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Legislative DUC Walk Continues

By David J. Ruderman

Last year, the Legislature adopted SB 244 (Wolk, D-Davis) to require cities, counties and Local Agency Formation Commissions (LAFCos) to plan for disadvantaged unincorporated communities, or DUCs. Many cities and LAFCos were concerned about the impacts of this unfunded mandate. The League of California Cities sought an amendment to remove the law's limits on a city's ability to annex territory without also addressing nearby DUCs. CALAFCO took a wait-and-see approach with SB 244, encouraging parties to gain experience with the law before seeking amendments. While the League's effort this year was ultimately unsuccessful (as we reported in our Spring 2012 Newsletter), it did accomplish compromise language that corrected certain anomalies in SB 244. With CALAFCO's support, the Legislature also passed a technical change to clarify SB 244's reach. These amendments are important for general plan updates or potential annexations.

The first amendment appears in the Local Government Omnibus Act, SB 1090, which the Governor signed on September 14, 2012. SB 1090 fixes an anomaly in SB 244 that had required cities to analyze all nearby island and fringe communities in the land use elements of their general plans, even if the communities were not DUCs. Under SB 1090, cities will now be required to identify and plan only for island and fringe communities that are DUCs—i.e., areas in which the median household income is 80% or less of the statewide median. In addition, SB 1090 clarifies that a city need not develop new data to comply with SB 244's requirement to update the general plan land use element to analyze DUC service needs. SB 1090 allows such updates to be based on existing data, such as that provided by LAFCo municipal service reviews (MSRs).

The second amendment appears in AB 2698, the annual Cortese-Knox-Hertzberg Local Government Reorganization Act Omnibus bill which the Governor approved July 9, 2012. AB 2698 makes a minor change to the original bill's prohibition on LAFCo approval of the annexation of territory contiguous to a DUC unless a city also applies to annex the DUC. This was the provision the League unsuccessfully sought to repeal. This annexation provision previously provided that if written evidence demonstrated that a majority of the residents within a DUC opposed annexation, no application to annex it was required. AB 2698 changed that requirement to provide that the written evidence must demonstrate that a majority of registered voters within the DUC oppose annexation, rather than residents. This harmonizes this provision with the definition of a DUC—any area with 12 or more registered voters in which the median household income is 80% or less than the statewide median—and, for example, the protest provisions of Cortese-Knox-Hertzberg that give registered voters, not residents, a voice in changes of organization.

In sum, these two laws amend SB 244 to fix technical problems but do not alter its essential mandates or purpose—to encourage investment in communities that often lack basic infrastructure—nor do they address core objections raised by City and LAFCo officials. We have likely yet to see the end of proposals to amend SB 244, so stay tuned for new efforts next year.

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For more information on this topic, contact David at 530/798-2417 or DRuderman@CLLAW.US.

Pension Reform Becomes Law

By Teresa L. Highsmith

On September 12, 2012, Governor Brown signed AB 340, the "California Public Employee's Pension Reform Act," implementing some reforms stated in his 12-point pension reform plan for all state, school and local agency retirement plans. That proposal was the subject of an article in our Winter 2012 Newsletter. The heart of the Governor's original proposal—mandating a move from defined benefit pensions to a "hybrid" defined benefit / defined contribution pension system—did not survive the legislative process. However, many of his other proposals take effect next year. In particular, a cap on compensation used to calculate pension benefits for any "new" employee (i.e., new to the pension system, not new to a particular employer) hired after January 1st, will ensure that few pensions will exceed $100,000, unless an employee works 30 or more years, and no pension for "new" employees will exceed 120% of the Social Security Wage Index (currently $132,120).

Effective January 1, 2013, for all Employees regardless of hire date:

- Employees' share of pension cost is subject to existing MOUs. When those expire, employers can bargain to increase that share to the lesser of half of actuarial cost or 8% of salary for miscellaneous or 12% for sworn police and fire employees.
- "Air time" (i.e., service credits purchased rather than reflecting years of employment) is disallowed.
- No "pension holidays" will be permitted—employers must pay annual costs of a defined benefit plan unless plan assets are more than 120% of funding requirements.
- Future pension enhancements will not apply retroactively, but only to subsequent service.
- Upon conviction of a felony arising from the performance of public duties or connected with obtaining salary or other benefits for public service, an employee forfeits the portion of his or her pension accruing after the crime.
- New retirees may not be employed by an agency in the same retirement system for 180 days after retirement ("sit out" period).
  - A legislative body can approve an exception to fill a critical position.
  - This "sit out" requirement does not apply to public safety retirees.
- Retired annuitants (after the 180-day "sit out" period) are limited to 960 hours of annual service to any agency in same retirement system; no extensions are permitted.
- To avoid characterization as a "new" employee, employees may not have a break in service of more than six months, although moves between employers and pension systems are permitted.

For "New" Employees hired after January 1, 2013:

- Employees must contribute at least 50% of the cost of their pensions (if MOU had a more generous employer share, this applies upon MOU expiration, amendment or extension).
- No more "PERS pickup" of employer payment of the employee share of pension costs will be allowed upon expiration of existing MOUs.
- The new retirement formula for miscellaneous employees is 2% at 62, with a maximum benefit of 2.5% at 67.
- Three formulas are provided for public safety employees: 2% at 57 (Basic Safety Plan), 2.5% at 57 (Safety Option Plan I) or 2.7% at 57 (Safety Option Plan II)—employers must use the formula closest to that existing on December 31, 2012.
- Pensions will be based on the highest 36 months of base salary, ending formulas that are more easily "spiked" such as the single-highest-year formula, and excluding compensation other than "base compensation" such as leave payouts, overtime and the like.
- Compensation used to calculate a pension is capped at $110,100 for an employee who participates in Social Security and at $132,120 for others; these caps will be adjusted for inflation.
  - No supplemental defined benefit plan is permitted.
  - Employer contributions to supplemental defined contribution plans (such as 457 plans) are limited by federal law.
  - The right to receive continued employer contributions to a defined contribution plan is declared not to be a vested right.

