Joint Powers Revenue Bonds: A Tool for Intergovernmental Cooperation in California

Stephen L. Taber
Richard W. Whittaker

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal

Part of the Law Commons

Recommended Citation
Available at: https://repository.uchastings.edu/hastings_law_journal/vol23/iss3/3

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.
Joint Powers Revenue Bonds: A Tool for Intergovernmental Cooperation in California

By Stephen L. Taber* and Richard W. Whittaker**

Just as fairy tales abound with ugly ducklings that grow into swans and Cinderellas who become beautiful princesses,¹ so in the law there are examples of new and important uses being given to statutes which were enacted originally for different purposes.² Since its enactment in 1949,³ the joint powers bond provision⁴ in California has been such a statute. This provision has been used primarily to avoid the harsh two-thirds vote requirement for general obligation bonds⁵ rather than financing joint governmental agency projects. The purpose of this article is to note the current use of the joint powers revenue bond as a substitute for general obligation bond financing and the response of the state legislature to this use. Finally, some new trends are observed and certain legislative changes suggested that would restrict

---

* A.B., 1969, University of California, Santa Barbara; M.P.A., 1971, University of California, Los Angeles. Assistant Consultant, California Senate Local Government Committee; Student, University of the Pacific, McGeorge School of Law.

the joint powers bond to truly intergovernmental purposes and enable further expansion in its use.

The Use of Joint Powers Bonds in California

Characteristics of Joint Powers Bonds

The joint power bond provision is an appendage to the Joint Exercise of Power Act. Article one of the act basically provides that two or more public agencies (federal, state, or local) may join together and form a separate agency (or authority) which may exercise any power common to the contracting agencies. In practice these joint powers agencies have been used for many purposes including the construction of public facilities and the formation of regional planning agencies.

Article two of the act provides the authority by which a joint powers agency may issue bonds for specified purposes. The scope of this authority is limited almost exclusively to public buildings and has had, in practice, little to do with projects of an intergovernmental nature.

Joint powers revenue bonds authorized under the act are generally sold at a lower interest rate than are bonds which are issued by a semi-public entity such as a nonprofit corporation. This lower interest rate is possible because they are municipal bonds which need not receive approval from the Securities and Exchange Commission and Internal Revenue Service as to their tax-exempt status as do those of nonprofit corporations. On the other hand, because joint powers bonds are theoretically not secured by the full taxing power of the local agencies involved, they bear a higher interest rate than general obligation bonds.

7. Id. § 6500-14.
8. For purposes of the joint powers provisions a public agency is defined as "the federal government or any federal department or agency, this state, an adjoining state or any state department or agency, a county, county board of education, city, public corporation, or public district of this state or an adjoining state." Id. § 6500 (West Supp. 1971).
9. See note 75 & accompanying text infra.
10. E.g., the Association of Bay Area Governments and the Southern California Association of Governments.
12. Id. § 6546 (West Supp. 1971).
14. A. SOKOLOW, THE EXTRAORDINARY MAJORITY REQUIREMENT IN CALIFORNIA
Joint powers bonds are more restricted as to the projects for which they can be issued than are general obligation or nonprofit corporation bonds. Until 1965 such bonds could be issued only for exhibition buildings and sports facilities. Since that time their use has been extended to "[a]ny other public buildings" and regional parks in Los Angeles County, thereby allowing a large number of capital facilities to be financed by joint powers bonds.

**Joint Powers Bonds as a Substitute for the General Obligation Bond**

The common use of joint powers revenue bonds in California has been for projects which are neither for the joint use of two or more governmental agencies nor particularly for revenue producing purposes. The bonds are primarily issued in response to pressure on cities, counties, and school districts to avoid the constitutionally required two-thirds voter approval for general obligation bonds.

The two-thirds vote requirement (which exists in only three other states) was imposed in 1879 after a period of municipal financing disasters brought on by the extravagant issuance of bonds for internal improvements. In recent years, however, the two-thirds vote requirement has been seriously questioned. With the present level of fiscal sophistication of local agencies and their advisers, such a stringent requirement may no longer be needed. Its avoidance has been defended on the grounds that the requirement thwarts the will of the majority and that the elected leaders are only carrying out the popular mandate by financing projects by other means.

