

**Joint Powers Authorities:
What You Need to Know**

2020/2021 Nevada County Grand Jury

Report Date: May 18, 2021

Release Date: June 1, 2021

Joint Powers Authorities: What You Need to Know

Summary

A Joint Powers Authority (JPA) is a stand-alone organization formed by governmental entities for a specific purpose or project. At their best, well-run JPAs can save taxpayer money through combining efficiencies, expertise, and effort. At their worst, they can be sinkholes for cost overruns and cronyism, lack transparency, and evade oversight by citizens and officials.

A Grand Jury is the only entity with authority to investigate JPAs operating in California.

This informational report serves as a jumping-off point for the citizens of Nevada County to understand what JPAs are, their purpose, their structure, and types of services they provide. It discusses, in brief, the relationships with JPAs to the authorities (both state and local) which govern them. This report also points out the hidden dangers of those JPAs that do not comply with the spirit of the law and provides brief examples from other counties.

The 2020-2021 Grand Jury found the complexities of JPA structures, laws, and terminologies difficult to understand and monitor, leading to possible misuses and abuses.

Glossary

- **Agreement** Joint Powers Agreement
- **G.C.** California Government Code
- **Governmental Entity** A governmental entity is a state, county, city or any other governmental entity listed in G.C. §6500.
- **JPA** Joint Powers Authority or Joint Powers Agency (these terms are often used interchangeably with government/public agencies)
- **LAFCo** Local Agency Formation Commission
- **Marks-Roos Act** The Marks-Roos Local Bond Pooling Act of 1985
- **PFA** Public Financing Authority
- **RDA** Redevelopment Agency
- **State** State of California

Background

What are Joint Powers Authorities?

Two or more governmental entities can join together to form a Joint Powers Authority (JPA) to solve mutual problems, to fund a project, or to act as a single representative entity for specific activities. Agencies at the federal, state, county, special district, or school district-level can combine to form JPAs. Interestingly, JPAs can even be formed between different U.S. states, and local JPAs can be formed in California with tribal governments. Through special enabling legislation, non-governmental entities may become parties to a JPA.

JPAs are distinct entities from special districts, which also provide specific functions to local communities. Special districts hold elections, are served by boards, and fall under different State laws for their legal authority.¹ However, special districts may participate in JPAs and be part of JPA Agreements (Agreements). The Nevada County Grand Jury has published several reports specific to special districts in the 2018 – 2019 and 2019 – 2020 jury years. These reports are on the Grand Jury website.²

The concept of JPAs in California is exactly 100 years old at the time of this report. In 1921, the California legislature allowed any two cities or counties to “enter into agreements and funds to exercise a power common to each.” This enabled Alameda County and San Francisco to jointly expand a tuberculosis facility in Alameda County for use by patients from both counties. In 1923, the California Supreme Court upheld this joint power arrangement. Around 20 years later,

the Legislature authorized special districts to form JPAs to accomplish mutual projects such as bridges and water projects.

Redevelopment Agencies (RDAs) in California were originally formed to fund urban renewal programs. In 2011, these agencies were dissolved to address the State of California (State) budget deficit. Their assets and liabilities were transferred to successor agencies which were prohibited from taking on new redevelopment or debt. Under State oversight and a conservator's guidance, the successor agency was to pay off existing debt and dissolve once the debt was fully paid off. Some successor agencies now operate under a JPA. If new JPAs were formed to act as successor agencies, they may be invalid if they assume any new debt.

The State Senate's Citizen's Guide to JPAs gives a fuller account of JPA formation and evolution in the State.³

Approach

In the course of writing this report, the Grand Jury researched:

- information from State publications,
- information from the reports of other Grand Juries in California,
- governing law, and
- information from the Nevada County Local Agency Formation Commission (LAFCo).

Discussion

What is the purpose of forming a JPA?

The purpose of forming a JPA is to permit public entities to pool resources. For Nevada County this could include the county itself, its cities, its special districts, or other public agencies both inside and outside the county. For example, two cities could create a JPA to negotiate insurance, building projects, resource sharing, service delivery, or any number of mutual public projects or goals. Pooling resources, coordinating efforts, and eliminating redundant actions or overlapping services can save taxpayer money. JPAs can also obtain more favorable rates or bids from outside services to achieve economies of scale.

JPA formation can cut down on the time it might take to start a new project that involves multiple or overlapping agencies and jurisdictions. The more traditional approach would be to place a measure on a ballot, get it approved by voters, and sell bonds to private investors to raise the revenue or capital needed. Forming a JPA for the benefit of several agencies or jurisdictions

can cut the expense and time it takes to manage multiple voter initiatives across jurisdictions whose individual outcomes in the end may differ.

