



City of Encinitas

Office of
The Mayor

August 21, 2019

The Honorable Lorena Gonzalez
Chair, Assembly Appropriations Committee
State Capitol Building, Room 2114
Sacramento, CA 95814

Catherine S. Blakespear
Mayor

**RE: SB 266 (Leyva) Public Employees' Retirement System: Disallowed
Compensation: Benefit Adjustments: Notice of Opposition**

Dear Assembly Member Gonzalez,

Jody Hubbard
Deputy Mayor

The City of Encinitas must respectfully oppose SB 266, which would require public agencies to directly pay retirees and/or their beneficiaries, disallowed retirement benefits using general fund dollars. Our objections to this measure are rooted in policy, operational cost, and legal concerns that will inevitably face virtually every local government agency should this measure be signed into law.

Kellie Shay Hinze
Council Member

Double Payment:

Under current law, once a benefit is determined to be disallowed, both the employer and the employee cease making future payments on that benefit. Past contributions from the employee are returned to the employee, while past contributions from the employer are applied towards future payment. We the employer have already made our contributions; we should not be double paying for the benefit.

Tony Kranz
Council Member

As Amended CalPERS has no Incentive to Properly Calculate Benefit Payments:

Recent amendments to the measure remove all responsibility by CalPERS to ensure benefits are reviewed, calculated and administered correctly. Instead, SB 266 places sole responsibility on the employer—even if the employer exercises their right to have CalPERS review their compensation proposal. While we understand that CalPERS has asserted that they face IRS plan qualification concerns for paying out an unlawful benefit, the fact that there is zero accountability or assurances afforded to the state or local agency when CalPERS reviews a compensation agreement is irrational.

Joe Mosca
Council Member

Requirements under SB 266 will Create Compliance and Implementation Issues:

Under SB 266, we would be issuing direct General Fund payments to retirees, which would trigger GASB 68 reporting requirements. Given the unique circumstances surrounding these overpayments, we would have to track and report these liabilities. Such additional responsibilities will require us to hire costly outside actuarial and legal experts to ensure that they follow federal reporting laws. SB 266 would further strain our budget at a time where retirement obligations are making it financially difficult to provide critical services for the public.

Karen P. Brust
City Manager

This measure also fails to consider the common practice of employees moving from jurisdiction to jurisdiction throughout their careers. Under normal circumstances, CalPERS pays out a benefit if an employee works for multiple agencies who enjoy

reciprocity. However, under SB 266 it is unclear. Such confusion will lead to compliance, legal, and implementation challenges.

This measure would also require the City of Encinitas to track and maintain current records of all retirees and their beneficiaries in order to deliver the direct payment. As such, SB 266 would present us with a costly logistical challenge.

Gift of Public Funds is a Violation of the California Constitution:

Under SB 266, City of Encinitas would be issuing monthly, unlawful, payments to former employees and/ or their beneficiaries in perpetuity. Continued payment of a disallowed benefit to a retiree would constitute a gift of public funds, in violation of Section 6, Article 16 of the California Constitution. Such violation would leave a public agency left to defend itself from costly litigation lawsuits filed by members of the public.

For these reasons, the City of Encinitas opposes SB 266 (Leyva).

Sincerely,



Catherine Blakespear
Mayor

cc: Senator Patricia Bates
Assembly Member Tasha Boerner Horvath
JGC Governmental Relations
Catherine Hill, League of California Cities
Encinitas Mayor and Council Members
Encinitas City Manager, Karen P. Brust