22 (Univ. of Calif., Davis, Institute of Governmental Affairs, Feb. 1970) [hereinafter cited as SOKOLOW].

15. CAL. GOV'T CODE § 6546(d) (West Supp. 1971); i.e. counties of over 4 million population. The provision was so worded in order to comply with CAL. CONST. art. IV, § 16, which prohibits special legislation.

16. There may be some projects that represent true joint ventures, but even these exceptions tend to follow the pattern of single agency financing. For example, the Orange County-Westminster Civic Center Authority was formed to construct a civic center complex which would serve both the City of Westminster and Orange County. However, the center was financed by two bond issues, one for the city's portion and one for the county's. See ORANGE COUNTY-WESTMINSTER CIVIC CENTER AUTHORITY, CITY BUILDING FACILITIES REVENUE BONDS, OFFICIAL STATEMENT (Jan. 30, 1967); ORANGE COUNTY-WESTMINSTER CIVIC AUTHORITY, COURTHOUSE REVENUE BONDS, SECOND ISSUE, OFFICIAL STATEMENT (Nov. 4, 1969).

17. See CAL. CONST. art. XIII, § 40.


19. See id. at 775, 471 P.2d at 493, 87 Cal. Rptr. at 845.

20. As an example of the dilemma, in the past several years, an overwhelming
Attempts to remove the constitutional two-thirds vote provision by amendment, however, have been unsuccessful.\(^\text{21}\) Although the California Supreme Court in *Westbrook v. Milahy*\(^\text{22}\) invalidated the provision on the grounds that it violated the equal protection clause of the United States Constitution because it "discriminates against those who vote in favor of bond issue propositions,"\(^\text{23}\) this reasoning was rejected by the United States Supreme Court in *Gordon v. Lance*\(^\text{24}\) where the Court stated that "so long as such provisions do not discriminate against or authorize discrimination against any identifiable class they do not violate the Equal Protection Clause."\(^\text{25}\)

Since legislative and judicial solutions to the problem of the two-thirds vote requirement have not proved successful, local agencies have increasingly turned to methods other than general obligation bonds. The most popular method has been the lease-purchase method of financing. This method is a means by which a public or semipublic entity issues revenue bonds\(^\text{26}\) and constructs a capital facility which is then leased to another public agency for rental payments sufficient to service the bonds. Except for the higher interest rate that accompanies revenue bonds,\(^\text{27}\) the result is the same for the lessee agency as it would be if it had issued general obligation bonds, and the agency has avoided the necessity of putting the issue to a vote. The lessor entity may be a nonprofit corporation,\(^\text{28}\) a joint powers agency,\(^\text{29}\) a retirement fund,\(^\text{30}\) or others. Recently enacted legislation\(^\text{31}\) allows a redevelopment agency,

\(^{21}\) E.g., Assembly Const. Amend. 1 (1966) would have reduced the 2\(\%\) requirement to 60\% for schools and libraries. It was rejected by the voters in 1966.


\(^{23}\) Id. at 781, 471 P.2d at 498, 87 Cal. Rptr. at 850.

\(^{24}\) 403 U.S. 1 (1971).

\(^{25}\) Id. at 7.

\(^{26}\) See note 99 infra.

\(^{27}\) See 11 CAL-TAX NEWS, Sept. 1970, at 3; SOKOLOW, supra note 14, at 19.

\(^{28}\) See Dean v. Kuchel, 35 Cal. 2d 444, 218 P.2d 521 (1950).

\(^{29}\) See Beebe, supra note 13, at 54.


which already had the authority to issue bonds without a vote,\textsuperscript{32} to construct a school and lease it to a school district.

The legality of lease-purchase financing has been upheld\textsuperscript{33} in California\textsuperscript{34} on the ground that a lease is not a debt for the total amount due under the lease; rather, the lease payments become obligations only as they become due.\textsuperscript{35} However, authorities in the field of lease-purchase financing seem to agree\textsuperscript{36} with Justice Edmonds in his dissent in \textit{County of Los Angeles v. Byram}\textsuperscript{37} that a lease-purchase agreement is "no more than a cleverly designed subterfuge to evade the limitations of... the Constitution."

