

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

SB 278 (Leyva)  
Version: March 23, 2021  
Hearing Date: April 6, 2021  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Public Employees' Retirement System: disallowed compensation: benefit adjustments

**DIGEST**

This bill provides that, when a retiree's California Public Employees' Retirement System (CalPERS) pension is reduced post-retirement, due to the inclusion of compensation agreed to under a collective bargaining agreement that is later determined to be nonpensionable, the public employer must cover the difference between the pension as originally calculated and as reduced by CalPERS.

**EXECUTIVE SUMMARY**

Under current law, if CalPERS discovers that a public employee's pension benefits have been calculated on the basis of compensation reported by a public employer that CalPERS determines to be disallowed, the payments must be adjusted to reflect the correctly included compensation. When the correction shows an overpayment to a retiree, CalPERS will reduce the retiree's benefits going forward and claw back any overpayments already made. This can result in retirees being ordered to pay a lump sum of tens of thousands of dollars and a permanent reduction in the retiree's benefits going forward.

This bill shifts the burden of an overpayment to a retiree, when caused by improperly reported compensation, from the retiree to the public employer, in cases where the compensation was agreed to between the public employer and an employee organization in a memorandum of understanding. Specifically, the bill provides that, when CalPERS determines that a retiree's benefit must be reduced because an item of compensation was erroneously reported, and that compensation was the subject of a collective bargaining agreement, the public employer must pay the retiree for the portion of the pension that was revoked via an annuity or a lump-sum payment. The bill also provides a system whereby public employers can submit to CalPERS a request to review a compensation item negotiated under a collective bargaining agreement and receive a non-binding ruling on whether the item is pensionable compensation.

This bill is sponsored by California Professional Firefighters and supported by a number of public sector employee and labor groups. The bill is opposed by a number of California counties, cities, and towns. This bill passed out of the Senate Committee on Labor, Public Employment and Retirement with a 5-0 vote.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes CalPERS and sets the purpose of the System as effecting the economy and efficiency of public service by providing a path for employees to leave state service without hardship or prejudice. (Gov. Code, §§ 20001-20002.)
- 2) Establishes the CalPERS Board of Administration (Board) and vests the Board with the sole authority to administer the CalPERS benefit pension system, including determining who is an eligible employee to receive benefits and what assets can be purchased by CalPERS. (Gov. Code, §§ 20090, 20125, & 21090.)
- 3) Provides that, in its discretion and upon any terms it deems just, the Board may correct errors or omissions of any active or retired member, or any beneficiary of an active or retired member, as specified. The law permits CalPERS to decline to collect erroneous payments if the overpayment is \$250 or less, or in the case of death benefits, \$50 or less. (Gov. Code, §§ 20160-20161.)
- 4) Provides that, in the case of an overpayment of benefits, the Board shall make an adjustment to correct the payments, which the Board may accomplish through direct cash payments from the retiree or entity. (Gov. Code, § 20163.)
- 5) Provides that, in the event of an erroneous payment to a CalPERS member or beneficiary, CalPERS has three years from the date of payment to collect the erroneous payment from the member or beneficiary.<sup>1</sup> (Gov. Code, §§ 20164(b)(1).)
- 6) Establishes the California Public Employees' Pension Reform Act of 2013 (PEPRA), which limits the types of compensation that can be counted in the calculation of pension benefits for new members. (Gov. Code, § 7522 et seq.)
- 7) Grants the Board the authority to administer, implement, and enforce PEPRA with the same effect as if the provisions were contained in the Public Employees' Retirement Law, and provides that, if there is a conflict between two, PEPRA controls. (Gov. Code, § 20004.)

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<sup>1</sup> CalPERS' time to recover a payment in case of fraud is has 10 years from the discovery of the erroneous payment (Gov. Code, § 20164(b)(2) & (d)); fraudulent overpayments are not relevant to this bill.

- 8) Provides that, if a CalPERS officer determines that compensation is disallowed, the member may appeal the decision to the Board. If the member is dissatisfied with the Board's decision, they may appeal to seek reconsideration from the Board or appeal to a superior court via a statutory writ of mandate procedure. (Cal. Code Regs., tit. 2, § 555.1; Civ. Code, § 1094.5.)

