



## Collective Liability Insurance Cooperative

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### MEMORANDUM

TO: All CLIC Member Districts

DATE: December 3, 2012

RE: Legislative Action

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Public entity risk pools provide a long term, stable source of risk financing, protected from the price fluctuations associated with the commercial insurance cycle; broad coverage designed to meet the needs of public entities, and training and risk control services tailored to the needs of public entities. As owners of the pool, you direct the operation of the pool to maximize the benefit to all participants without a requirement to generate profits for shareholders or other outside owners.

There were two pieces of legislation introduced in the last year, which are a direct attack on public entity risk pooling in Illinois. Those pieces of legislation were not successful due to in large part a concerted effort to oppose the legislation by governmental risk pools throughout the State. However, there is no guarantee that they will not be raised again in upcoming legislative sessions. If enacted, they will fundamentally change for the worse the way public entity risk pooling will operate in Illinois.

### Legislative Attacks

#### I. Intergovernmental Cooperation Act – Joint Self-Insurance Provisions

The first pieces of legislation (HB 542 and SB 1856) have been termed by the pooling community as the "Anti-Pooling Legislation". The legislation is an attempt to make structural changes to risk pooling by changing certain provisions of the Joint Self-Insurance provisions of the Intergovernmental Cooperation Act. The proposed legislation does several things:

- Limits the period for notice of withdrawal to no more than 30 days
- Allows a withdrawn member to rejoin the pool without penalty for up to 60 days
- Requires the head of any insurance pool to be a licensed insurance producer in the State of Illinois
- Bars any pool from entering into Contracts for insurance coverage for a period of more than one year

The effect of this legislation will:

(a) erode the necessary self-direction that intergovernmental cooperatives and their members need for *stability, predictability, and cost-effectiveness*;

(b) nullify the predictability and stability achieved by the members agreeing to a set notice period which allows a public entity pool to efficiently and accurately set rates for members, appropriately (and fairly) allocate costs, and negotiate favorable reinsurance contracts, and causing the withdrawing members share of fixed costs allocated to it through the budget process to be passed on to the remaining pool members which will increase costs for all public entity members;

(c) place intergovernmental risk pools at a competitive disadvantage to commercial insurers by limiting pools to contracts of no more than one year duration and allowing commercial insurers to enter into contracts of any length; by eliminating a pool's ability to enter into multi-year contracts with reinsurers when such contracts would lower the cost to the public entities participating in the pool; by requiring the "head" of the public entity risk pool to be a licensed insurance producer but not requiring the same for commercial insurance companies; and

(d) reduce public entities' ability to control their own risk financing and insurance needs by imposing legislative limits on the ability of pool members to self-determine their own membership terms and notice requirements to the detriment of self-insured risk pools and their public entity members.

## II. Illinois Tort Immunity Act

The second piece of legislation (SB 3796) is a proposed change to the Illinois Tort Immunity Act to modify the provisions relating to selection of defense counsel. When a municipal/school district employee is sued in relation to the performance of their job, the municipality/school district generally provides a defense for the employee. The proposed change will require the municipality/school district to pay for a separate lawyer of the employee's choice for each employee in the suit, without limitation. This approach is unnecessary and prohibitively expensive.

The effect of this legislation will:

(a) increase the defense costs paid by local governments on behalf of themselves and their employees by two to three times; the unit of local government will end up paying for the defense fees of two, three or possibly more attorneys each representing a different employee without having control over the hourly rate being charged, the experience of the attorney being retained or the ability to control the litigation to protect against unnecessary legal action and cost;

(b) result in dramatically more and high settlements, even in frivolous cases, being paid by the local government and ultimately the taxpayer due to the oppressive costs of the legal defense and to avoid the crushing defense cost exposure that would otherwise be faced; and

(c) interfere with defense strategies by fracturing the defense in cases giving employees the ability to bind the municipality under settlement of other decisions for which the municipality did not agree.

### **Combating these Legislative Attack on Pools**

On the possibility that these pieces of legislation may be resurrected, CLIC and its lobbyist recommend that members take a proactive approach with their legislators to ensure that should the legislation reappear, the legislators are aware of local government opposition to the legislation and the harm it could cause local governments and their taxpayers.

It has been recommended that the way to deal with this destructive legislation is to have every CLIC member pass a Resolution which supports the concept of pooling and warns against unnecessary legislative interference. Such a Resolution will make clear to all state legislators that there is a very large and active group within his or her district which has confidence in and relies upon its own voting ability within the Pool to see to it that its operations are lawful, effective and serve the interests of the Pool members rather than consultants. The Resolution clearly spells out the benefits of pooling and the demand of local government that their legislators seek advice and counsel from them before taking a position on pool directed legislation and/or when legislation is being proposed that directly affects local governments and ultimately the taxpayers.