



## CITY OF BEVERLY HILLS

455 NORTH REXFORD DRIVE ▪ BEVERLY HILLS, CALIFORNIA 90210

Robert Wunderlich, Mayor

July 1, 2021

The Honorable Connie Leyva  
California State Senate, 20th District  
State Capitol, Room 4061  
Sacramento, CA 95814

Re: SB 278 (Leyva) Public Employees' Retirement System: disallowed compensation: benefit adjustments  
City of Beverly Hills – **OPPOSE**

Dear Senator Leyva,

On behalf of the City of Beverly Hills, I write to you in respectful OPPOSITION to your SB 278, which would establish new procedures for employees covered by the California Public Employee Retirement System (CalPERS) in cases where their pensionable benefits are erroneously calculated and reported to CalPERS by their employer.

The Public Employees' Pension Reform Act (PEPRA,) which took effect January 1, 2013, limited the types of compensation that can be counted in calculating pension benefits for the new members. While that set of reforms was significant, they confused what may lawfully be offered as employee pension benefits. As a result, some public agencies and their represented employee organizations came to agreements on benefits packages and submitted them to CalPERS for approval. Only after these agreements were approved and administered did CalPERS determine that these forms of compensation were unlawful. Those future retirement benefits, which were being paid for by employers and employees into pension systems, were 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. In contrast, past contributions from the employer are applied towards future payments. In the case of a retiree that received the disallowed benefit, the pension system must recoup the overpaid benefit from the retiree. The pension system must recoup that overpayment from the retiree because it is unlawful to pay out a benefit that is not legally allowable or earned.

SB 278 outlines a policy whereby public agencies would be required to continue to make payments to retirees that have had their pensions reduced by CalPERS when CalPERS realizes the pensionable benefits

were erroneously calculated. 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.

Furthermore, SB 278 fails to consider the common practice of employees moving from jurisdiction to jurisdiction throughout their careers; with the full burden falling under their last employer, should PERS disallow compensation. An employee could spend 25 years working for one city, change jobs to a new city for the last five years before they retire, and that final employer would be responsible for 100 percent of the disallowed compensation.

What is truly unsettling to Beverly Hills is that PERS is unable to estimate what the true cost of SB 278 is to the state, let alone all of the cities and counties. Considering a retiree and their designated survivor would be receiving pay they are not truly entitled to for the rest of their life, this impact could have repercussions for decades. Additionally, PERS is unwilling to share how they calculate the monthly payment for a retiree with a jurisdiction. This does not allow a jurisdiction to double-check the amount PERS determines as the right payout yet; if PERS is wrong, the City would be 100 percent responsible for paying the disallowed compensation.

Finally, many cities and counties currently have over 70 percent of their general fund budget dedicated to public safety services. This budget is further stressed each year as PERS recalculates each jurisdiction's unfunded pension liability. Some cities and counties struggle each year to balance their revenues with their expenditures in good economic times; however, COVID-19 has caused a myriad of jurisdictions to lay off employees, have furloughs, and spend general fund reserves as revenue has suffered due to the pandemic. There is a real concern that this additional burden could force many jurisdictions into bankruptcy if there is a downturn in the economy. As PERS is not considered a priority debtor by the courts, jurisdictions could choose to stop paying into PERS in order to maintain basic services to its residents.

Again, it is unfortunate that after an agency and their bargaining unit agreed on benefits and those benefits had been paid for any amount of time for the benefit to be taken from the retiree. Public agencies simply cannot continue to make payments directly to a retiree for an unlawful benefit, especially as this could be construed as a gift of public funds as the retired employee and their designated survivor will continue to receive monies they were never entitled to in the first place.

For these reasons, the City of Beverly Hills must respectfully OPPOSE your SB 278.

Sincerely,



Robert Wunderlich

Mayor, City of Beverly Hills

Cc: Members and Consultants, Assembly Public Employment and Retirement Committee  
The Honorable Ben Allen, 26th Senate District  
The Honorable Richard Bloom, 50th Assembly District  
Andrew K. Antwih, Shaw Yoder Antwih Schmelzer & Lange