

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, 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 purposes of insurance risk pooling.

EXISTING LAW:

- 1) 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. (Government Code (GOV) Section 6500 et seq.)
- 2) 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 Section 6500)
- 3) 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 Section 6525)
- 4) 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. 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. (GOV Section 6512.2)
- 5) Provides that the pooling of self-insured claims or losses among entities participating in a JPA are not subject to regulation under the Insurance Code, as provided. (GOV Section 990.8(c))
- 6) Defines water corporation as including every corporation or person owning, controlling, operating, or managing any water system for compensation within this state. (Public Utilities Code (PUC) Section 241)
- 7) Provides that any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system within the state, who sells, leases, rents, or delivers water to any person, firm, corporation, municipality, or any other political subdivision of the state, whether under contract or otherwise, is a public utility, and is subject to regulation by the California Public Utilities Commissioner (CPUC). (PUC Section 2701)

FISCAL EFFECT: Unknown

COMMENTS:1) *Purpose.* 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 agreement (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) *Discussion.* Public water systems that deliver domestic water generally fall into three categories:

- a) Local agencies (cities and special districts). Local Agency Formation Commissions (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 (water corporations). The California Public Utilities Commission (CPUC) controls the companies' service areas and their water rates; or,
- 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 CPUC regulate mutual water companies.

Under existing law, public agencies may form JPAs to jointly exercise any power common to all members. 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. 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.

As previously mentioned, water rates for water corporations are set by the CPUC. However, any increases in operating costs, including the cost of insurance, are required to be recovered in rates. Therefore, as water corporations face higher insurance costs these costs will be passed onto consumers in the form of increased water rates.

In California, two JPAs exist to provide risk pooling for public water systems. These JPAs (ACWA JPIA and JPRIMA) provide insurance to water utility members at a lower average cost and offer broader coverage than the commercial insurance market.

Currently, mutual water companies are authorized to join a JPA for the provision of insurance, so long as the JPA has one or more public agencies as a member. This bill asks for the same allowance for water corporations. By allowing water corporations to join a JPA it will allow them to avoid the high cost of commercial insurance coverage and help offer more rate stability for consumers.

- 3) *Argument in Support.* This bill's sponsor, the California Water Association, notes that water corporations would benefit from participation in JPAs because it would allow them to set lower premiums and offer broader coverage than would be available through the private marketplace.
- 4) *Argument in Opposition.* The Association of California Water Agencies Joint Powers Insurance Authority (ACWA JPIA) oppose this bill noting that investor-owned private water corporations are fundamentally different from public water agencies and pose substantially increased risk. The opposition also notes concern over the potential downstream and unanticipated impact to the risk pooling industry in California by allowing investor-owned private water corporations to join or form a risk pool.
- 5) *Double Referral.* This bill is to be heard in the Assembly Local Government Committee upon passage out of this committee.
- 6) *Prior Legislation.*
 - a) AB 656 (Cristina Garcia), Chapter 250, Statutes of 2015 allowed a mutual water company to enter into a JPA with a public agency for the provision of insurance and risk-pooling.
 - b) AB 101 (Steinberg), Chapter 14, Statutes of 2000 allowed a private (non-profit or for-profit) charter school to be considered a public agency for membership in a JPA for risk pooling.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Mutual Water Companies
California Water Association
Lake Alpine Water Company
Lukins Brothers Water Company, INC.
National Association of Water Companies
San Gabriel Valley Water Company
Sierra Park Water Company, INC.
Suburban Water Systems

Opposition

Association of California Water Agencies Joint Powers Insurance Authority (ACWA JPIA)

Analysis Prepared by: Claire Wendt / INS. / (916) 319-2086