Joint powers revenue bonds are one of the principal means of lease-purchase financing in California today.\textsuperscript{38} In order to finance a facility by joint powers bonds, a local agency must enter into a joint powers agreement with at least one other agency which: (1) is also empowered to construct the facility,\textsuperscript{39} and (2) will derive at least some theoretical benefit from the project.\textsuperscript{40} In the agreement, a joint pow-


\textsuperscript{33} County of Los Angeles v. Byram, 36 Cal. 2d 694, 227 P.2d 4 (1951); Dean v. Kuchel, 35 Cal. 2d 444, 218 P.2d 521 (1950).

\textsuperscript{34} Lease-purchase arrangements are in widespread use in other states. However, the Supreme Court of New Mexico, in McKinley v. Alamogordo Municipal School Dist. Authority, 81 N.M. 196, 465 P.2d 79 (1969), held that the lease of a school building to a school district by a nonprofit corporation violated the state's constitutional debt limitation.

\textsuperscript{35} In City of La Habra v. Pellerin, 216 Cal. App. 2d 99, 102, 30 Cal. Rptr. 752, 754 (1963), the court held that since the money due under the lease for a period of twenty years did not become due and payable at one time, "[t]he lease does not create an immediate indebtedness for the aggregate amount of the installment rent due, but on the contrary creates a liability month by month for the consideration... within the financial ability of the city to pay; hence the lease does not violate section 18 of article XI of the California Constitution."

\textsuperscript{36} See Beebe, supra note 13, at 35: "The basic underlying concept of the above-mentioned solutions to the financing problems of local government [i.e., lease-purchase] is that they all avoid the two-thirds vote requirement."

\textsuperscript{37} 36 Cal. 2d 694, 702, 227 P.2d 4, 9 (1951).

\textsuperscript{38} On July 1, 1970, 39 joint powers agencies had outstanding bonds totalling $199,081,000. Controller's Report of Financial Transactions of Special Districts, 1969-70 Fiscal Year.

The Controller's figures do not include the enormous backlog of projects which have been approved but which have not yet been financed. "If these bonds are all issued, the total could be approximately one billion dollars." Letter from James Warren Beebe to Richard W. Whittaker, Dec. 6, 1971.


\textsuperscript{40} See County of Amador v. Huberty, 203 Cal. App. 2d 664, 669, 21 Cal. Rptr. 816, 819 (1962): "There is no requirement that both of the parties share in the ownership and operation of any project constructed under the Joint Exercise of Powers Act." The court went on to say that the furnishing of water to an irrigation
ers agency is formed which is given the power to issue revenue bonds, without a vote of the people, to construct the facility and to lease it to the governmental agency desiring it.

**Voter Controls on Joint Powers Bonds**

The California law provides, at present, no requirement for voter approval for the issuance of joint powers revenue bonds. The bonds are issued by the joint powers agency after being authorized to do so by ordinance of each member entity. Although no vote of the people is involved, such action is subject to being rescinded by referendum in the member entity. Since all member entities must authorize the joint powers agency before it may issue bonds, a successful referendum in any single member entity would be sufficient to defeat the bond issue. Only a highly organized opposition, however, would be able to successfully challenge a bond issue by referendum and, therefore, defeat is unlikely.

** Majority Vote**

In 1970 an attempt was made to provide for issuance of joint powers revenue bonds only after a majority vote in each of the member entities. The bill passed the assembly but died in the Senate Governmental Organization Committee.

In the 1971 legislative session two measures were introduced to require an election to authorize the issuance of joint powers bonds. One would have required a vote on all joint powers agreements authorizing more than $250,000 in bonds. However, its author dropped it, and it was not considered by the legislature. The other, the strictest control measure yet proposed in California, was in the form of a constitutional amendment. This amendment would have lowered the percentage needed to pass a general obligation bond issue from 66½ percent, thereby increasing the value of land served by the district, would add to the county's assessed valuation. This would be sufficient benefit to the county to allow it to participate in the joint powers agreement.

41. Cal. Gov't Code § 6546 (West 1966) provides that the bonds shall be authorized by the parties to the agreement.

42. A joint powers agency has no power to issue revenue bonds until it is expressly authorized to do so by the parties to the agreement. Id. § 6547.1.

