

1980

DISASTER ASSISTANCE

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 Official Title and Summary Prepared by the Attorney General

DISASTER ASSISTANCE. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Specifically provides that nothing in the Constitution shall prohibit the state, or any of its subdivisions or local governments, from providing aid to persons for the purpose of clearing debris, natural materials, and wreckage from private lands and waters deposited thereon during a major disaster or emergency declared by the President. Such aid must be found to be in the public interest and its cost eligible for federal reimbursement. Recipient must indemnify public entity from any claim against it arising from rendering such aid. Fiscal impact on state or local governments: No direct state or local costs.

 FINAL VOTE CAST BY LEGISLATURE ON SCA 21 (PROPOSITION 7)

Assembly—Ayes, 69
Noes, 0

Senate—Ayes, 39
Noes, 0

Analysis by Legislative Analyst

Background:

California's Constitution forbids state and local governments from making gifts of public money to private individuals or corporations. However, public funds may be used to provide assistance to persons on private property *during* a major disaster or emergency if the assistance is necessary to protect public health and safety or avoid further damage. A constitutional issue has been raised as to whether public funds may be used to remove debris and wreckage on private property immediately *after* a disaster or emergency. If such removal of debris and wreckage is deemed to be a gift of public funds, it is prohibited by the California Constitution.

Under existing federal law, the President may direct federal agencies to clear debris and wreckage caused by a major disaster from publicly and privately owned property or grant funds to any state or local government for such purpose. However, no work may be done unless the state or local government arranges an unconditional authorization for the work and agrees to reimburse the federal government for any claim against the federal government arising from the debris removal.

Proposal

This proposal would specifically provide that it shall

not be a gift of public funds for state and local governments to remove debris, natural materials or wreckage deposited on private property by a major disaster or emergency under the following two conditions: (1) the President of the United States has declared a major disaster or emergency for the area in which the property is located, and (2) the cost of any aid provided by the state or local governments to remove the materials from private property must be eligible for federal reimbursement.

This proposal also specifies that the state or local governments providing the aid must obtain an agreement from the private property owners receiving assistance to reimburse the state or local governments for any claim against the state or local governments resulting from the debris removal.

Fiscal Effect:

This measure has no direct state or local costs. Federal funds are normally available for debris removal when such removal is necessary to (1) eliminate threats to life and property, (2) eliminate hazards which threaten substantial destruction of undamaged public or private property, or (3) facilitate the economic recovery of the community.

Argument in Favor of Proposition 7

Floods and other natural disasters in both northern and southern California can destroy lifetime possessions of their innocent victims. Many of our residents have already lost homes, cars and other possessions due to these natural occurrences. However, there are instances where our citizens could have a reduced loss if they could receive more immediate emergency assistance in removing mud, boulders, or water from their homes and property after the occurrence of the disaster.

Local government agencies are generally on the scene in such circumstances with personnel and equipment for cleaning up streets and property, and these could be made available to assist in debris removal on private property. Yet, even with that need clearly demonstrated, the State Constitution prohibits any public cleanup on private property unless such assistance is needed to protect public health and safety or avoid further disaster damage. The general result of this

avoid further disaster damage. The general result of this legal interpretation of the State Constitution is that no public cleanup and debris removal on private property is given.

Proposition 7 would amend Article XVI, Section 6, of the State Constitution to provide that cleanup on private property may be provided by a local public agency following a natural disaster. The state taxpayer will be protected in that this type of cleanup assistance would be provided only if eligible for federal reimbursement normally available following a natural disaster.

VOTE YES ON PROPOSITION 7.

LOU CUSANOVICH
State Senator, 19th District

KENNETH HAHN
Supervisor, Los Angeles County

BAXTER WARD
Supervisor, Los Angeles County

Argument printed on this page is the opinion of the authors and has not been checked for accuracy by any official agency
No argument against Proposition 7 was submitted

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 21 (Statutes of 1979, Resolution Chapter 93) expressly amends the Constitution by amending a section thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and 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~~ 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, further, that nothing contained in this Constitution shall prohibit the State, or any county, city and county, city, township, or other political corporation or subdivision of the State from providing aid or assistance to persons, if found to be in the public interest, for the purpose of clearing debris, natural materials, and wreckage from privately owned lands and waters deposited thereon or therein during a period of a major disaster or emergency, in either case declared by the President. In such case, the public entity shall be indemnified by the recipient from the award of any claim against the public entity arising from the rendering of such aid or assistance. Such aid or assistance must be eligible for federal reimbursement for the cost thereof.

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.