How are JPAs formed?

Governmental entities can form a JPA to fulfill common objectives without voter approval or voter initiatives. However, these governmental entities must post notices, hold a public meeting, and solicit comments from citizens or other stakeholders before forming any Agreements. Through special legislation, some non-governmental entities may participate in JPAs. Some examples of these include Agreements with non-profit hospitals to provide healthcare in various California counties and Agreements between mutual water companies and public water agencies.

To form a JPA, the governmental entities must enter into a formal agreement. The Agreement must identify a governing body such as a Board of Directors, and in most circumstances, identify a treasurer and an auditor. The Agreement must be filed within 30 days with the Secretary of State and the State Controller. If a component entity is a county, city or special district and the JPA provides municipal services, the Agreement must also be filed with the county's Local Agency Formation Commission (LAFCo).

After this point, the JPA can enter into contracts, issue bonds, and finance projects.

It may be difficult to identify an organization as a JPA, because many do not use this term in its official name.⁴ In addition, there appears to be a discrepancy in the number of JPA filings listed with the Secretary of State versus those with the State Controller.⁵

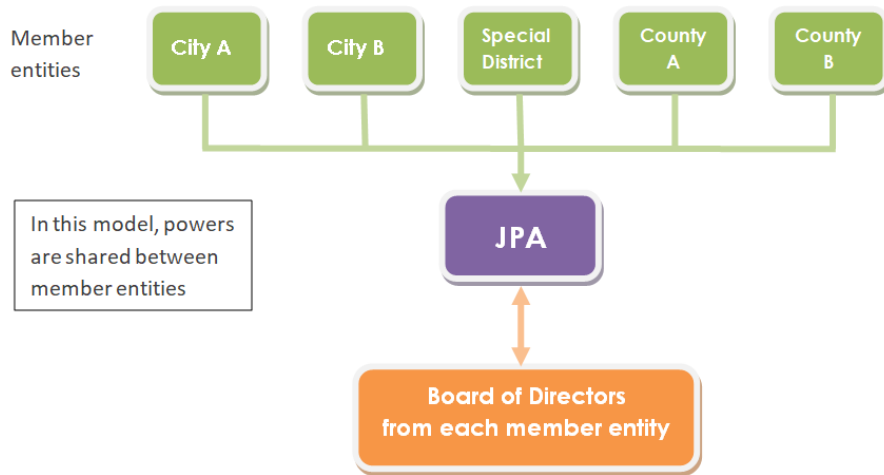
JPA Organizational Structures

JPAs appear generally in two distinct organizational structures:

- horizontal model (aka, “direct model”)
- vertical model (aka “circular model”)

The hypothetical models below show how JPA structures may form.

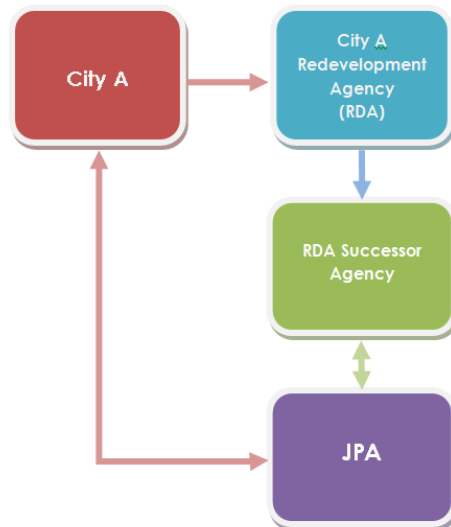
Horizontal Model JPA Example



Horizontal-model JPAs consist of member entities that share a common problem to solve, opportunity, or goal. In general, they transfer their authority (with member entity representation) to a JPA to provide a service or fund a project. If the JPA is not performing well, not producing the desired results, or not delivering improvements, a member entity may withdraw from the JPA.

Horizontal-model JPAs provide internal checks and balances. Since more entities are involved, this allows for self-correction and accountability. Many JPAs with the horizontal structure tend to provide cost-efficient services and tax benefits to communities.

Vertical Model JPA Example



Vertical-model JPAs are essentially JPAs formed within the same organization and controlled by a single authority instead of several. An example would be a city that forms a JPA with its Redevelopment Agency (RDA). The JPA then issues a bond to fund a redevelopment project in the city. The practical effect of such a JPA is that while the city is in control, it can issue bonds as a JPA without voter approval.