43. See text accompanying notes 47-57 infra.


cent to 60 percent and would have imposed the same 60 percent vote requirement on all joint powers bonds and lease-purchase agreements.

This proposed amendment is, in theory, the only proposal which takes into account the side effects of the regulation of joint powers bonds. First, it lowers the percentage needed to approve general obligation bonds, thereby reducing the pressure for utilizing other means of financing. Secondly, it puts the same limitation on all lease-purchase agreements as it does on joint powers agreements. In this way, all lease-purchase financing would be placed under the same requirements, eliminating the resort to nonprofit corporation bonds that other joint powers vote proposals might encourage.

The amendment presented a problem because its effect would have been to discourage intergovernmental cooperation by making separate projects easier to finance than joint projects. The Revenue Bond Law of 1941 could be used for financing separate projects, requiring only a 50 percent vote, while the Joint Powers Act, which would have required a 60 percent vote, would have to be used for joint projects.

The Referendum

Because of the failure of legislation putting joint powers bonds to a vote, legislation was introduced containing variations of the referendum procedure. One such measure was Assembly Bill 1261, enacted in the 1971 legislative session as Chapter 721, which clarifies the referendum procedure for actions authorizing the issuance of joint powers bonds. Prior to this act, it was uncertain whether an authorization to issue bonds was referendable. It has been held that, under the California referendum provision of the constitution, only legislative, as distinguished from administrative actions of local agencies, are subject to referendum. The determination of the nature of the act does not depend on whether it is called an ordinance or resolution, but whether the act was intrinsically legislative or administrative. There are no California decisions indicating the nature of the issuance of bonds, and a

48. Cal. Const. art. IV, § 25 provides: "Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide . . . ." This provision is a reenactment of a 1911 amendment "without, in the end result, changing the meaning of the provisions." California Constitution Revision Comm’n, Proposed Revision of the California Constitution 49 (1966).
1924 Texas case states that an action to submit bonds to an election is administrative. However, more recent California cases define a legislative act as one which sets governmental policy, rather than carrying out present policy. This position, combined with a judicial reluctance to label an act "administrative," would probably lead to the decision that an act resulting in the issuance of bonds is legislative and therefore referendable.

Chapter 721 provides that all action to authorize joint powers bonds shall be taken by ordinance. The ordinance must generally describe the project, state the maximum amount of the bonds proposed to be issued, and state that the ordinance is subject to referendum. Those local agencies which were not already empowered to enact ordinances were given the power to do so for the purpose of authorizing joint powers bonds, and those local agencies without publication requirements for ordinances were required to publish their ordinances within fifteen days of adoption. Special district ordinances not otherwise subject to referendum were made so subject by this act under the procedures set forth for county ordinances. Since, except for cities, there is no restriction upon the re-enactment of an ordinance after its rejection by the electorate, the act provides that if an ordinance authorizing joint powers bonds is rescinded by referendum, an ordinance for bonds for the same purpose shall not be enacted for a period of one year from the date of the referendum.

The importance of this act is not that it requires an ordinance, since under constitutional referendum the determination of whether an action is referendable is not one that can be made by the legislature. Rather, the legislature has set forth a statutory referendum on joint

52. See Comment, The Scope of the Initiative and Referendum in California, 54 CALIF. L. REV. 1717, 1735 (1966) which suggests that if the matter is controversial, a court should rarely label it "administrative." See also Note, Judicial Limitations in the Initiative and Referendum in California Municipalities, 17 HASTINGS L.J. 805 (1966).
54. Id. § 4, at 1392.
55. See Hill v. Board of Supervisors, 176 Cal. 84, 167 P. 514 (1917); Hopping v. City Council of the City of Richmond, 170 Cal. 605, 609-10, 150 P. 977, 978-79 (1915).
powers bonds which can be invoked whether or not a constitutional refer-
endum will lie.67