This bill:

- 1) States that it is the intent of the Legislature to ensure that a retired CalPERS member is protected when an alleged misapplication or calculation occurs as a result of an employer's error, and that the cost of such errors should be borne by the employer rather than through a retroactive clawback and permanent reduction in the retired member's pension. The bill further states that providing retirement security to public servants who have appropriately bargained and paid for the promise of a secure retirement serves a public purpose.
- 2) Defines "disallowed compensation" as compensation reported for a CalPERS member by the state, school employer, or a contracting agency (collectively, the entity), which the CalPERS system subsequently determines is not in compliance with PEPRA, resulting in an overstatement and/or overpayment of the member's compensation.
  - a) The bill applies to determinations going forward and to determinations made on or after January 1, 2017, if an appeal has been filed and the member, retired member, survivor, or beneficiary has not exhausted their administrative or legal remedies.
- 3) Provides that, if CalPERS determines that the compensation reported for a member by the entity is disallowed compensation, CalPERS shall require the entity to discontinue reporting the disallowed compensation.
- 4) Provides that, when disallowed compensation is reported as to an *active* CalPERS member, the entity's contributions made on the disallowed compensation shall be credited against the entity's future contributions; and any contributions made by the member with respect to the disallowed compensation shall be returned to the member by the entity.
- 5) Provides that, when disallowed compensation is reported as to a *retired* CalPERS member, survivor, or beneficiary whose final compensation at the time of retirement was calculated including the disallowed compensation, the entity's contributions made on the disallowed compensation shall be credited against its future contributions; and CalPERS shall permanently adjust the benefit of the member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation.

- 6) Implements an additional repayment procedure for disallowed compensation reported as to a *retired* member, survivor, or beneficiary whose final compensation was predicated on the disallowed compensation, when four conditions are met:
  - a) The compensation was reported to CalPERS and contributions were made on that compensation while the member was actively employed;
  - b) The compensation was provided for in a memorandum of understanding or collective bargaining agreement as compensation for pension purposes;
  - c) The determination by CalPERS that the compensation was disallowed after the member retired; and
  - d) The member was not aware that the compensation was disallowed when it was reported.
  
- 7) If the prior four conditions are met, the entity that reported the disallowed contributions must comply with the following repayment procedure:
  - a) Pay to CalPERS, as a direct payment, the full cost of any overpayment of the prior paid benefit made to the retired member, survivor, or beneficiary resulting from the disallowed compensation; and
  - b) Pay to the retired member, survivor, or beneficiary the actuarial equivalent of the present value representing the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated to exclude the disallowed compensation for the duration the allowance is projected to be paid. The payment must be paid as an annuity based on the calculated amount unless the retired member, survivor, or beneficiary and the entity mutually agree to a lump sum payment or payments.
  
- 8) Provides that, in the case of an overpayment that satisfies the conditions of item 7), CalPERS must provide a notice to the entity and the affected retired member, beneficiary, or survivor that includes, at a minimum:
  - c) The amount of overpayment to be paid by the entity;
  - d) The actuarial equivalent present value owed to the retired member, beneficiary, or survivor under the repayment procedure; and
  - e) Written disclosure of the entity's obligation under the repayment procedure.
  
- 9) Requires CalPERS to provide to an entity, on request, the contact information of a retired member, beneficiary, or survivor entitled to payment under the repayment procedure, so that the entity can contact the person entitled to repayment; and provides that the contact information shall be kept confidential.
  
- 10) Provides that an entity may submit to CalPERS a request to review an amount to be included as compensable benefits pursuant to a memorandum of understanding adopted under a collective bargaining agreement entered into on or after January 1, 2022, and CalPERS shall provide nonbinding guidance as to the submission within 90 days of receiving the necessary information to complete the review.

- 11) Requires CalPERS to periodically publish notice of the proposed compensation language submitted to the system for guidance under the above provision.
- 12) Provides that the bill's provisions do not effect or alter a party's right to appeal a determination of disallowable contributions by CalPERS.

