



The City of Burlingame

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September 4, 2019

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

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

Dear Assembly Member Gonzalez,

The City of Burlingame 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.

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.

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 its right to have CalPERS review its 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.

Requirements under SB 266 will Create Compliance and Implementation Issues:

Under SB 266, the City of Burlingame 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 is a de facto and retroactive benefit enhancement bill that would further strain our budget at a time where retirement obligations are making it financially difficult to provide critical services for the public. The City has already seen dramatic increases in pension costs, with actuarial valuations estimating that our pension costs will double over the next 8 to 10 years, to a high of over 82% of payroll for Safety employees and 42% of payroll for Miscellaneous employees. These increases in pension cost obligations make it difficult for the City to replace aging and worn out infrastructure (including buildings, sewer, and water systems), plan for growth in the city, and continue current services.

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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 the 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 Burlingame to track and maintain current records of all retirees and their beneficiaries in order to deliver the direct payment. 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 Burlingame 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 Burlingame strongly opposes SB 266 (Leyva). If you have any question about the City's position on this matter, please contact Human Resources Director Sonya Morrison at smorrison@burlingame.org or 650-558-7209.

Sincerely,

Donna Colson
Mayor

cc: State Senator Connie Leyva
State Senator Jerry Hill
State Assembly Member Kevin Mullin
Che Salinas, Chief Deputy Legislative Secretary for Operations, Office of Governor Newsom Leg.unit@gov.ca.gov
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