JPA, within whose boundaries the public capital improvement is to be located, has approved the financing of the public capital improvement and made a finding of significant public benefit in accordance with the criteria specified in 5), above, after a public hearing held by that local agency within each county or city and county where the public capital improvement is to be located after notice of the hearing is published once at least five days prior to the hearing in a newspaper of general circulation in each affected county or city and county. If the public capital improvement to be financed will provide infrastructure, services, or a golf course to support, or in conjunction with, any development project, the local agency for purposes of this requirement shall be the city, county, or city and county with land use jurisdiction over the development project; and,
  - c) A notice with specified contents is sent by certified mail at least five business days prior to the hearing held, pursuant to b), above, to the Attorney General and to the California Debt and Investment Advisory Commission (CDIAC), with specified exceptions.

- 7) Provides exemptions to 6), above, for bonds issued to finance: the undergrounding of utility and communication lines; facilities for the generation or transmission of electrical energy for public or private uses, as specified; facilities for the production, storage, transmission, or treatment of water, recycled water, or wastewater; public school facilities; and, public highways located within the jurisdiction of a JPA, as specified.
- 8) Requires, pursuant to Marks-Roos, interest earned on any bonds issued by a JPA to be free from state personal income tax and corporate income tax.
- 9) Provides, pursuant to California's Revenue and Taxation Code, that income which this state is prohibited from taxing includes interest on bonds issued by this state or a local government in this state.
- 10) Provides, pursuant to the California Constitution, that interest on bonds issued by the state or a local government in the state is exempt from taxes on income.
- 11) Exempts, pursuant to federal tax law, state taxation of interest on federal bonds if the interest on state obligations is exempt from tax.

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

**COMMENTS:**

- 1) **Bill Summary.** This bill seeks to allow California JPAs to finance private projects located outside the state. The major provisions of this bill include the following:
  - a) A new, significant authority for California JPAs to issue bonds for the financing of out-of-state projects that are privately owned, developed or operated;
  - b) A requirement that the city, county, or other public body with land use planning authority over the project, or the state in which the project is situated approve the bond issuance and the financing by resolution, order, or other official action;
  - c) A requirement that the JPA finds that the bond issuance or the financing or refinancing will result in a substantial public benefit to this state because *one or more* of the following is satisfied:
    - i) At least 20% of the net proceeds of the issue are allocated to the financing of one or more projects, including working capital, located in this state;
    - ii) The borrower of the bond proceeds has its principal place of business in this state and, if that borrower is subject to income or franchise tax in this state or any other state, that borrower has paid to this state for the most recent tax year income or franchise tax of at least \$50,000 or one-half of its total income or franchise tax liability to all states, whichever is less. If the borrower has little or no assets other than the project to be financed and is owned by another company or companies, then the company or companies that own a majority of interest in the borrower shall have its or their principal place of business in this state;

- iii) The borrower of the bond proceeds or a controlled group of which it is a member has at least 50 full-time equivalent employees in this state;
  - iv) The borrower of the bond proceeds or a controlled group of which it is a member has paid to this state for the most recent tax year income or franchise tax of at least \$100,000; or,
  - v) In the case of the financing of one or more multifamily rental housing projects, the developer of that project or projects has its principal place of business in this state, and any such developer subject to personal or corporate income tax in California or other states has paid to this state for the most recent tax year income or franchise tax of at least \$50,000 or one-half of its total income or franchise tax liability to all states, whichever is less.
- d) A provision stating that income on bonds issued, pursuant to the bill, is not exempt from taxation, but shall be included in gross income under the state's personal and corporate income tax laws.
  - e) A requirement that the LAO submit a report to the Legislature on the implementation of the bill; and,
  - f) An urgency clause.

This bill is sponsored by the California Municipal Finance Authority (CAMF) and the Independent Cities Finance Authority (ICFA).

- 2) **Author's Statement.** According to the author, "Activities financed with tax exempt bonds increasingly transcend state boundaries and the practice of issuing municipal debt for multi-state and out-of-state projects is becoming more widespread. Multi-state financing provides cost and time savings to borrowers through economies of scale. In recent years, municipal issuers located in Arizona, Colorado, Florida, Illinois, Texas and Wisconsin, among other states, have issued bonds to finance multi-state and out-of-state projects. Although some of those projects are located in California, companies and non-profit organizations seeking to develop their multi-state projects must look beyond California for cost effective bond financings. Allowing California JPAs to assist in financing multi-state and out-of-state projects can generate time, efficiency and transaction cost benefits to enterprises with substantial operations, employment or headquarters in California."
- 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 JPA Act authorizes 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. 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.