### COMMENTS

#### 1. First Comment About the Bill

According to the author:

In 2012, after serving the public for nearly 30 years, a firefighter employed by the City of Davis retired. Prior to retiring, the firefighter requested an official retirement estimate from CalPERS, which provided a projection of retirement benefits as of the firefighter's estimated retirement date. Based on the information provided by CalPERS in their official retirement estimate, the firefighter made the decision to retire.

In 2017, CalPERS notified the long-retired firefighter that the City of Davis had reported certain disallowed compensation, which CalPERS believed was not pensionable compensation. Consequently, CalPERS sought to collect the overpayment reimbursement – not from the City of Davis that had mistakenly reported the special compensation, but from the retired firefighter. The reimbursement sought by CalPERS included a lump sum amount of \$42,000 and a sizable future reduction in the retired firefighter's monthly retirement allowance.

Unfortunately, a handful of other firefighters, law enforcement, and school retirees have also reported similar stories across multiple CalPERS employers.

SB 278 protects a retiree's already promised and paid-for collectively bargained benefits in cases where the benefit is disallowed by CalPERS after the member has already retired. It also sets parameters for resolving future disputes over active and retired employees' collectively-bargained pensionable compensation.

#### 2. This bill prevents retired public employees from bearing the cost of reporting errors made by public employers

In California, "a pension right constitutes something more than a mere gratuity."<sup>2</sup> Pensions "induce competent persons to enter and remain in public employment," and

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<sup>2</sup> *Kern v. Long Beach* (1947) 29 Cal.848, 851.

“[i]t is obvious that this purpose be thwarted if a public employee could be deprived of pension benefits.”<sup>3</sup>

When CalPERS discovers that a public employer has erroneously reported a component of an employee’s compensation as pensionable, CalPERS must correct the error. For the employer, the result of a correction is the same whether the employee is active or retired: the public employer’s overpayments are credited toward future payments to the system.<sup>4</sup> But for the employee, the difference is stark under current law. If the employee is still active, any excess contributions made by the employee are repaid and the record is corrected going forward.<sup>5</sup> If the employee is retired, however – meaning they retired on the basis of the erroneously calculated benefits – CalPERS will claw back any overpayments already made and reduce the retiree’s benefits going forward.<sup>6</sup> The burden of the employer’s erroneous reporting thus falls entirely on the retired public employee, who likely had no reason to know there was any error.

This bill makes the public employer, not the retired public employee, responsible for the cost of the public employer’s reporting error when the compensation was part of a collective bargaining agreement. The bill’s approach is similar to the concept of unilateral mistake in contract law: when one party to a contract makes a mistake, the other party – the party negatively affected by the mistake – has a right to rescission, but the party who made the mistake has no right to back out of the contract based on their own error.<sup>7</sup> The bill’s approach is also similar to the principle of estoppel, which provides that “[w]henever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.”<sup>8</sup> For estoppel to apply, the party that induced the reliance – here, the public employer – need not have acted fraudulently or intended to harm the other party; it is enough that the party’s representations induced the other party – here, the public employee – to take an action which they might not otherwise have taken had they known the truth (i.e., retiring).<sup>9</sup> Where equitable estoppel applies, the party that induced the other party’s reliance is estopped from denying the truth of the statement in question; similarly here, the public employer is required to make up for its own incorrect reporting that led to an overstatement of the retiree’s benefits, functionally “estopping” it from allowing the public employee’s retirement benefits to be reduced. Accordingly, by shifting the burden from the retired public employee to the public employer, this bill appears in line with basic principles of law and equity present in other areas of the law.

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<sup>3</sup> *Id.* at p. 856.

<sup>4</sup> Gov. Code, § 20163.

<sup>5</sup> Gov. Code, § 20163.

<sup>6</sup> *Ibid.*

<sup>7</sup> See Civ. Code, § 1689(b)(1).

<sup>8</sup> Evid. Code, § 623.

<sup>9</sup> *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 384.

