



Public Sector Pools, Lobbying and Legislative Action: Stories of Engagement

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Introduction

When cities, counties, special districts and K-12 schools lost insurance coverage in the 1980s, they grouped together to create public sector pools for the joint purchase of insurance and related risk management services. That required legislative changes, state by state, to enable pooling and establish the organizational and governance structures necessary for collective purchasing.

The authorization to form a pool (by any name—joint insurance funds (JIFs), cooperatives, insurance trusts, etc.) comes from state law. In many states, that legislation was initiated by an association—the league of cities or the association of counties; school boards; or special district groups like transit, utilities or emergency services. In addition to providing the host structure for the pools, these associations often represent their constituencies on a broad range of issues at the state legislature.

For pools that are connected to associations, the opportunity to track and influence legislation is built into the services of the parent organization. But how does it work for pools that function independently? Or in states where pools compete with each other? How and when is it appropriate for public entity pools to engage in the legislative process?

Four Case Studies

This paper illustrates a variety of ways that pools engage in legislative activity from four geographically distinct areas of the U.S. The authors of the case studies have decades of experience working with public sector pools in the regions they represent.

Illinois: The Value of a Lobbyist and Building a Coalition

Michael McHugh, RPA Central

In 2011, we engaged the services of a lobbyist to represent our pool clients before the 97th General Assembly in Illinois. At that time, there was proposed legislation to amend the Illinois Intergovernmental Cooperation Act to place restrictions on the operations of joint insurance pools.

The first step our lobbyist took was to reach out to the executive directors and lobbyists of other self-insured pools in Illinois to create a unified and comprehensive approach to defeat the legislation. It was a unique experience to sit in a room with competitors discussing ways to come together around a common purpose: to stop a bill that would have dire consequences not just for pools, but for every public entity in Illinois that enjoys cooperative purchasing in a joint insurance pool.

United by our lobbyist, a broad coalition of insurance-related interests formed in Springfield to educate legislators about the damage the proposed legislation would do. The coalition also reached out to local pool members on a regular basis to help them connect with their elected representatives to voice opposition to the bill. Using these tactics, the legislation was defeated. What's even more compelling is that a decade later, the alliances forged through this process continue to benefit Illinois public entity joint insurance pools.

In addition to in-state lobbying work, our lobbyist maintains high-level relationships with various state insurance departments throughout the country, and works closely with the National Association of Insurance Commissioners and the Federal Insurance Office in Washington, D.C.

Our ongoing successful relationship with a lobbyist gives us an ally who:

- Monitors legislation and rule-making that affect our pools
- Assists in the development of offensive and defensive legislative strategy
- Advises on nationwide licensing and regulatory issues
- Builds relationships with legislators and regulators to help us with future issues that may be impactful

California: Statewide Grassroots Collaboration

John Nielsen and Adrienne Beatty, RPA West

California is home to one-third of the nation's public entity pools. These pools—or joint powers authorities (JPAs)—have a rich history influencing the formation, application and litigation of laws that could impact their public entity members. California JPAs have coalesced in their advocacy efforts through a statewide association of pools: the California Association of Joint Powers Authorities (CAJPA).

Since CAJPA's formation in 1981, legislative advocacy has been one of its core purposes. Through its legislative committee and with the support of a paid lobbyist, CAJPA monitors all legislative and regulatory changes that may impact California JPAs.

The legislative committee recommends various legislative positions on critical bills, and encourages and enables JPAs to engage in the legislative process. CAJPA keeps its members informed on key legislative activities, coordinates legislative efforts and utilizes grassroots outreach to make sure the voices of public sector pools are heard by the legislature.

CAJPA also hosts an annual Legislative Action Day, which is an integral part of the association's legislative strategy and activities. Each spring, members from across the state gather in Sacramento to meet one-on-one with legislators at the capitol. The purpose of the event is to educate legislators and regulators about CAJPA, its members and its positions on proposed legislation.

