CITY OF MURRIETA

July 23, 2019

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

RE: Senate Bill 266 (Leyva) – Oppose (As Amended June 17, 2019) Notice of Opposition

Dear Assembly Member Gonzalez:

The City of Murrieta must respectfully oppose Senate Bill (SB) 266 which will require public agencies to directly pay retirees and/or their beneficiaries, disallowed retirement benefits using general fund dollars. As amended, SB 266 places 100 percent of the total liability for such overpayments on public agencies—abdicating all responsibility previously held by the California Public Employees Retirement System (CalPERS) to ensure that retirement benefits are calculated and administered correctly. As such, SB 266 is a de facto and retroactive benefit enhancement measure that will further strain local agency budgets at a time where retirement obligations are effectively eliminating agencies' ability to provide critical services for the public. Our objections to this measure are rooted in policy, operational, cost, and legal concerns that will inevitably face virtually every state and local government agency should this measure be signed into law.

As Amended CalPERS has no Incentive to Properly Calculate Benefit Payments:
In 2012, the California State Legislature passed significant public pension reform legislation known as the Public Employees' Pension Reform Act (PEPRA), which took effect January 1, 2013. While the reforms were significant, they led to confusion as to what may lawfully be offered as employee pension benefits. As a result, some public agencies and their represented employee organizations came to agreements on benefit packages that did not meet the new legal standards to be considered a pensionable benefit. Those future retirement benefits, which were being paid for by employers and employees into pension systems such as CalPERS, were at some point determined to violate the law and were terminated. Terminated benefits that violate PEPRA are considered "disallowed benefits."

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. Unfortunately, in the case of a retiree that received the disallowed benefit, the pension system must recoup the overpaid benefit from the retiree. They must do so because it is unlawful to pay out a benefit that is not legally allowable or earned.

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 as proposed in section 5 of the measure. 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
As stated, under SB 266, state and local agencies would now be issuing direct General Fund payments to retirees. Even though direct payments to retirees will be made outside of the retirement system, such liabilities still trigger reporting requirements. Given the unique circumstances surrounding these overpayments, agencies will now have to track and report these liabilities. Such additional responsibilities will require agencies to hire costly outside actuarial and legal experts to ensure that they follow federal reporting laws.

Additionally, SB 266 currently provides that "make whole" payments can be paid in a lump sum or as an annuity. Under the constructive receipt doctrine, retirees will be immediately taxed on make whole amounts even if they choose to receive an annuity creating unanticipated and adverse tax consequences.

Moreover, the bill fails to consider the common practice of employees moving from jurisdiction to jurisdiction throughout their careers. What happens when a retiree worked for multiple public employers in different retirement systems? Under normal circumstances, CalPERS pays out the benefit if employee works for multiple agencies who enjoy reciprocity. But under SB 266 it is unclear. Are multiple agencies now responsible for directly paying a retiree or beneficiary? What happens in the case where an employee's bargaining unit at one employer agreed to a disallowed benefit but worked for the majority of their career for another agency? Is the agency where the retiree worked longest on the hook for an agreement that they were not a party to? Such confusion will lead to compliance, legal and implementation challenges.

Gift of Public Funds is a Violation of the California Constitution
To be clear, Senate Bill 266 will require agencies to issue monthly, unlawful, payments to former employees and/ or their beneficiaries in perpetuity. Public agencies cannot continue to make payments to retirees as proposed by SB 266 for the same legal basis that requires pension systems to recoup their disallowed retirement benefit payments to retirees. 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. Again, it is unfortunate that after an agency and their bargaining unit came to an agreement on benefits and those benefits had been paid for any amount of time for the benefit to be taken from the retiree. Although public agencies may feel morally or ethically compelled to do so, public agencies simply cannot continue to make payments directly to a retiree for an unlawful benefit.

For the reasons stated above, the City opposes SB 266. If you have any questions, please contact Louie Lacasella, City Manager's Office at (951) 461-6008 or llacasella@MurrietaCA.gov.

Sincerely,

Kelly Seyarto
Mayor

Cc. Murrieta City Council
Senator Jeff Stone
Assembly Member Melissa Melendez
Erin Sasse, League of California Cities Public Affairs Manager
David Jones, Emanuels Jones & Associates