While the bill's opponents – cities, counties and towns – suggest that this bill will impose an undue financial burden, this Committee has not received any evidence suggesting that post-retirement benefits reductions are common. Moreover, this bill provides a procedure by which public employers can obtain an opinion on whether an item of compensation included in a collective bargaining agreement is compensable, thereby providing public employers with some certainty about including an item of compensation before it results in an overpayment to a retiree. While the opinion from CalPERS is not binding, there has been no suggestion or evidence that CalPERS is likely to renege on previously rendered opinions. Moreover, under current law, a public employer has little incentive to pore over each item because the cost of an error is borne by the retired employee; this bill might encourage public employers to be more diligent in the first instance in order to avoid paying for erroneous calculations down the road.

3. This bill applies retroactively to pension determinations made on or after January 1, 2017, as long as the pension recipient has filed an appeal and has not exhausted their legal remedies

A “retroactive or retrospective law” “is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute.”<sup>10</sup> As a general rule, statutes operate only prospectively “unless there is an ‘express retroactivity provision’” or very clear extrinsic evidence that the Legislature intended a retroactive application.<sup>11</sup> Where “the Legislature clearly intends a statute to operate retroactively,” courts will uphold the retroactivity unless due process considerations demand otherwise.<sup>12</sup> To determine whether a retroactive application comports with due process, a court will “consider ‘the significance of the state interest served by the law, the importance of the retroactive application of the law to the effectuation of that interest, the extent of reliance upon the former law, the legitimacy of that reliance, the extent of actions taken on the basis of that reliance, and the extent to which the retroactive application of the new law would disrupt those actions.’”<sup>13</sup>

This bill expressly extends its provisions to retirees whose pension payments were calculated based on disallowable contributions extending back to pension determinations made on or after January 1, 2017, so there should be no question that the Legislature intended this limited retroactive application. Nor does the bill's retroactivity appear to implicate due process concerns. The bill is retroactive only for retirees with pending appeals on decisions made on or after January 1, 2017 – so the retroactive effect is fairly limited – and the state's interest in ensuring that its employees can rely on their promised retirement benefits is strong. The only countermending interest offered by the opponents is that this bill might raise costs for public employers, but the opponents do not suggest they *specifically* rely on CalPERS' current practice of penalizing a retiree for a public employer's erroneous reporting in conducting their operations; nor is it likely

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<sup>10</sup> *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 839.

<sup>11</sup> *Id.* at p. 841.

<sup>12</sup> *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

<sup>13</sup> *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1138.

such reliance would be a compelling reason to keep punishing retirees for their employers' errors. Accordingly, this bill's retroactivity provisions appears to be consistent with case law on retroactive legislation.

4. This bill's provision for payments to public retirees does not appear to present constitutional problems

As noted below, several opponents of the bill argue that this measure could violate section 6 of Article XVI of California's Constitution (Section 6), which prohibits the Legislature from giving state, county, and local funds as a gift or payment for the liabilities of an individual.<sup>14</sup> And while the opponents do not raise it, the nature of SB 278 could conceivably implicate section 17 of Article IV of the California Constitution (Section 17), which prohibits the Legislature from granting, or from authorizing a county or locality to grant, extra compensation to a public employee or contractor after the service was rendered or under an agreement made without authority of law.<sup>15</sup> This section analyzes the application of both sections and concludes it is very unlikely either section poses an impediment to this bill.

First, as a general principle, there is a presumption that the Legislature acts within its constitutional power.<sup>16</sup> " 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. [Any] restrictions and limitations are to be construed strictly, and are not to be extended to exclude matters not covered by the language used.' ... In other words, 'all intendments favor the exercise of the Legislature's plenary authority.' "<sup>17</sup>

Within that framework, it appears very likely that Section 16, prohibiting gifts of public funds, does not prohibit the payments in this bill. " 'It is well settled that, in determining whether an appropriation of public funds or property is to be considered a gift, the primary question is whether the funds are to be used for a "public" or a "private" purpose. If they are for a "public purpose," they are not gifts within the meaning of [the Constitution].' "<sup>18</sup> "The determination of what constitutes a public purpose is primarily a matter of legislative discretion [citations], which is not disturbed by the courts so long as it has a reasonable basis."<sup>19</sup> Not only does this bill serve a public purpose already recognized by the courts – providing security for public retirees, as a way to induce workers to join and remain in public service – but the bill expressly declares that the Legislature believes such a public purpose exists. In light of the fact that there is both a declaration of a public purpose, and the public purpose of providing

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<sup>14</sup> Cal. Const., art. XVI, § 6.