Senate Bill 1056, enacted as Chapter 464 in the 1971 legislative
session,68 expands the use of revenue bonds by a joint powers agency
to include sewage treatment systems. Since bonds for this purpose are
issued under the Revenue Bond Law of 1941,69 rather than under the
Joint Powers Act, the proposed issuance of bonds must be put to a vote
of the people and must receive a majority of the votes cast.60 However,
if construction of the facilities in question is required for compli-
ance with a water quality control plan,61 and the regional water quality
control board finds that immediate planning and construction of the fa-
cilities is urgently needed for compliance with the plan, and the board
issues a cease and desist order directing a public agency to cease its
present means of waste discharge, a joint powers agency may issue
bonds by ordinance of its governing body, without a vote of the people,
but subject to referendum.62

In theory, the requirements of Senate Bill 1056 seem more strin-
gent than those of Assembly Bill 1261.63 Chapter 464 requires as a gen-
eral rule a vote of the people, and it provides an exception only in the
case where it is necessary for a local agency to immediately cease using
its present sewage facilities. However, cooperation between the water
quality control board and the local agency may be expected and the
board could include improved facilities in its plans and issue a cease
and desist order at the request of the local agency so that the latter may
issue its bonds without the voter approval normally required.

There is one important difference between the referendum pro-
vided for in Chapter 721 and that provided for in Chapter 464. In
Chapter 721, which applies only to bonds issued under the joint pow-
ers bond provision, the referendum is not on the bonds themselves but
on the authorization for the local agency to enter into the agreement to
issue the bonds. The issue can be put to a vote by petition of 10 per-
cent of the voters in any one member entity and that entity’s participa-
tion in the issuance of bonds can be withdrawn by a majority of those
voting in that entity alone. In this way, the voters of one member en-

60. Id. § 54386.
63. See text accompanying note 47 supra.
tity may stop the bond issue although it is favored by a majority of the voters within the joint powers agency as a whole.

Chapter 464 by-passes this referendum provision by utilizing the Revenue Bond Law of 1941. Therefore, there is no requirement that the members of the joint powers agency authorize the issuance of the bonds, which authorization would be subject to a referendum in each member entity.64 Both the election and the referendum under Chapter 464 apply to the bonds themselves rather than the authorization to issue bonds. Therefore, 10 percent of the voters of all the member entities taken together must sign the petition and a majority of those voting in all the member entities must vote against the bonds in order to defeat them. In this way, bonds issued under Chapter 464 are less vulnerable to defeat than those issued under Chapter 721.

The Need for More Strict Control

The referendum procedure does not provide an adequate substitute for a mandatory vote on joint powers revenue bonds which are used in place of general obligation bonds. In the larger cities and counties, it is virtually impossible to obtain the requisite number of signatures without expensive publicity.65 For example, in the City of Sacramento, although convention center general obligation bonds were rejected by the voters twice,66 opponents were still unable to get a referendum on joint powers bonds for the same purpose. Requiring a majority vote is the only acceptable means of providing for direct citizen participation in the incurring of debt by joint powers lease-purchase financing.

The effect of a majority vote requirement upon the financial operations of local agencies would be difficult to forecast. To many local agencies the solution to their financing problems would seem to be a reduction of the vote needed to authorize general obligation bonds from two-thirds to a simple majority.67 Many of those who support joint powers financing as a means of eluding the two thirds requirement profess a belief that joint powers bonds should not be used for this purpose unless a majority of the people desire that bonds be issued.68 In such

64. CAL. GOV'T CODE § 6547 (West 1966).
65. In Los Angeles County, for example, it would take 231,226 signatures to put a referendum measure on the ballot. There has not been a referendum measure on the ballot in Los Angeles County since the procedure was first provided for in 1911.
66. See note 69 infra.
68. Testimony of Donald R. Hodgman, Transcript of Public Hearing, Subcomm.
cases majority vote provisions would not inhibit the use of joint powers bonds. On the other hand, there is a segment of joint powers bond supporters who advocate using the bonds for unpopular projects which would not be approved by a simple majority of the voters. It is this sort of abuse that should be curtailed.

**New and Better Uses for Joint Powers Bonds**

Numerous proposals for expansion of the use of joint powers revenue bonds have been considered by the legislature in the past few years. With the increasing complexity of government at the local level and the growing urgency of problems that can only be solved by intergovernmental cooperation, many of these proposals, although not accepted, have pointed the way toward new and better uses for joint powers bonds. The most significant of recently proposed extensions in the use of bonds are in the area of sewage treatment and the generation of electric power.

