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Local Agencies - Insurance Pooling Arrangements

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Official Title and Summary Prepared by the Attorney General

LOCAL AGENCIES—INSURANCE POOLING ARRANGEMENTS—LEGISLATIVE CONSTITUTIONAL AMENDMENT. Amends section 6 of article XVI of Constitution to permit cities, counties, townships and other political corporations and subdivisions of State, to join with other such agencies in providing for payment of workers' compensation, unemployment compensation, tort liability or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by Legislature. Financial impact: None on state; effect on local governments unpredictable.

FINAL VOTE CAST BY LEGISLATURE ON SCA 16 (PROPOSITION 7)

Assembly—Ayes, 73
Noes, 0

Senate—Ayes, 27
Noes, 0

Analysis by Legislative Analyst

Background:

California's Constitution forbids the Legislature from authorizing a gift of public funds.

The Legislature has passed laws which authorize local public agencies to establish insurance pools to protect themselves against claims. For example, two or more counties could agree to share the payment of any valid claim made against one of them.

A question has arisen whether a county that contributes to the payment of a claim against another county is, in effect, making a gift of public funds. If the payment is a gift of public funds, it would be unconstitutional.

Proposal:

This constitutional amendment specifically permits two or more local governmental bodies, such as cities and counties, to join together in insurance pools to provide for payment of the following four types of claims:

1. Worker's compensation (payments for injuries or disabilities sustained by employees in the course of their work).

2. Unemployment compensation (payments to workers who through no fault of their own are unemployed).

3. Tort liability losses (such as vehicle accidents attributed to poor highway design, or private losses resulting from failures of public dams or bridges).

4. Public liability losses (claims, other than those already specified, which are made against the local governmental entity).

Fiscal Effect:

This proposal would have no fiscal effect on the state. Because it neither requires local governments to change their present insurance arrangements nor specifies how an insurance pool must be made up or operated, it would not, by itself, have any fiscal effect on local governments either. The proposal would make clear that local governments could enter pools. Whether a pooling arrangement would decrease or increase local governmental costs would depend on the manner in which it was established and administered, and the extent of risk exposure and claims activity experienced by its members.

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Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment No. 16 (Statutes of 1977, Resolution Chapter 77) expressly amends an existing section of the Constitution; therefore, new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XVI

SEC. 6. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country; provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other

stockholders in such corporation; and

Provided, further, that this section shall not prohibit any county, city and county, city, township, or other political corporation or subdivision of the state from joining with other such agencies in providing for the payment of workers' compensation, unemployment compensation, tort liability, or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under a joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by the Legislature; and

Provided, further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans who served in the military or naval service of the United States during the time of war, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation.

And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer's office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the taxes accruing to such political subdivision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the taxes accruing to such political subdivision before any other obligation of such political subdivision is met from such taxes.

Argument in Favor of Proposition 7

Proposition 7 will save money for local government and reduce property tax by expressly authorizing local governments to obtain insurance or to self-insure on a cooperative basis.

Insurance costs for cities, counties, and school districts have gone up dramatically over the past few years. This, in turn, has contributed to higher taxes. Keeping down the cost of insurance by allowing joint purchase or self-insurance will save money and keep taxes down.

This amendment was introduced at the request of the City of Los Angeles, the County of Los Angeles and the County Supervisors Association. A 1976 law attempted to solve this problem. Unfortunately, most counties and cities have been unable to implement this plan because of constitutional questions raised by local county counsel. Proposition 7 will answer those questions, clear up the legal ambiguities and allow local governments to

join together in saving insurance premium dollars.

The authority under this amendment will extend to the many categories of insurance purchased by prudent local joint governing bodies—worker's compensation, automobile insurance, tort liability, and other kinds of insurance. Local governments will then be able to obtain the best protection at the most economical rates. Before my election to the Senate, I was in the construction business and this is the type of cost-savings approach commonly utilized in private industry.

Proposition 7 passed the Senate and the Assembly unanimously, 27-0 in the Senate, 73-0 in the Assembly. There is no known opposition to the measure.