<sup>15</sup> Cal. Const., art. IV, § 17.

<sup>16</sup> *Howard Jarvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th 486, 540.

<sup>17</sup> *Id.* at pp. 540-541, first alteration in original.

<sup>18</sup> *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 363 (brackets in original).

<sup>19</sup> *County of Alameda v. Janssen* (1940) 16 Cal.2d 276, 281.

pension security to public employees is reasonable, it seems highly unlikely that a court would decide otherwise.

With respect to Section 17, the analysis is similar and reaches the same result. Section 17 was adopted

to prevent the legislature from allowing the payment of extra compensation to officers who, subsequent to their election or appointment, discovered that the regular salary was insufficient, and also to prevent relief bills in favor of those who had dealt with state and municipal officers, acting without *express* authorization from any source, or under palpably unauthorized and invalid contracts, and who were constantly asking the legislature to consider their misfortune in pity, and regard them as deserving of public benevolence.<sup>20</sup>

The courts, accordingly, have not interpreted Section 17 to apply to any and every law permitting compensation for work already performed, but rather have looked to the nature and basis for the retroactive payment.<sup>21</sup> Here, where the payments contemplated are made to compensate for the public employer's own error and the retiree's reliance on that error, it is clear that SB 278 is not the type of payment Section 17 seeks to avoid. The retirees affected by this bill are not coming back to the state, hat in hand, complaining that what they were promised is insufficient – quite the opposite. The bill ensures that retirees will be paid *exactly* what they were promised, by the public employer that made the error that led to the overstated benefits. It thus seems unlikely that Section 17 is an impediment to this bill.

5. This bill provides that retiree contact information must be kept confidential, consistent with other limitations on personal information

Article I, section 3, of the California Constitution provides that “[t]he people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”<sup>22</sup> This right is not absolute, however: the Constitution also provides that public access may be limited as necessary to protect the equally vital right of privacy.<sup>23</sup>

This bill provides that, where CalPERS needs to provide the contact information of a retiree or beneficiary to an entity, so that the entity can contact the retiree or beneficiary as required by this bill, the entity must keep that information confidential. This

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<sup>20</sup> *Miller v. Dunn* (1887) 72 Cal. 462, 467-468.

<sup>21</sup> *E.g., Jarvis v. Cory* (1980) 28 Cal.3d 562, 570-752 (*Jarvis*); *San Joaquin County Employees' Assn v. County of San Joaquin* (1974) 39 Cal.App.3d 83, 86-87 (*San Joaquin County Employees' Ass'n*).

<sup>22</sup> Cal. Const., art. I, § 3(b)(1).

<sup>23</sup> *Id.*, § 3(b)(3).

provision appears consistent with the Constitution's balance between public access and personal privacy.

## 6. Arguments in support

According to the sponsor of the bill, California Professional Firefighters:

Like many retirees, when a firefighter, law enforcement officer, or school employee retires, they rely on a fixed monthly pension to meet their day-to-day needs. Moreover, unlike private sector employees, many public employees, including a sizeable percentage of public safety personnel, do not receive Social Security benefits. For these retirees, their fixed pension is typically their only source of retirement income....

SB 278 would protect the promised and paid-for pensions of CalPERS retirees through a number of mechanisms, as well as putting in place steps to ensure that similar miscalculations do not happen again in the future. This bill would require that the employer to immediately stop reporting the disallowed compensation to the system. For active employees, CalPERS must credit the contributions made on the disallowed compensation to the employer against future contributions and the employer is required to refund the employee contributions made on the disallowed compensation to the active employee. For retirees or their beneficiaries, the employer must repay to CalPERS any overpayment that resulted from the benefit derived from the disallowed compensation and must provide an annuity or lump sum payment to the retiree to compensate for the reduction that resulted from the disallowed compensation. CalPERS must also provide notice to an affected employer and the affected retiree regarding the amount of the overpayment due from the employer and the amount owed to the retired member or beneficiary.

