Legacy Costs and City and Special District Reorganizations

CALAFCO University

January 13, 2020

Michael G. Colantuono, Esq.

COLANTUONO HIGHSMITH WHATLEY, PC

The Legislature also recognizes that providing housing for persons and families of all incomes is an important factor in p

CKH Provisions re Liabilities

Generally, all assets and liabilities of a reorganized agency become those of its successor:

GC 57477 (consolidated cities)

GC 57531 (bonds of district merged into city)

GC 57461 (dissolved district)

GC 57418 (new city in territory of disincorporated city)

GC 57087.3 (merger of subsidiary district into city)

COLANTUONO HIGHSMITH WHATLEY, PC

The Legislature also recognizes that providing housing for persons and families of all incomes is an important factor in p

CKH Provisions re Liabilities

Still more such provisions:

GC 56056 (merger of a district into a city)

GC 57329 (county roads become city streets on annexation unless accepted by county after annexation initiated)

GC 57385 (same as to incorporation)

GC 57502 (consolidated districts)

COLANTUONO
HIGHSMITH
WHATLEY, PC

Consolidation of cities

- GC 57481 – on consolidation, the territory of one city may not be taxed to pay any debt of the other.
- GC 57482 – successor city authorized to levy separate taxes in the former cities' territories

COLANTUONO HIGHSMITH WHATLEY, PC

Annexation to City

- GC 57328: Annexed area becomes liable for City's bonds.

COLANTUONO HIGHSMITH WHATLEY, PC

Disincorporation of City

GC 56816 – Debts of a Disincorporated City intended to be responsibility of territory of former city.

City required to provide a written statement of debts and other liabilities along with cash, assets and uncollected revenues. If City is running on fumes, it may lack the resources to do so.

GC 57354 – provides for levy of a tax, assessment or service charge in territory of former city to cover is bonds

COLANTUONO HIGHSMITH WHATLEY, PC

Disincorporation of City

GC 56804

LAFCO E.O. required to prepare a comprehensive fiscal analysis to include "all current and long-term liabilities, including, but not limited to debt obligations … including the balance of the restricted and unrestricted funds available to extinguish the obligations and liabilities."

COLANTUONO HIGHSMITH WHATLEY, PC

Disincorporation of a City

- GC 57420
  - Newly incorporated city that includes 2/3 or more of the assessed valuation of land of a disincorporated city is proportionally responsible for its debts and liabilities
  - Auditor provides the calculation and the Board of Supervisors approves it by "an order entered in the minutes"
  - When it does, the newly incorporated city is liable for that share of the disincorporated city's debts
- 19th Century practice of disincorporating as a de facto bankruptcy is not longer a viable way to avoid debt

COLANTUONO
HIGHSMITH
WHATLEY, PC

Disincorporation of a City

- GC 57419 (no tax on land for debts of disincorporated city that was not part of that city)

COLANTUONO HIGHSMITH WHATLEY, PC

Ballot Measures

GC 57135: If change of organization is submitted to an election and requires new revenues, the revenues and the associated liabilities must be discussed in the ballot question.

COLANTUONO HIGHSMITH WHATLEY, PC

Inactive district

GC 56042 – defines the "inactive districts" which can be summarily dissolved to exclude those which have assets or liabilities.

COLANTUONO
HIGHSMITH
WHATLEY, PC

Detachment from City

GC 57351 – City may tax former territory after detachment to fund that territory's proportionate share of pre-detachment debts

COLANTUONO HIGHSMITH WHATLEY, PC

What's the relevance of these sections, some of them obscure

- They can suggest conditions of approval to govern similar issues in more common reorganizations

LAFCo has Wide Power to Impose Conditions to Address Liabilities

GC 56886 power to impose terms & conditions:

(c) The imposition, exemption, transfer, division, or apportionment, as among any affected cities, affected counties, affected districts, and affected territory of **liability** for payment of all or any part of principal, interest, and any other amounts which shall become due on account of all or any part of any outstanding or then authorized but thereafter issued **bonds**, including revenue bonds, **or other contracts or obligations** of any city, county, district, or any improvement district within a local agency, and the levying or fixing and the collection of any (1) taxes or assessments, or (2) service charges, rentals, or rates, or (3) both taxes or assessments and service charges, rentals, or rates, in the same manner as provided in the original authorization of the bonds and in the amount necessary to provide for that payment.