A "yes" vote on Proposition 7 will allow local government to save money by obtaining insurance at the lowest possible cost. The money saved will be yours.

ALAN ROBBINS

State Senator, 20th District

Rebuttal to Argument in Favor of Proposition 7

After reading the proponent's ballot argument our original argument against this measure is still valid. Insurance pooling either by private contract or "self-insuring" *will not save money!* Until inflation is brought under control at *all* levels of state and local government, method suggested, cutting expenditures, insurance costs will continue to rise.

Insurance pooling is no panacea for skyrocketing insurance rates. A not identified "1976 law attempted to settle this problem . . ." says the proponent. Is it not simpler to make changes in the existing law than to imbed this unnecessary provision into Section 6, Article XVI of the California Constitution? Why not review constitutional questions raised by county counsels and

possibly seek a solution by statutory enactment. If the present law's ambiguities are still too great a hurdle, why invest them with the aura of constitutionality by placing them in the Constitution.

Seeking solutions to insurance problems by constitutional amendment is not the answer.

VOTE "NO" on Proposition 7.

HAL M. ROGERS

President, Taxpayers Unanimous

NELLIE L. LOWE

Secretary, Taxpayers Unanimous

JOSEPH H. DONOHUE

*Founder, Voters Including Concerned Taxpayers
Offering Real Savings (VICTORS)*

Argument Against Proposition 7

Insurance pooling as outlined in this Constitutional Amendment that adds a new paragraph to Section 6 Article XVI looks great on paper. But a closer look at the liabilities involved which are workmen's compensation, tort liability, public liability and unemployment compensation should cause the voter to pause and take a second look.

For instance. Use the assumption that five counties entered into a public liability and/or tort (damages) insurance pool. Suppose that during the life of the policy, one county made a costly settlement in the millions while the other four counties paid only nominal amounts for public liability and damages. When the insurance pool policy expired, the insurance carrier would automatically do one of two things, or both. The insurance rate would drastically increase or the upfront deductible figure would zoom dramatically, or both actions could occur.

Therefore the taxpayers in four counties would be underwriting the losses incurred by the fifth county and thus paying for losses that they were not responsible for in the first place. This pooling arrangement would tax four counties disproportionately to offset the loss of a single county. If this joint insurance pool were a "self-insured" device, the costs would be the same.

Let every county assume its own risks and consequent liabilities. We urge a "NO" vote on Proposition 7.

HAL M. ROGERS
President, Taxpayers Unanimous

NELLIE L. LOWE
Secretary, Taxpayers Unanimous

JOSEPH H. DONOHUE
*Founder, Voters Including Concerned Taxpayers
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Rebuttal to Argument Against Proposition 7

The experience of local governments already engaged in insurance pooling, as permitted by 1976 law under certain joint powers agreements, has been a substantial savings in tax dollars.

A self-insured pool operates as any private insurance company; only those cities or counties incurring excess liability have premiums adversely affected by that liability. The parties to the agreement can stipulate the amount of the deductible to be paid by each city and can state that no city is liable for the debts and obligations of other cities.

Parties to an insurance pool purchasing insurance from a private company can stipulate that increased costs to the pool because of one party's liability shall be borne by that one party. Insurance pooling will make local governments more aware that they are dealing with their own dollars and thus more likely to improve

and maintain safety measures to reduce costs.

Proposition 7 does not mandate insurance pooling by local governments; it gives local governments that *option*. The purpose of any insurance is to share risk so that one party does not bear an enormous and perhaps unbearable liability. Insurance pooling is the most economical way to spread the risk because it reduces administrative cost and eliminates unnecessary fees and charges. In the case of self-insurance, the premiums earn interest for local government and for the pool.

Through insurance pooling, local governments can reduce the high cost of insurance. Proposition 7 *clearly* provides local government with a tool to save money. Tax dollars are too scarce to waste and this authority is needed.

ALAN ROBBINS
State Senator, 20th District