



**BEST BEST & KRIEGER**  
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**MEMORANDUM**

**To:** NorthNet Library System  
**From:** Isabel C. Safie  
**Date:** June 12, 2018  
**Re:** Additional Q & A's Related to Liability of Legacy System Members

**BACKGROUND**

During the NorthNet Library System ("NorthNet") Executive Committee ("Committee") meeting this February, the Committee determined that additional analysis regarding the liability of current, former, and potential new members of the three legacy systems was required. In this Memorandum, we summarize our previous conclusions with regard to NorthNet's legal obligations and each legacy system's liability for CalPERS obligations, as well as address each of the four (4) questions listed in NorthNet's contract addendum dated April 13, 2018. Throughout this Memorandum, we also discuss how our analysis would change if AB 1912 passes in its current form.

**NORTHNET'S LEGAL OBLIGATIONS**

Unless NorthNet has affirmatively assumed the legacy systems' CalPERS obligations pursuant to a contract approved by its governing board, it is not legally responsible for such obligations. We have seen no evidence of such assumption. Rather, each legacy system retains legal responsibility for its CalPERS obligations pursuant to each system's CalPERS contract. NorthNet currently provides accounting services to the legacy systems and acts as a custodian of funds for North Bay and Mountain Valley. These obligations do not, however, subject NorthNet to any legal responsibility for the legacy systems' CalPERS obligations.

**LIABILITY OF LEGACY SYSTEMS**

Members (former and current) of the legacy systems are (or are not) liable for current and future CalPERS obligations as follows:

1. Members of North Bay *may not* be held liable for North Bay's CalPERS obligations under current law, since North Bay's JPA Agreement provides that its members shall not be liable for the debts and obligations of North Bay. However, if AB 1912 passes as currently



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amended, members of North Bay *would be liable* for the system's CalPERS obligations, and the members would need to mutually agree on the apportionment of liability.

2. Members of North State *may be* held liable for North State's CalPERS obligations which are attributable to the members' respective periods of membership in North State, in proportion with other members of North State during the same period. We reached this conclusion because North State's Bylaws voluntarily subject North State to the Joint Exercise of Powers Act, including Government Code Section 6508.1, which imposes shared liability on constituent members of an agency, for the debts and obligations of such agency. If AB 1912 passes, members will need to agree on the apportionment of liability, otherwise CalPERS will apportion liability. Please note, however, our conclusion may be a contentious one. Based on a letter from North State's former System Administrator dated August 20, 1999, it appears North State, at one point in time, believed that its members were "not directly liable as in a JPA" for the CalPERS obligations of North State. If North State and its former members operated under the assumption that the shared liability provision of the Joint Exercise of Powers Act was inapplicable to North State, it is highly likely North State would need to litigate the issue with former members. Additionally, the outcome of such litigation is uncertain, given the possibility of more extrinsic evidence (in addition to the letter) indicating that North State never intended to subject its members to shared liability.

3. Members of Mountain Valley *may not* be held legally responsible for Mountain Valley's CalPERS obligations since Mountain Valley is not a joint powers authority, and its members are not subject to JPA law. However, NorthNet could request that former members agree to take on a portion of Mountain Valley's CalPERS obligations. The passage of AB 1912 would not affect our conclusion with regard to Mountain Valley since it is not organized as a joint powers authority.

**Q&A ANALYSIS**

***A. What is the liability of North State Cooperative Library System's ("North State") former members? There are libraries that left the system but were members when the retirement benefits were voted on and given to employees. Are they still liable for a portion of the costs, up to when they left the system? Also, is there a formula that will assign each jurisdiction a portion of the liability?***

Under current law: Former members of North State may be held liable for North State's CalPERS obligations which accrued during the former members' respective periods of membership in North State during the same period. Thus, libraries that were members of North State when the retirement benefits were voted on and given to members, should be proportionately liable for their share of the present and future CalPERS obligations which have accrued and are accruing from the period in time in which such libraries were members. Although there is no requisite formula for determining a former member's liability, it would be reasonable to allocate



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liabilities on a proportionate basis according to the liabilities that accrued while the member was a member of North State, including future liabilities related to that particular membership period, pursuant to Government Code Section 6508.1. The services of an actuarial firm would be necessary to make this determination.

If AB 1912 passes as currently written: All members – former and then current, will need to agree on the apportionment of liability, otherwise CalPERS will apportion liability. Depending on how the members or CalPERS decide(s) to apportion liability, some members could be liable for more or less than what their “proportionate” liability would be if AB 1912 does not pass. For example, a current member which was not active when other members voted on retirement benefits could be liable for all or a significant portion of North State’s liability if the members or CalPERS agree(s) to apportion liability in such manner pursuant to AB 1912. On the other hand, if AB 1912 does not pass, it would not be reasonable to allocate liabilities to members which were not active when CalPERS obligations accrued to North State.