The Independent Cities Risk Management Authority (ICRMA) is RPA's flagship risk pool in California. ICRMA is engaged in CAJPA initiatives, including an important and timely project to collect data on high-severity settlements and identify underlying causation. Liability settlements have been skyrocketing in recent years, influenced by the lack of tort caps and joint and several liability. Along with other pools in the state, ICRMA has provided loss data and detailed information on high-value claims in order to evaluate causation and scope. Additionally, ICRMA's executive director participates on CAJPA's communications committee, which is determining how best to use, brand and distribute the results of the study project. The goals are to educate decision-makers and influence legislative change.

In addition to its legislative actions, on a selective basis—when their interests are likely to be implicated—CAJPA and its members seek to influence appellate court decisions through the coordinated development and delivery of amicus curiae (“friend of the court”) briefs. Often, JPAs and their members join in support of these briefs as appeals courts consider cases of interest.

New Jersey: A Pool of Pools Becomes a Legislative Champion

Scott Tennant, RPA East

Half of the local government pools in New Jersey (called joint insurance funds, or JIFs) participate in an excess liability pool known as the Municipal Excess Liability Joint Insurance Fund (MEL). The MEL represents a significant accumulation of common interests, assets and capacity among participating pools. One of the ways those resources are utilized is through the MEL’s legislative committee. Formed nearly 25 years ago, the legislative committee comprises representatives from member pools supported by a hired legislative consultant. Representing every county and region of New Jersey, the MEL is a powerful and well-organized legislative influencer, able to utilize relationships across both sides of the political aisle that individual member pools would not be able to leverage alone.

The MEL legislative committee is proactive and puts forth legislative initiatives to benefit member JIFs and their operations. For example, a recent piece of legislation created the Joint Committee on Management of Investments (JCMI), which allows multiple JIFs to commingle their funds to purchase municipal debt. Since the JCMI became operational in May 2020, it has purchased in excess of \$200 million in debt. This has driven down borrowing costs for local municipalities because of increased liquidity in the municipal debt market and because the JCMI has no profit motive. At the same time, the JCMI has increased investment returns for its members.

Beginning in 2021, the MEL legislative committee has been part of an initiative that brings together all of New Jersey’s 52 JIFs, the New Jersey Self-Insurers Association, the New Jersey Business and Industry Association, and other large self-insured entities to influence a surge of employer-adverse legislative initiatives. The emerging legislation represents very significant challenges to all employers, and could radically alter workers’ compensation structure, operations and costs. At the time of publication, these efforts are still underway, and the outcome is yet to be determined.

Arizona: Addressing Member Needs

Mike Tiffany, RPA West

The Arizona pools in RPA West have had a state-level government relations program in place for more than 20 years. This program engages at least one lobbyist on retainer year-round, in addition to pool staff, to work with legislators and legislative staff. We don’t rely on our government relations team every day, but when we need them, there’s no substitute.

Sometimes, for example, we need to pass a bill for our members. A few years ago, our property and liability pool wanted to offer administrative support to member school districts struggling with unemployment insurance claims. At the time, Arizona’s public entity pooling statute did not authorize this activity. We needed to change the law, therefore, to create the necessary authority. This involved finding a sponsor for our bill; educating her on our intent; enlisting allies in the pooling space to support the bill; making sure that committee chairs found room for us on their agendas; fielding questions from legislators and staff; testifying as the bill made its way through the House and Senate; and lining up support in committee, on the floor and in the governor’s office. It was a lot of work, but well worth it, as the program has proved hugely important to our school districts during the COVID-19 pandemic.

At other times, we’ve needed to stop someone else’s bill. Not long ago, an Arizona House member proposed legislation that would have prohibited confidential settlements in public entity sexual harassment cases. The idea behind the bill was that the public has a right to know the details of settlements involving public money. Our legal team told us, though, that this provision would not only make legal settlements much more difficult to achieve, it would have the perverse effect of revealing victims’ identities to the public, often against their will. Our staff and lobbyist worked behind the scenes to bring attention to the unintended consequences of this provision and ultimately helped defeat the bill.