- 4) **Marks-Roos Bond Pooling.** Marks-Roos provides JPAs with broad powers to issue bonds for a wide variety of purposes, and was established to facilitate local bond pooling and allow local agencies to achieve reduced issuance costs. Marks-Roos bonds may only be issued by JPAs, and JPAs issuing bonds under Marks-Roos need not follow other bond act requirements in the issuance of bonds, such as voter approval. Marks-Roos bonds are bonds of the issuing JPA, not bonds of the member agencies. As such, the JPAs member agencies are not liable or otherwise obligated on the bonds, unless they expressly agree to assume such liability.

Marks-Roos bonds are issued to assist local agencies with their financing needs. "Local agencies" are defined to include the sponsoring member of the JPA or any city, county, city and county, authority, district, or public corporation of the state.

In order to use the Marks-Roos Act, the local agency for which the bonds are being issued must determine that there are significant public benefits for taking that action. "Significant public benefits" are defined to mean:

- a) Demonstrable savings in effective interest rate, bond preparation, bond underwriting, or bond issuance costs;
- b) Significant reductions in effective user charges levied by a local agency;
- c) Employment benefits from undertaking the project in a timely fashion; or,
- d) More efficient delivery of local agency services to residential and commercial development.

These determinations are typically made by resolution of the local agency's legislative body when the local agency approves the financing.

In addition, Marks-Roos states that a JPA may not issue bonds, unless a member of the JPA within whose boundaries the public capital improvement is to be located has approved the financing, among other things. This requirement provides a "nexus" between the members of the JPA and the project.

Marks-Roos bonds may be issued to directly pay the cost of public capital improvements. Direct financing of these improvements generally takes the form of bonds issued by the JPA and secured by payments to be made under a loan agreement, installment purchase agreement, or lease between the JPA and the local agency that is paying for the project. In this type of arrangement, the JPA acts as a conduit issuer for the local agency and has no obligation on the bonds other than to make payment from the payments made by the local agency, pursuant to the underlying agreement between the JPA and the local agency. The source of revenues for the underlying agreement with the local agency can vary greatly and will determine which type of agreement is used.

- 5) **Restrictions on Marks-Roos.** SB 147 (Kopp), Chapter 35, Statutes of 1998, enacted many of the restrictions on the use of Marks-Roos after CDIAC found that some JPAs (called "roving" or "remote" JPAs) were using their Marks-Roos authority to finance projects, such as golf courses and casinos, outside their member agencies' jurisdictions in order to collect

fees. These types of financing arrangements are known as "land-based" bond deals and, in some cases, were financing wholly private projects.

According to an analysis of SB 147 by the Senate Local Government Committee, "To make sure that remote JPAs don't finance speculative projects within another agency's jurisdiction, SB 147 requires greater participation from the agencies whose territory will include the projects or services. To ensure that the projects benefit the public, SB 147 requires the *sponsoring agency* to find that a project will promote the public interest. By placing new restrictions on remote project financing, SB 147 will *help ensure that communities don't get stuck with unwanted, or financially shaky, projects* (emphasis added)." Requiring the public agency to make the public benefit determination was in keeping with an informal opinion issued by the Attorney General in 1996.

In addition, according to CDIAC, the sponsor of SB 147, there is not adequate oversight over a project or its financing without a geographic connection. CDIAC asserted that requiring a project to be located within the boundaries of a member agency of the JPA provides more public accountability for land-based bond deals.

- 6) **Previous Legislation.** AB 2046 (Gomez) of 2014 was similar to this bill. AB 2046 was held in the Senate Appropriations Committee.

SB 188 (Negrete McLeod) of 2007 declared that a JPA formed by an existing JPA with more than 450 members and any public agency in another state has the same powers as a JPA under the Act, including Marks-Roos. SB 188 also declared that any provisions of the Act that limit the location of projects, financing, or other activities to California do not apply to this type of JPA. SB 188 required, before this type of JPA could issue bonds for a project or other activity, the governmental agency with primary responsibility over land use project approval to approve the project and the use of this JPA to finance the project. SB 188 also required this type of JPA to submit an annual report to CDIAC detailing its projects, financings, and activities. SB 188 was sponsored by the California Statewide Communities Development Authority (CSCDA) in an attempt to expand its tax-exempt operations into other states.

An analysis of SB 188 by the Senate Local Government Committee notes, "The public finance industry is becoming a nationwide enterprise and CSCDA wants to maintain its leadership position by becoming a multi-state bond issuer and lender. Although the Joint Exercise of Powers Act already allows other states' public agencies to join a JPA, the Marks-Roos Act imposes additional limits on membership and the location of projects. To help CSCDA maintain its leadership in the tax-exempt bond markets and expand into other states, SB 188 exempts this type of JPA from any provision of the Joint Exercise of Powers Act that might limit its activities to California."

The CSCDA is operated by HB Capital Resources Ltd, a private firm that also operates the Wisconsin-based Public Finance Authority, one of several out-of-state conduit issuers that operates nationwide. SB 188 was held in the Senate Appropriations Committee.