**Sewage Treatment Facilities**

There is a recognized need to construct sewage treatment facilities on a regional level, both for greater efficiency and to ensure the existence of a comprehensive water quality control system. This need has become more acute since the passage of the Porter-Cologne Act, which

---

69. "Many of the projects are necessary to provide the facilities to provide services which are not necessarily popular.... [w]e seriously doubt that a majority of the 3 million voters of Los Angeles County would approve even a few of the above projects, even though each is to the overall benefit of the county." Letter from Gerald F. Crump, Deputy County Counsel of Los Angeles County to Senator Clark Bradley, May 18, 1971.

One project (the Sacramento convention center) was financed with joint powers revenue bonds after general obligation financing had been turned down twice by a majority of the voters. Sacramento City Resolution 63-429, declaring result of special bond election (yes: 14,090; no: 30,774); Resolution 66-279, declaring result of special bond election (yes: 32,544; no: 41,614); Sacramento County Resolution 69-935 and Sacramento City Resolution 69-1128, approving and authorizing joint exercise of powers agreement to create the Sacramento Community Center Authority.

70. "A regional system provides a means to adjust administrative institutions, capital investment, and abatement practices to the overriding physical imperatives of streamflow, temperature, and water chemistry—and to do so in a manner that effectuates economies of scale and allows selective application of effort." 1970 REPORT OF THE FEDERAL WATER QUALITY ADMINISTRATION in 1 ECON. OF CLEAN WATER 143 (1970).

provides that a regional water quality control board may impose a fine on a local agency which does not properly treat its sewage.\textsuperscript{72} As early as 1967 a bill was introduced which would have enabled a joint powers agency to finance a water and sewage treatment and disposal system with revenue bonds,\textsuperscript{73} but it was not passed.

Finally, in 1970 the legislature reluctantly enacted a provision which allowed a joint powers agency formed by the County of San Bernardino and any city therein to issue bonds for the construction of sanitary sewage facilities.\textsuperscript{74} The provision expired on January 1, 1971, and was enacted solely to allow the City of San Bernardino to finance, by lease-purchase agreement, an addition to its sewage treatment facility.\textsuperscript{75}

In 1971, a legislative proposal was developed by the California Sanitary and Sanitation Districts Association in an attempt to provide revenue bond financing for facilities constructed by a joint powers agency.\textsuperscript{76} At the time, a joint powers agency was not eligible to issue revenue bonds\textsuperscript{77} under the Revenue Bond Law of 1941, nor could members of a joint powers agency issue revenue bonds and contribute the proceeds to the agency.\textsuperscript{78} Therefore, the only means by which a joint powers agency could obtain bond proceeds for construction of a sewage treatment facility was for the members of the agency to issue general obligation bonds (requiring a two-thirds vote) and contribute the proceeds to the agency.

\textsuperscript{72}\textsc{Cal. Water Code} § 13350 (West 1971) ($6,000 fine for each day a violation occurs).

\textsuperscript{73} Cal. S.B. 655 (1967).

\textsuperscript{74} \textsc{Cal. Gov't Code} § 6546.5 (West Supp. 1971).

\textsuperscript{75} Official Statement, San Bernardino Public Safety Authority, June 1, 1970. Notwithstanding the motives involved, the price and complexity of adequate sewage treatment plants caused many smaller local agencies to consider joining with others to jointly construct the facilities. For example, the cities of Morgan Hill and Gilroy entered into a joint powers agreement to construct a sewage treatment plant. Gilroy Resolution No. 1179 (Oct. 19, 1967). Gilroy made its contribution in cash and Morgan Hill used the proceeds of a general obligation bond election.

\textsuperscript{76} The proposal was of special interest to the South East Regional Reclamation Authority in Orange County. This Authority is a joint powers agency consisting of two cities, two California water districts, a county water district, and two sanitary districts. The authority was formed to "jointly plan on a regional basis, facilities for the collection, treatment, reclamation and when necessary, disposal of sewage." Letter from Alexander Bowie to William K. Norris, Executive Director, California Sanitary and Sanitation Districts Ass'n, Mar. 10, 1971.