There are many potential risks with this model because there are not the same checks, balances, and accountability as with the horizontal model JPAs. One big risk is corruption. An infamous example of this occurred in 2010 with the City of Bell. The Los Angeles Times described this as “corruption on steroids.”⁶ In another example from Contra Costa County, the same individual signed for both a city and its RDA.⁷ A JPA might fall short of its ability to repay debt and could internally use the organization’s general fund or other internal sources (real estate collateral, in the case of the City of Bell) to avoid risk of defaulting on the bond. Since this is allowed without voter approval, this could result in higher rates to taxpayers.

Other potential issues with a vertical model can include:

- **Transparency:** Orange County’s Grand Jury found many issues with transparency with some vertical JPAs.⁸
- **Solvency:** Orange County’s Grand Jury discovered issues with revenue and off-the-books records of three of its county’s vertical JPAs.
- **Reporting:** The Contra Costa Grand Jury called out the lack of reporting and oversight of some vertical JPAs operating in their county.

JPA Service Categories

JPAs can serve a useful purpose in the delivery of cost-effective services by sharing resources and responsibilities. JPA services fall broadly into five categories:

- **General Public/Municipal Services** – Governmental entities such as counties, cities, and special districts can create JPAs to provide public services such as police and fire protection, solid waste management, transportation planning, hazardous waste, flood control, soil conservation, and other services that might be needed as improvements or to fulfill state or federal mandates.
- **Financial Services** –These JPAs operate under the Revenue Bond Act of 1941 and the Marks-Roos Local Bond Pooling Act of 1985 (Marks-Roos Act) to raise public capital for many purposes, including:
 - School and city buildings

- Bridges
- Flood control
- Jails
- Public recreation facilities, etc.

These types of JPAs are sometimes called Public Financing Authorities (PFAs) or “captive JPAs.” Most JPAs of this type are formed to provide financial services for public improvements. One of the largest is the CHF (California Rural Home Mortgage Financing Authority Homebuyers Fund), which operates in all 58 California counties. It assists first-time home buyers by providing financing and grants, consolidating these with federal, state, and local funding.⁹

- **Insurance Pooling and Purchasing Discounts** – These JPAs usually involve governmental entities, such as school districts or counties that need to buy insurance, supplies, or equipment. For insurance, they generally enter into a self-insurance arrangement with insurance companies and third-party administrators for claims. The JPA controls the funds for each agency in a collective account which earns interest to help finance the JPA’s operations and pays the member entities’ claims.

This type of JPA can also join with other insurance/purchasing JPA to create a “super JPA.” These JPAs can negotiate for lower rates and volume discounts for supplies, insurance, and equipment. The Excess Insurance Authority (EIA) is an example of a super-JPA operated by the California State Association of Counties.

- **Planning Services** – These types of JPAs usually work on regional issues that go beyond city or county limits. They are sometimes known as Councils of Governments (COGs). They may bring in experts to develop strategies. Many of these serve entire metropolitan regions encompassing several cities and counties.
- **Regulatory Enforcement** – The least common type of JPA, these enforce regulations via an independent agency or as an arrangement with other enforcement agencies. They ensure that federal and state laws and procedures are being followed by member agencies, for example, air pollution regulations. These JPAs are able to provide an oversight role for their member agencies.

What are the funding sources?

After the passage of Proposition 13, the Legislature explored ways of providing governmental entities with greater flexibility to finance their projects. In 1985, the Marks-Roos Act¹⁰ was enacted. Among other things, it permitted JPAs to issue bonds or enter into other financing arrangements which did not necessarily conform to the statutory and constitutional debt

limitations which the member entities faced. Part of the flexibility provided by the Marks-Roos Act is that the JPA can authorize a bond by passing an appropriate resolution even though its constituent governmental entities might need voters to pass an ordinance to accomplish the same goal.

Following the passage of the Marks-Roos Act, a new type of JPA, the Public Financing Authority, emerged for the purpose of providing Marks-Roos financing on behalf of the members of the JPA. This type of JPA often appears as a vertical model in which a governmental entity forms a JPA with another governmental entity under its control to finance public projects.

Revenue bonds can be the main source of raising money for JPAs. JPAs are also authorized to charge fees, make assessments, and levy taxes (California Government Code (G.C.) §6503). Governmental entities can form JPAs to sell one large bond and then loan the money out to local agency projects or services. This is known as “bond pooling” and theoretically can save money for taxpayers on both finance charges and interest rates. These bonds may be publicly or privately sold.

In some instances, “the term ‘joint powers agency’ is somewhat misleading because, when issuing bonds under Article 2 of the Marks-Roos Act, the agency exercises its own power, not the joint powers of the contracting parties.”¹¹

Some JPAs can issue revenue bonds without approval from voters. Within a 30-day period local voters could force referendums to trigger elections in attempts to negate the separate ordinances, but that rarely happens. If there is no petition or the petition fails to qualify, the JPA can proceed to issue the bonds. To issue Marks-Roos bonds, a JPA need only pass a resolution complying with G.C. §6591. It need not pass an ordinance or obtain voter approval, as the California Supreme Court ruled in *Rider v. City of San Diego* (1998) 18 Cal. 4th 1035.

