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MEMORANDUM

To: Board of Directors
NORTHNET LIBRARY SYSTEM
From: Isabel C. Safie
Date: November 29, 2018
Re: Update on AB 1912 and Liability of Legacy Systems

UPDATE ON AB 1912

Since my last presentation to NorthNet Library System (“NorthNet”) on June 15, 2018, AB 1912 was amended several more times, and signed into law by Governor Brown. AB 1912 becomes effective on January 1, 2019. The following is a summary of the most significant aspects of the bill:

- Shared Retirement Liabilities of the JPA. The retirement liabilities of a JPA are the debts of the parties to the JPA agreement. This rule applies on a retroactive and prospective basis. However AB 1912 would not apply to members of a JPA whose retirement contract was terminated prior to AB 1912’s passage or to members of a JPA that dissolved prior to January 1, 2019.
- Apportionment if JPA Winds Down. Member agencies would only be required to apportion retirement liabilities of a JPA *if* (a) the JPA intends to adopt a resolution of intent to terminate its contract with CalPERS, or (b) CalPERS issues a notice of potential termination following the JPA’s default for failure to pay employer contributions or upon its determination that the JPA is no longer in existence, such as in the event of dissolution or cessation of operations. This means that members of a JPA that is not at risk of failing or which is not planning to terminate its CalPERS contract, would not be forced to apportion the JPA’s retirement liability among themselves. **This is a significant change since my presentation to NorthNet on AB 1912.**
- Timing of Apportionment Agreement. For any JPA participating in CalPERS, member agencies would need to apportion retirement liabilities of the JPA and submit a copy of the agreement to the CalPERS Board *prior to filing a notice to terminate.* Additionally, any JPA subject to potential termination for failure to pay employer



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contributions would need to provide the Board with a copy of the apportionment agreement within 60 days' notice.

- CalPERS' Determination of Apportionment. If member agencies are unable to agree as to apportionment, the retirement board (i.e., CalPERS for legacy members) would determine apportionment between member agencies based on the share of service received by each member agency, or the population of each member agency. A member agency may challenge the Board's determination, in which case an arbitrator would make the final and binding determination.
- Member Agencies Always Remain Liable. Terminating JPAs and their member agencies will remain liable to CalPERS if there are still inadequate funds available for the benefits promised (e.g. one member agency defaults on its obligations), even after member agencies agree or the Board apportions 100% of the JPA's retirement liabilities. **This is another significant change from my presentation to NorthNet on AB 1912.**

APPLICATION OF AB 1912 TO LEGACY SYSTEMS

In our previous Memorandum dated June 12, 2018, we concluded that members of North Bay could not be held liable for the JPA's retirement liabilities since North Bay's JPA agreement specifically provided that members would not be responsible for the debts of the JPA. We also concluded that members of Mountain-Valley could not be held liable for the debts of Mountain-Valley because it is not subject to JPA law and the members have not otherwise agreed to be liable for the system's retirement liabilities. With regard to North State, we concluded that members *are* liable, in proportion with the members' respective periods of membership, because North State's Bylaws voluntarily subject North State to the Joint Exercise of Powers Act, including the shared liability provisions of Government Code section 6508.1.

In light of AB 1912 becoming law, our previous conclusion with regard to North Bay changes significantly—North Bay member agencies would now be liable for the JPA's retirement liabilities in the event North Bay intends to adopt a resolution of intent to terminate its contract with CalPERS or CalPERS gives notice of potential termination. Our conclusion for North State remains essentially the same—North State member agencies are liable, however the proportion of liability would be decided by the members themselves or the CalPERS' Board if the members cannot agree. Lastly our conclusion with regard to Mountain-Valley remains the same (i.e., Mountain-Valley member agencies are not liable) since AB 1912 is not applicable. Below we provide further detail regarding how AB 1912 will apply (or not apply) to the legacy systems.

A. North Bay & North State – Shared Liability Among Member Agencies



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Members of North Bay and North State will share liability for the retirement obligations of their respective library system. However neither system will be required to allocate liability unless either intends to adopt a resolution of intent to terminate its contract with CalPERS or CalPERS provides either with a notice of a potential termination. Members of North Bay and North State will not be required to apportion liability if their respective systems are not at risk of failing, continue to pay required employer contributions, and do not plan to terminate their CalPERS contract.

In the event either system decides to terminate its contract with CalPERS, the member agencies would need to decide how to allocate retirement liability amongst themselves and provide CalPERS with a copy of the allocation agreement prior to filing a notice to terminate. Since the entire termination process begins with filing a notice to terminate and can generally last up to one (1) year, member agencies should work on the allocation agreement as soon as possible once it is determined that the system is terminating its contract, to avoid further delays.

If member agencies cannot agree on apportioning liability, CalPERS would determine apportionment between the member agencies based on share of service received from the legacy system by each agency, or the population of each member agency. A member agency may challenge the Board's determination, in which case an arbitrator would make the final and binding determination.

Please keep in mind that North State members may be likely to challenge application of AB 1912 since the system was not explicitly formed pursuant to JPA law, but rather a provision in its Bylaws voluntarily subjects North State to JPA law. Moreover, documents previously provided by NorthNet indicate that North State administrators may be under the mistaken impression that the system is not subject to JPA law. However based on our review, we believe the Bylaws are sufficient to show that parties intended for members to be responsible for the debts of North State, given that JPA law imposed joint liability on member agencies of a JPA absent a clear renunciation of liability pursuant to section 6508.1.

B. Mountain-Valley Library System – Member Agencies Not Liable

Since Mountain-Valley is not a JPA and has not elected to be subject to JPA law, its members are not liable for the retirement obligations of the system, regardless of AB 1912's passage.