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Fitch: Despite Local CA Victory, OPEB Battles Will Go On.

Fitch Ratings-San Francisco-08 May 2014: The California Supreme Court's decision last week against reviewing a lower court's decision on other post-employment benefit (OPEB) liabilities removed one legal challenge to public employers' efforts to reduce obligations, Fitch Ratings says. However, many other hurdles remain. We generally view OPEBs as more flexible than pensions. This decision supports that view, as well as the view that local governments' (in this case California's) ability to make material adjustments to these benefits.

The April 30 denial by the California Supreme Court leaves standing a December 2013 opinion by the state's Court of Appeals, which affirmed the city of San Diego's ability to cap its contributions toward retiree health care benefits. The appeals court cited substantial legal precedent in concluding that San Diego's OPEBs were an employment benefit rather than a vested contractual right and, unlike pension benefits, could be reduced for current employees and retirees.

California courts have looked closely at the circumstances under which OPEBs have addressed the validity of subsequent reductions. A series of decisions over the past several years by both the federal 9th Circuit Court and the state Supreme Court have held that OPEBs in general are not vested with contractual rights, but this status may be granted or implied through labor negotiations or other governing board actions. As a result, local governments' legal authority to reduce OPEBs must be determined on a case-by-case basis, leading to repeated litigation of benefit cuts across multiple jurisdictions.

Fitch expects OPEB litigation to continue as public employers in California increasingly look for means to reduce long-term liabilities and growing expenses. Several cases arising from OPEB cuts made during the recent recession continue to wend their way through the state's courts, and any new efforts to reduce benefits are likely to face legal challenges as well. Litigation is likely to slow the pace of OPEB reform in California and the prospect of litigation may also lead some employers to reconsider such efforts.

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