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July 11, 2019

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

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

Dear Assembly Member Gonzalez,

The City of Arcata 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 and 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 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.

**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 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. For example, for the new fiscal year, the increased pension cost the City is currently experiencing has already required the City to further defer operational purchases and capital improvement projects, as well as delay hiring of or not re-establish necessary positions. With the 7% CalPERS discount rate reduction going into full effect, our City expects even further reductions and deferrals to fund future pension costs. By requiring the City to also take on total liability of disallowed benefit repayment costs for retirees, the City will be required to make additional and more severe choices. Whether that is further reduction in services, deferral of capital projects, or operating critically short-staffed, we end up doing a disservice to both the public and our employees.

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 implantation challenges.

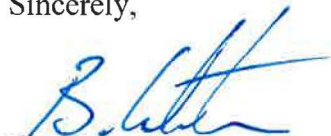
Additionally, this measure would require the City of Arcata to track and maintain current records of all retirees and their beneficiaries in order to deliver the direct payment. SB 266 would present us with a costly logistical challenge.

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

Under SB 266, the City of Arcata 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 Arcata **opposes** SB 266 (Leyva).

Sincerely,



Brett Watson, Mayor  
City of Arcata

cc:

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