COLANTUONO HIGHSMITH WHATLEY, PC

LAFCo has Wide Power to Impose Conditions to Address Liabilities

GC 56886 power to impose terms & conditions

(d) Can include or exclude debt transferred to successor agency from its debt limit

(f) Can require the issuance of new debt

(g) Can require issuance of new bonds

(l) "The employment, transfer, or discharge of employees, the continuation, modification, or termination of existing employment contracts, civil service rights, seniority rights, retirement rights, and other employee benefits and rights."

COLANTUONO HIGHSMITH WHATLEY, PC

LAFCo has Wide Power to Impose Conditions to Address Liabilities

GC 56886 power to impose terms & conditions

(m) Can designate successor to "rights, **duties**, and **obligations** of the extinguished local agency with respect to enforcement, performance, or payment of any outstanding **bonds**, including revenue bonds, or **other contracts and obligations** of the extinguished local agency."

COLANTUONO HIGHSMITH WHATLEY, PC

LAFCo has Wide Power to Impose Conditions to Address Liabilities

GC 56886 power to impose terms & conditions

(s) Levy of taxes, assessments or fees

(t) Extension of previously authorized taxes, assessments or fees

(u) Responsibility for administering special taxes and special assessments

(v) "Any other matters necessary or incidental to any of the terms and conditions specified in this section."

COLANTUONO HIGHSMITH WHATLEY, PC

Contracts Clause

The state and federal constitutions prohibit governments from legislation so as to abrogate rights of contract against government.

This explains the elaborate CKH provisions ensuring that debts get honored one way or another.

COLANTUONO
HIGHSMITH
WHATLEY, PC

PERS obligations

PERS requires very substantial payments to terminate a contract – the net present value of the actuarial obligation calculated at a very conservative interest rate.

Few agencies can afford the termination fee

As a result some agencies continue to exist on paper solely to pay PERS liabilities on a PAYGO basis

PERS and JPAs

Statute requires JPA member agencies to accept liability for the JPA's pension liabilities. GC 6508.1

Agencies may apportion that liability among them in the JPA or another agreement. GC 6508.2

Results from the dissolution of a social services JPA in the San Gabriel Valley with no means to fund PERS liability, leading PERS to cut 100+ pensioners' pensions by 60%

COLANTUONO
HIGHSMITH
WHATLEY, PC

Implications of Large & Growing Pension Costs

Pension obligations are large, growing, and often a significant legacy issue

They will drive reorganization issues, too, as local governments look to deliver services without bearing the pension burden or seek efficiencies to spread that burden

How may public agencies can we afford?

Does it make sense to provide a PERS pension for relatively low-skill positions that could be performed by contract, volunteers, etc.?

COLANTUONO
HIGHSMITH
WHATLEY, PC

Some advice

Analyze these issues at the front end

Ask for audit reports and audited financial statements

Pay close attention to audit footnotes

New GASB rules require pension, OPEB and other conditional obligations of the agency to be disclosed

Get input from affected stakeholders: the affected agencies, employee unions, taxpayer advocates, etc.

COLANTUONO HIGHSMITH WHATLEY, PC

The Big Picture

- Government does not exist to manage liabilities, but to deliver services.
- While liability issues cannot be ignored, they can be managed.
- Don’t let them be an excuse to preserve inefficient service systems.

COLANTUONO HIGHSMITH WHATLEY, PC

Questions?

COLANTUONO HIGHSMITH WHATLEY, PC

Colantuono, Highsmith & Whatley, PC

Southern California
790 E. Colorado Blvd, Ste. 850
Pasadena, CA 91101-2109
(213) 542-5700

Northern California
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
(530) 432-7357

www.chwlaw.us

COLANTUONO HIGHSMITH WHATLEY, PC