- 7) **CMFA and ICFA.** According to its website, "The CMFA mission is to support economic development, job creation and social programs throughout the State of California while giving back to California communities. By supporting our member communities and their



local charities with a portion of the revenue generated through the issuance of taxable and tax-exempt bonds for public, private and non-profit entities, the CMFA is able to directly contribute to the health and welfare of the residents of California.

"The CMFA shares 25% of all issuance fees directly with its member communities. In addition, a grant equal to 25% of the issuance fee is made to the California Foundation for Stronger Communities to fund charities designated by the member communities. A portion of the annual fees received by the CMFA will also be directed to charitable activities within California communities. This unique commitment to 'give back' directly to the communities in which we operate sets the CMFA apart."

According to its website, "The Independent Cities Finance Authority is an unaffiliated Joint Powers Authority (JPA) with the ability to help cities achieve their goals. Since its inception in 1988, ICFA has assisted in funding over \$500 million in critical community projects, from hospitals, to charter schools, municipal utilities to housing for low and moderate-income families and seniors. ICFA is well positioned outside of laborious bureaucracies. Our bonds are issued quickly, often providing essential financing for projects that would falter without it. ICFA helps cities to achieve their finance requirements efficiently..."

CMFA and ICFA are not required by law to make charitable contributions.

- 8) **Policy Considerations:** This bill raises a number of questions the Committee may wish to consider:
- a) **Expanding the Purpose of JPAs.** Is it appropriate to expand the authority of California JPAs to allow the issuance of bonds for private projects that are located outside California, given the original intent of the JPA Act and Marks-Roos?
  - b) **Severing the Geographical Nexus.** This bill severs the geographical nexus between the bond-issuing JPA and the jurisdiction in which the local agency project is located. Are there appropriate safeguards in the bill to ensure oversight of and accountability for these financed projects?
  - c) **Substantial Public Benefit: Criteria.** This bill's criteria for a "substantial public benefit" is different from the criteria for a "significant public benefit" in existing law, pursuant to Marks-Roos. The Committee may wish to consider whether the public benefits identified in this bill are sufficient to merit the new authority this bill grants California's JPAs.
  - d) **Substantial Public Benefit: Who Decides?** This bill allows the bond-issuing JPA to determine the "substantial public benefit" to this state, rather than the local jurisdiction in which the project will be located. Does this give the local agency enough oversight over these projects? Is there an inherent conflict of interest in vesting this decision with the entity that stands to benefit financially from such a determination? Would it be more prudent for a financially disinterested party to make this finding?
  - e) **Approval in Public Meetings.** While this bill requires the California JPA to authorize the issuance of bonds in a public meeting, it doesn't require a public meeting when the out-of-state jurisdiction approves projects financed by California JPAs. It only requires

this approval to be accomplished "by resolution, order, or other official action of the city, county, or other public body with land use planning authority over the project, or of the state in which the project is situated." Is this sufficient public involvement for the jurisdictions in which these projects will be located?

f) **Refinancing.** This bill states that the approval process required by the bill "does not apply to the issuance of refunding bonds if a prior financing or refinancing of the project was approved by the city, county, public body, or state." This would appear to allow California JPAs to engage in re-financings without any "official action" of the out-of-state jurisdiction. Is this a policy the Committee wishes to support?

g) **Tax Exemption.** This bill provides that the interest on bonds issued, pursuant to the bill, is not exempt from income taxation, and shall be included in gross income under the state's personal and corporate income tax laws. However, the California Constitution provides that interest on bonds issued by the state or a local government in the state is exempt from taxes on income. In instances where the State Constitution and local laws conflict, the Constitution generally prevails. The Committee may wish to consider the implications of this contradiction.

9) **Urgency clause.** This bill contains an urgency clause. The Committee may wish to consider asking the author to explain the need for an expedited process for this bill.

10) **Arguments in support.** The California Municipal Finance Authority, co-sponsor of this measure, states, "The public benefits to California for assisting in the financing of multi-state and out-of-state projects include, among others, (i) time, efficiency, cost savings and employment or headquarters in California, (ii) creating the perception that California is friendly to private enterprise, (iii) putting California-based public finance professionals (including commercial lenders, underwriters, financial advisors, attorneys and others) on an even footing to compete with public finance professionals based in other states, and (iv) in the case of certain JPAs, generating substantial contributions to California charitable organizations for the express purpose of benefitting California communities."

11) **Arguments in opposition.** None on file.

12) **Double-Referral.** This bill is double-referred to the Revenue and Taxation Committee.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Municipal Finance Authority [CO-SPONSOR]  
Independent Cities Finance Authority [CO-SPONSOR]

##### **Opposition**

None on file

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