Further considerations: Please note, the issue of agreeing on, and collecting, the proportionate or apportioned liability of former members will be challenging for North State, as it appears that North State, at one point, operated under the assumption that its members were not liable for the debts and obligations of the system. In a letter dated August 20, 1999 from Jim Kirks, System Administrator for North State, to Wanda Green, Secretary for the Library of California, Mr. Kirks stated:

[North State] is one of two Systems in the State of California organized by adoption of “Joint Resolution”, rather than Joint Exercise of Powers. This approach was chosen because members of the System are not directly liable as in a JPA where each signatory is directly liable in the event of some legal action involving the JPA and its members.

However, Mr. Kirks’ understanding, as expressed in this letter, should not overcome Article II of North State’s Bylaws which state that North State’s “objectives...shall be to implement and accomplish the purposes described...agreed upon by the member libraries consistent with the provisions of the California Government Code, Sections 6500-6578 (Joint Exercise of Powers).” Since this citation includes Section 6508.1, the shared responsibility provision, North State has a viable argument for demanding that former members agree to apportion and pay for North State’s CalPERS liabilities.

***B. If a library joins a legacy system after there were no longer any employees of the legacy system (“new member” for purposes of this Memorandum), do they have a legal obligation to share in the current and future fiscal CalPERS responsibilities? Or is it up to each legacy system to make that determination?***



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Under current law: New members joining any of the legacy systems after there are no longer employees of the legacy system, would not have any legal obligation to share in the current or future CalPERS obligations of such legacy system, unless a new member specifically agreed to take on such responsibility. Our analysis for each legacy system is as follows:

- With regard to North Bay, its JPA Agreement specifically provides that its members would not be liable for the debts and obligations of North Bay. Unless the JPA agreement is revised, or North Bay entered into a separate agreement with a new member, to apportion liability for the new member, new members of North Bay would not be responsible for the system's CalPERS obligations.
- With regard to North State, we do not believe Section 6508.1 may be interpreted to obligate new members to be liable for CalPERS obligations which began accruing before such members became active with North State. Rather, a reasonable interpretation of Section 6508.1 leads us to conclude that members of North State may be held liable for their proportionate share of obligations accruing while their membership is active (along with amounts accruing from those obligations in the future).
- With regard to Mountain Valley, new members may not be held legally responsible for Mountain Valley's CalPERS obligations unless they specifically agree to take on such responsibility.

If AB 1912 passes as currently written: Members joining North Bay and North State would be required to agree on the apportionment of CalPERS liabilities between all the members, including current and former members, of the legacy system for which they are members. However, members joining after the legacy system no longer has any employees would certainly have supportable arguments as to why they should not be liable for any CalPERS obligations. However, this would be a matter for the members to agree upon. In the event members cannot agree as to the apportionment of liability, CalPERS would apportion liability between the members.

Our analysis with regard to Mountain Valley is unaffected by the passing of AB 1912—future members may not be held liable for Mountain Valley's CalPERS obligations unless they specifically agree to take on such responsibility.

***C. If there is no record as to when a library joined, and they would like to leave, what is the library's legal obligation to share in current and future fiscal CalPERS liabilities?***



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If there is no record as to when a library joined a particular library system, and we have previously concluded that members of that system may be held liable for CalPERS obligations, the library system would have to negotiate with the library regarding its particular legal obligation. If negotiations break down, the legacy system would need to be willing to enter litigation to resolve the issue.

***D. Please provide a legal opinion on Colusa's membership status and CalPERS obligation with legacy systems, as Colusa originally belonged to North State but years ago changed membership to Mountain Valley.***

Colusa County Free Library ("Colusa") should be liable for its proportionate share of CalPERS obligations which accrued to North State while Colusa was a member, including its proportionate share of future CalPERS obligations which are attributable to Colusa's period of membership. With regard to Colusa's membership period, it appears that Colusa was one of the founding members of North State, as it was named in North State's formative joint resolution effective in 1966. However, Colusa's CalPERS obligations would not have begun to accrue until North State's contract with CalPERS became effective on January 1, 1978. With regard to Colusa's termination of membership in North State, it appears that Colusa may have terminated membership sometime after January 18, 2001, when it affiliated with Mountain Valley.<sup>1</sup> However, it is unclear as to whether Colusa's termination of membership in North State became immediately effective on January 18, 2001, or whether there is other documentation for Colusa's official termination in North State.

Under current law, Colusa may be held liable for its proportionate share of North State's CalPERS obligations which accrued between January 1, 1978 and January 18, 2001 (or a later date if North State has documentation which shows Colusa's membership in North State extended past January 18, 2001). If AB 1912 passes, Colusa and other North State members would have to agree as to Colusa's portion of North State's CalPERS liability, otherwise CalPERS would determine Colusa's liability. Additionally, since Mountain Valley is not a JPA and it does not appear its members ever agreed to be responsible for its CalPERS obligations, Colusa may not be held responsible with regard to Mountain Valley's CalPERS obligations.

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<sup>1</sup> Memorandum by Mountain Valley Library System, dated January 18, 2001 to Library Administrator for Colusa County Free Library.