According to recent CalPERS actuarial analyses, AB 340 will save the state, counties and local agencies $42 to $55 billion over the next 30 years. However, reduced pension benefits are likely to be offset by higher salaries to retain and attract public employees. This seems especially true for professional positions such as doctors, lawyers, judges, professors and the like. The courts and UC and CSU systems may find these limits especially problematic, particularly as the pool of employees already "in the system" approach retirement age. In the short run, these employers may find it difficult to recruit employees from out-of-state (important to the UC as it seeks to retain national rankings for its campuses) and from the private sector (already problematic for the courts).

It remains to be seen whether limitation on pension enhancements, forfeiture provisions and caps on pension amounts will generate litigation from employee groups. But given that the California Public Employee's Pension Reform Act did not include a constitutional amendment, AB 340 may be just the beginning of public employee pension reform efforts.

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For more information on labor law topics, contact Terri at 213/542-5703 or THighsmith@CLLAW.US.

Supreme Court Attends to Local Revenue Matters

By Michael G. Colantuono

The California Supreme Court's docket currently features four cases regarding local government revenues, perhaps a sign of the increasingly complicated laws on this subject and the current economy. These cover property tax administration fees, telephone taxes, assessments, and Proposition 13.

First is *Alhambra & 46 Other Cities v. Los Angeles County*, Case No. S185457. In 2004, the Legislature adopted SB 1096 to implement the VLF Swap, diverting vehicle license fees from cities and counties in exchange for additional property tax. That bill also implemented the so-called "Triple Flip" which reduced local sales tax receipts, increased local governments' share of property taxes at the expense of schools, and replaced school funds with State funds. Both measures were intended to help the State budget while being revenue neutral as to cities and counties. The bill included a provision allowing counties to partly fund the property tax system by imposing Property Tax Administration Fees or "PTAF" on cities and special districts. SB 1096 made clear counties could get no PTAF on property taxes paid in lieu of sales taxes and vehicle license fees for two years and that in later years they could recover their "actual costs" to implement the Triple Flip and VLF Swap. The County Auditors Association prepared guidelines, however, that advised counties to recover much more from cities. This shifted perhaps $40 million per year from cities to counties even though Los Angeles County agreed in *Alhambra* that it spends just $35,000 a year to implement these measures.

Michael Colantuono argued for the cities in the Supreme Court on September 5th. Although the argument went well from the cities' perspective, Justice Goodwin Liu asked questions regarded related Revenue & Taxation Code sections that neither party anticipated. Given the density of the Revenue & Taxation Code, these are not questions easily answered on the fly. Accordingly, the Court invited supplemental briefs which were filed September 28th. The parties may reply to those briefs by October 10th. Decision is due December 4th.

If the Los Angeles County cities succeed in *Alhambra*, the case will return to the trial court to resolve a disagreement whether the County can limit repayment to one year after each city filed a claim or whether a three-year statute of limitations applies. Cities in other counties, including Orange, Placer and San Mateo, negotiated "tolling agreements" stopping the clocks on their own PTAF disputes pending the outcome of *Alhambra*. A Fresno County case is on hold in the Court of Appeal there. As *Alhambra* will be decided soon, it will soon be time for counsel to reopen these files.

The Supreme Court granted review of *McWilliams v. Long Beach*, Case No. S202037, a telephone tax dispute which raises a technical question on which many millions of dollars turn: Can cities and counties adopt local claiming requirements for tax refunds, or does the Government Claims Act control? If local ordinances control, most bar class actions. If the Government Claims Act controls, class actions are permitted, as the Supreme Court decided in *Ardon v. Los Angeles*, a case Sandi Levin argued in 2011. Michael Colantuono and Tiana Murillo filed their opening brief for Long Beach in the *McWilliams* case in September and the plaintiff's brief is due in late October. Decision is not likely until late 2013.

The Supreme Court is also considering *Concerned Citizens for Responsible Government v. West Point Fire Protection District*, Case No. S195192, which concerns whether Proposition 218 permits assessments to fund services (as opposed to infrastructure) and, assuming it does, how much is demanded of an engineer's report to show that services to be funded by assessment specially benefit property and that assessment amounts are proportionate to those special benefits. Michael Colantuono filed an amicus brief in the case on behalf of five local government organizations. The case has been fully briefed since March. Argument can be expected sometime next year.

Finally, former UC Chancellor Charles Young's attempt to invalidate Proposition 13 some 34 years after its adoption was rejected by the Los Angeles Court of Appeal in an unpublished opinion in July. Chancellor Young petitioned the California Supreme Court to review that case in early September and his petition is pending (*Young v. Schmidt*, Case No. S205111. The petition should be decided by early November. Chancellor Young argues that Proposition 13 exceeded the scope permitted an initiative amendment to our Constitution by revising rather than amending it. Only two published cases have invalidated constitutional amendments on that ground and, given the role Proposition 13 plays in our public life and how long it has been in effect, this case seems a long shot.

Plainly, the coming months will bring important new developments in local government finance law. As always, we'll keep you posted!

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For more information on this subject, contact Michael at 530/432-7357 or MColantuono@CLLAW.US.

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