Some JPAs that issue bonds may collect fees from their member agencies for the bond services provided. They may also sell bonds to refinance their member entities’ high-interest debt into a lower interest rate. Large JPAs hire experts to transact the sales of bonds. Since it is a complicated transaction, JPAs use these professionals to ensure legal and market requirements are met.

What laws govern JPAs in California?

According to G.C. §56047.7 a JPA is “an agency or entity formed pursuant to the Joint Exercise of Powers Act... that is formed for the local performance of governmental functions that includes the provision of municipal services.” The law allows the formation of a new organization that is completely separate from any of each member organization.

G.C. §§6500 – 6536, establish that as a separate public agency, a JPA can sue, be sued, obtain financing, incur debt, and manage or lease property. Note that Agreements can protect the individual member agencies from many of the JPA’s debts or other liabilities (G.C. §6508.1).

JPA’s are subject to the Brown Act, the California Public Records Act, the Political Reform Act, and other laws set up on behalf of the public interest to ensure political transparency. JPA meetings must be open to the public.

In 2016, Senate Bill 1266 amended G.C. §6503.6 and added §6503.8 to require certain JPAs that provide municipal services to file the full text of their initial Agreements and any amendments with their local LAFCo within 30 days. Any JPA that fails to make these required filings within this timeframe will be prohibited “from issuing bonds or incurring any indebtedness until those filings have been made.” This amendment to the G.C. essentially imposes “a state-mandated local program.” The G.C. also allows JPAs to be reimbursed if they incur costs when meeting State mandates.

Following the 2016 amendment to §6503.6 *et seq.*, municipal service JPAs that have a local component are required to provide their county LAFCo with a copy of their Agreements.

Who provides oversight and control of JPAs?

JPAs are self-governed as separate legal entities, even though subject to the statutes mentioned above. The agencies that belong to the JPAs have the responsibility to monitor them. No state-level agency or local agency directly monitors or specifically oversees them. A local LAFCo has no direct control or oversight of these JPAs, though under limited circumstances, it can conduct municipal services reviews.

Individual county civil grand juries are authorized to provide oversight of their local JPAs. “County civil grand juries function as civil watchdogs and may examine the records of JPAs operating in the county, while county auditors keep tabs on the financial reports of JPAs.”¹²

G.C. §6505 requires accountability from JPAs, including audits. A JPA has options for who performs the audit. It can designate an outside CPA, an officer, or employee of one of the constituent members, who must post a bond. It can also designate the county auditor for this service (G.C. §§6505.5 and .6).

Findings

- F1** There is no governmental entity with oversight responsibility for JPAs.
- F2** The JPA vertical structure has limited checks and balances.
- F3** Marks-Roos bonds may be issued without voter approval. Taxpayers may face potential liability.
- F4** Municipal service JPAs are only required to provide their local LAFCo with a copy of their Agreement and any amendments. JPAs providing only financial services are not required to file with LAFCo.
- F5** The complexities of JPA structures, laws, and terminologies make JPAs difficult to understand.

References and Resources

- ¹ California Special Districts Association:
https://calafco.org/sites/default/files/resources/CSDA_Guide_to_Laws_%26_Codes.pdf
- California State Senate:
https://www.senate.ca.gov/search?search_api_views_fulltext=Special+district+
- ² Nevada County Superior Court: <http://nccourt.net/divisions/gj-reports.shtml>
- ³ *Governments Working Together, A Citizen's Guide to Joint Powers Agreements*; California State Legislature Senate Local Government Committee; August 2007, pages 10 - 11.
- ⁴ Ibid, 9.
- ⁵ Ibid, 27.
- ⁶ Los Angeles Times, April 16, 2014, <https://timelines.latimes.com/bell/>
- ⁷ *Joint Powers Authorities, Transparency and Accountability (Report 1808)*; 2017-2018 Contra Costa County Grand Jury.
- ⁸ *Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency*; 2014-2015 County of Orange Grand Jury.
- ⁹ <https://www.countyofnapa.org/520/Proximity-Housing-Homebuyers-Assistance->
- ¹⁰ *A Review of the Marks-Roos Local Bond Pooling Act of 1985*; California Debt and Investment Advisory Commission; September 1998.
- ¹¹ Rider. 18 Cal 4th at 1051.
- ¹² *Governments Working Together, A Citizen's Guide to Joint Powers Agreements*; California State Legislature Senate Local Government Committee; August 2007, page 28.