\textsuperscript{77} See \textsc{Cal. Gov't Code} §§ 54301.1, 54307 (West 1966).

\textsuperscript{78} California Legislative Counsel Opinion No. 18203 states in part: "We think that the provisions of the Revenue Bond Law of 1941 contemplate that the agency issuing the bonds will be the owner and maintain primary control of a project con-
The problem was resolved by the enactment of Chapter 464, which provided that a joint powers agency made up of units of government otherwise empowered to construct sewage treatment facilities could issue 1941 revenue bonds for the purpose of constructing sewage facilities. This act, unlike previous legislation regarding joint powers financing of sewage treatment and unlike the California Sanitary and Sanitation District Association's proposal, did not provide for financing by use of the joint powers revenue bond. Rather, the act merely defined a joint powers agency as an agency empowered to issue revenue bonds under the 1941 Revenue Bond Act. It was thought that by placing the bond provision under the 1941 Act, thus providing for a vote on the bonds, it would be merely an extension of the familiar revenue bond form of sewage system financing.

This new provision can be used by local agencies in two ways. First it could be used by several agencies, acting as a joint powers agency, to finance a sewage treatment facility in common, with the bonds being paid off by the actual revenues of the system. Secondly, it could be used, as the San Bernardino provision was used, to allow a single agency to finance its treatment facility by means of lease-purchase.

Electrical Generating and Transmission

Another significant extension of the uses of joint powers financing has recently been proposed, but not yet enacted, in the field of electrical generating and transmission. California law gives cities and some special districts the authority to generate and distribute electricity. Currently, some fifteen cities and several special districts exercise this authority: some generating their own electric power, and some purchasing their power from the federal government or private power companies. In 1933 the voters approved the Central Valley Project Act.
which set up an electrical generating and distributing system and granted preference in the sale of power to publicly owned utilities.

Several agencies which do operate electrical systems have formed the Northern California Power Association—a joint powers agency—to investigate the development of joint facilities for supplying power to its members. This agency, if authorized by its members, has the authority to construct an electric generating and transmission system; however, it has no authority to issue bonds for that purpose. Additionally, 1941 revenue bonds are not available for use. Hence, in order to obtain financing for a jointly-constructed power generating and transmission system, each member agency would have to individually issue general obligation bonds (requiring a two-thirds vote) and contribute the money to the joint venture.

The first attempt, which was unsuccessful, to include power generating under joint powers revenue bonds was in 1970, when a bill was introduced which would have allowed local agencies to issue bonds under the 1941 Revenue Bond Act to generate, produce, transmit and distribute electricity. In addition, under this proposal joint powers agencies consisting entirely of members having the power to generate electricity would have been given the authority to issue bonds for that purpose. The vehicle proposed to grant revenue bond authority to the joint powers agency was not the Joint Powers Revenue Bond Act, but rather the 1941 Revenue Bond Act. Therefore, any bond issuance by a joint powers agency would have to be ratified by a majority vote of the voters residing within the jurisdiction of the joint powers agency.

In 1971, substantially the same legislation was introduced, allowing both revenue bonds by a single agency and by a joint powers

84. A joint powers agency may exercise any power which its members may exercise separately. CAL. GOV'T CODE § 6502 (West 1966). However, electric generating and transmission facilities are not included in the enumeration of purposes for which bonds may be issued. See id. § 6546 (West Supp. 1971).
85. See id. § 54310 (West 1966).
87. Cal. S.B. 1373 (1971). Senate Bill 1373 was passed by the Senate, 1971 CAL. SENATE J. 6540; recommended for passage by the Assembly Committee on Planning and Land Use, 1971 CAL. ASSEMBLY J. 10507; and refused passage by the Assembly, id. at 12181. This bill contained provisions which would have expanded the use of joint powers bonds to include electric generating facilities. In the Senate Local Government Committee the bill was amended to include the provisions of Assembly Bill 1261. 1971 CAL. SENATE J. 3461. This amendment did not satisfy the opposition which consisted of the private power companies and those members of the committee who wanted to see joint powers bonds put to a majority vote. Finally, the bill was amended to provide that the petition for referendum on the authorization to enter into
agency. However, in this bill, unlike the 1970 proposal, the joint powers revenue bond act was used, resulting in the ability to issue such bonds without a vote. This bill was passed by the Senate but killed by the Assembly. Also significant is the deletion in committee of the word "distribution" from the scope or projects permissible under the bond provisions. This change would have required the facilities constructed to be connected to a distribution system owned and financed by an individual local agency and not financed by the joint powers bonds. This would have discouraged the use of lease-purchase financing for electrical systems and would have been instrumental in restricting the use of bonds to those aspects of an electrical system—generating and transmission—which are intergovernmental in nature.