Still other times, we’ve worked to make an ally’s bill better. During the pandemic, for example, a number of bills were introduced that sought to provide limited organizational immunity against COVID-19-related lawsuits. Our pool members were among the entities covered by this legislation. Once legislators chose their preferred bill, our lobbyist arranged for us to participate in an important stakeholder meeting convened by the bill’s sponsor. At that meeting, we raised some concerns about a specific provision and requested—

and ultimately received—changes that strengthened the bill’s immunity language.

Finally, in recent years Arizona has produced new laws impacting pool members, including bullying at school, student restraint and seclusion, telemedicine, presumptive cancer for first responders, and many other topics our members care about. Often, even before the bills become law, members will call us with questions. Often, too, once the bills are signed, members will ask, “How does this affect us? What do we need to do?” By maintaining an active legislative monitoring program, we can answer questions quickly and accurately, and prepare guidance and educational material, sometimes before members even realize they need it.

Conclusion

Even if a pool regards itself as apolitical, the operations, claims, coverages and governance of pools, and pool members themselves, are affected by legislative activities. Staying aware of current and emerging legislative trends is critical to ongoing operations as well as future planning.

In addition to the examples provided in the case studies, these are some additional legislative challenges that must be addressed by pools as they arise:

- Surplus regulation, including mandated returns and surplus caps
- The pool’s legal authority to self-insure, interpret its own bylaws and offer new coverages (for example, prepaid legal services)
- Compliance with the ACA and other healthcare regulations
- Specific issues that impact member operations and claims, such as workers’ compensation presumptions or law enforcement regulations
- Challenges to tort immunities

If your pool is interested in deepening its engagement in the legislative process, the case studies presented here provide a few sample road maps. They highlight the importance of building coalitions in order to address statewide issues that could affect pool operations. They also illustrate that, regardless of the specific structure, the process of engagement involves three key components: monitoring the environment, prioritization and coordinated action.

Monitor the environment. It is important to stay informed about the political environment in general, as well as about specific bills that may affect pool or member operations. In addition to local and state issues, there are also national trends worth tracking. For example, Colorado was the first state to legalize marijuana nine years ago; today, that legislation is sweeping the U.S. A similar wave of legislative activity has arisen from sexual abuse and molestation (SAM) claims. Pools that track trends in the political and legislative environment are more likely to be prepared when trending legislation hits their state.

Prioritize what to address. The abundance of emerging issues and proposed legislation can seem overwhelming. It’s helpful to remember, though, that some issues and bills are mission critical and demand involvement, others may be passively monitored, and others can be ignored altogether. Determining priorities will make the best use of finite pool resources so you can build an effective plan of action.

Coordinate action. Planning to act—and react—to legislative initiatives requires forethought and engagement. Pools have successfully used a variety of tactics to influence legislation, including engaging paid lobbyists, organizing grassroots (pool member) lobbying efforts and developing longer-term educational campaigns (aimed at political leaders as well as the public). To be successful, your plan of action must be customized to the specific issues, budget and time frame; the stakeholders who need to be engaged; and the desired outcomes.

There are many political issues that can directly affect pool operations. Many pool leaders—and we agree with them—believe that direct engagement to influence outcomes is a better course of action than passive acceptance of legislative and regulatory changes. Building coalitions, consistent engagement, and remaining both alert and flexible will ensure better outcomes for pools and their members.

About the Authors

Authors Dorothy Gjerdrum and Michelle Carter have worked in the pooling industry for decades. In their RPA leadership roles, they direct special programs and projects for RPA, including the development of thought leadership. For more information on Risk Program Administrators, please contact us at info@riskprogramadministrators.com.

About RPA

Risk Program Administrators is committed to providing strategic guidance, industry expertise and custom services to advance public entity risk pools and programs. For more information, please visit riskprogramadministrators.com.

