

JOINT POWERS AUTHORITY (JPA) LEASE-REVENUE BOND PROGRAMS**6874**

(New 5/98)

Government Code Section 6500 et seq. provides for the joint exercise of powers by public agencies. *Public agency* is broadly defined to include the federal government and its agencies and departments, the state, another state or any state department or agency, as well as cities, and counties and other districts.

The joint powers agreement, which is approved and signed by all government participants, states its purposes and how that purpose will be accomplished or joint powers will be exercised. The agreement may be administered by one or more of the parties, or by a board or commission created specifically for this purpose.

The entity created by the joint powers agreement is separate from the parties to the agreement. When vested with specified powers, such as the power to make contracts, hire employees, or construct or operate buildings, the entity may sue and be sued in its own name. However, in general the debts, liabilities and obligations of the JPA will be those of the parties to the agreement, unless the agreement specifies otherwise.

JPAs have the power to issue revenue bonds—including lease-revenue bonds—for the acquisition, construction, maintenance and operation of specified infrastructure. The power to issue such bonds is described as an “additional” power of the agency, but one to which each of the member agencies must specifically agree. Further, the revenue bonds issued pursuant to this authority are *not* obligations of the participating members unless there is a specific assumption of liability.

State building construction accomplished through state-membership JPAs: State building construction and acquisition accomplished through JPAs (where the state is a member of a JPA established specifically for such a purpose) is usually exempted from PWB oversight by the authorizing statute. However, such construction and related financing is subject to DOF’s general powers of financial supervision pursuant to Government Code Section 13070.

Fiscal highlights:

1. State funds expended through *any* JPA may not be used to accomplish a state capital outlay purpose that has not been authorized by the Legislature.
2. DOF may require that an economic analysis be performed on state projects financed by a JPA to ensure that cost/benefits are favorable. By a memorandum of understanding between DOF and DGS, such an analysis is required for all DGS office building projects. DOF also works with STO to prepare the bond sale, reviews proposed bond sizing, may participate in rating agency meetings, prepares fund condition statements as required for the bond sale and for continuing disclosure, and reviews JPA proposals for disposition of surplus bond funds, if any.
3. If the state is a member of a JPA which has been created specifically by the Legislature to accomplish a state construction purpose, the capital project is generally eligible for interim financing through the PMIB or other short-term mechanism such as a General Fund loan.
4. The JPA issues the bonds. It adopts resolutions authorizing sales and setting policy guidelines for the agent for sale, appoints bond counsel, prepares estimates of cash flow needs, works with the STO in preparing for the bond sale, executes sales documents, and (together with the participating state agency) coordinates responsibility for providing all required disclosure information—on an initial and continuing basis—to STO.
5. If DGS is the project manager (or the state liaison to the project), DGS provides project time tables, calculates cash flow needs on behalf of the JPA, provides recommendations to DOF on bond sizing, participates in due diligence meetings, and keeps DOF and STO informed of any events with material impact on project status or budget.
6. STO is the agent for sale of the bonds and acts as the trustee or selects the trustee, with all associated rights and responsibilities including appointment of the underwriting team, setting the bond sale date, organizing meetings and due diligence associated with the sale, securing ratings and bond insurance, and pricing. STO is also dissemination agent for continuing disclosure for the bonds.
7. The credit underlying a state-membership JPA bond issuance (for a state capital outlay project) will be the same as for a PWB issuance, i.e., the state lease and the state fund from which the lease payments are being made. Financial statements for that fund may be included in the official statement and are subject to continuing disclosure.

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8. The key client department responsibility is to notify DOF and STO, at least eight months in advance (preferably one year) of a proposed sale for any project outside the normal budget process which may require the services of STO as agent-for-sale or continuing disclosure agent. The department must meet as necessary with STO to clarify the agent-for-sale-role and may not make commitments regarding financing structure, underwriters, or timing of sale until concurrence is received from STO. Since the leases associated with the bonds include financial terms, the department should consult the STO before final financing terms are negotiated. The client department has other responsibilities summarized in Section 6886.

Fiscal information generic to lease-revenue bonds is found in Section 6872. Lease requirements for lease-revenue bonds are described in Section 6872 as well as in Section 6876 under the heading “financing leases.”