Suggested Changes in the Use of Joint Powers Bonds

The California law should be changed: 88 (1) to provide an orderly and fair limitation on the authorizing of joint powers revenue bonds to insure their use for truly revenue producing projects; and (2) to expand the use of these bonds in their proper role of intergovernmental financing. The joint powers bonds should be, as is now the practice, issued by the joint powers agency after being authorized by the member entities without a vote of the electorate, with the joint powers agreement subject to referendum. However, certain steps should be taken to discourage the use of joint powers bonds in conjunction with lease-purchase agreements. First, a majority vote should be required on any lease-purchase agreement which is subject to payment out of the general fund. Second, the vote required to authorize general obligation bonds should be reduced from two-thirds to a simple majority. 89 This would effectively lessen the desirability of the use of joint powers bonds in lieu of general obligation bonds by eliminating their advantages and thus encourage their use only for multijurisdictional revenue-producing projects.

The result of the above changes would be that joint powers bonds would not be resorted to except in those cases in which a true inter-

---

88. Senator Milton Marks (R-San Francisco) has introduced Senate Bill 298 into the 1972 session which contains the authors' recommendations. See Sokolow, supra note 14; Marini, Local Bond Elections in California—the Two-Thirds Majority Requirement (University of California, Berkeley, Institute of Governmental Studies, 1963).
governmental need exists for the bonds. With the elimination of the general misuse of the joint powers bonds, the legislature would be more prone to greatly expand the purposes for which they can be used. Refuse disposal, electric generating, and transportation systems are only a few of the many projects which often are best handled on a multijurisdictional level. Such changes would strengthen the joint powers revenue bond as an effective tool for intergovernmental financing.

**Conclusion**

Over the past several years there have been proposals to use joint powers revenue bonds to finance sewage treatment facilities, electric generating, a heliport, a regional park, an airport, storm drain and flood control projects, refuse disposal facilities, and a municipal water system in California. None except the sewage treatment and water system provisions have been enacted by the legislature. Recent proposals to expand the use of joint powers financing, however, differ markedly from existing uses and show a hopeful trend for the future. These uses embody two desirable characteristics which should be implicit in the term "joint powers revenue bonds": (1) the projects proposed are truly revenue producing in that they are secured only by actual project revenue and do not encumber the general fund of a local agency, either directly or indirectly; (2) the projects for which the bonds are being issued are truly the result of a joint effort between two government agencies.

The expansion of the use of joint powers bonds into many areas where the bonds are presently unavailable would be desirable if the "bond issue . . . by its terms could never become a charge on the general funds or property of a municipality . . . ." In other words, there should be a return to a proper distinction between revenue bonds and general obligation bonds so that joint powers revenue bonds will

---

90. See text accompanying notes 73-80 supra.
91. See text accompanying notes 86-87 supra.
99. Revenue bonds have traditionally been defined as bonds which are secured by
be used only for revenue producing projects. This can be accomplished either by prohibiting the use of lease-purchase agreements with joint powers revenue bonds or by imposing restrictions upon such agreements commensurate with their general obligation use. In addition, joint powers revenue bonds, along with the no-vote provision, should be retained for truly revenue producing projects to encourage their use when needed for solving multijurisdictional problems.

Once joint powers bonds are properly restricted and no longer attractive as a substitute for the general obligation bond, it is likely that the bonds would be expanded in their application to many new areas. Used properly, joint powers revenue bonds offer an excellent means of solving many of the pressing multijurisdictional problems in California.

---