It is patently unfair to force a retiree who has dedicated a lifetime of service to the people of California to lose a large portion of their fixed income over a disallowed pay item that was not their fault. If the employer promises and pays for a benefit that is disallowed after the fact, the retiree living on a fixed income who is budgeting according to that fixed income should not have to pay the price for that broken promise. For these reasons, we urge your support of this important measure.

Bill supporter Riverside Sheriffs' Association states:

SB 278 would protect the retirement security of CalPERS members by ensuring that any collectively bargained compensation agreed to by their employer cannot be subsequently and retroactively sought from the retired member's pension allowance, but rather paid for it by the employer. To prevent similar retroactive action against retired employees in the future, SB 278 allows CalPERS

contracting agencies to submit a compensation proposal for a pension calculation to review its consistency and provide guidance with CalPERS regulations.

## 7. Arguments in opposition

Opposition to the bill focuses on three main issues: the bill's allocation of responsibility for retirement benefits that were disallowed after the fact; the bill's added compliance and implementation requirements; and a concern that the bill would violate section 6 of Article 16 of the California Constitution.

With respect to the bill's allocation of responsibility for overpayments, opponents League of California Cities, California Special Districts Association, California Association of Joint Powers Authorities, and California State Association of Counties note:

In 2012, the California State Legislature passed significant 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 benefits 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." ...

This measure removes all responsibility by CalPERS to ensure benefits are reviewed, calculated, and administered correctly. SB 278 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. Additionally, this measure would remove further accountability from CalPERS to provide the proper guidance needed by local agencies on compensation proposals. Specifically, in section 5(c)(1), CalPERS is simply charged "upon request" to review the "consistency" of an agency compensation proposal, rather than ensuring that an [agency's] proposal is in compliance with [PEPRA].

Similarly, the Cities of Farmersville and Tulare, note:

SB 278 would place 100 percent of the total liability for disallowed retirement benefits on public agencies – abdicating all responsibility previously held by CalPERS to ensure that retirement benefits are calculated and administered correctly. As such, SB 278 is a de facto and retroactive benefit enhancement measure that would further strain our budget at a time where the impacts of

COVID-19 and retirement obligations are making it exceedingly difficult to effectively provide critical services for the public. Higher PERS rates result in fewer discretionary dollars to cover basic City Services such as Public Safety/Police and Fire as well as public parks & open space.

With respect to the concern about added compliance and implementation efforts, the Cities of Brentwood, Citrus Heights, Gustine, Morgan Hill, and the Towns of Apple Valley and Los Gatos, state:

SB 278 would require us to issue 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.

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 278 it is unclear. Such confusion will lead to compliance, legal and implementation challenges. The lack of accountability by the administrator of public retirement benefits would lead to more confusion and compliance challenges for public agencies.

With respect to the potential Constitutional problem, many of the opponents voice the same concern as articulated by the City of Livermore:

Under SB 278, the City of Livermore would be issuing unlawful payments to former employees and/or their beneficiaries. 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.

### **SUPPORT**

California Professional Firefighters (sponsor)  
American Federation of State, County and Municipal Employees, AFL-CIO  
Association of California State Supervisors  
California Association of Professional Scientists  
California Labor Federation  
California State Retirees  
Organization of SMUD Employees  
Peace Officers' Research Association of California  
Professional Engineers in California Government  
Riverside Sheriffs' Association

**OPPOSITION**

Association of California Community College Administrators  
Association of California School Administrators  
Big Bear Area Regional Wastewater Agency  
California Association of School Business Officials  
California Association of Joint Powers Authorities  
California County Superintendents Educational Services Association  
California School Boards Association  
California Special Districts Association  
California State Association of Counties  
City of Arcata  
City of Belmont  
City of Brentwood  
City of Campbell  
City of Citrus Heights  
City of Cupertino  
City of El Segundo  
City of Farmersville  
City of Fountain Valley  
City of Gustine  
City of Hidden Hills  
City of Lakeport  
City of Lawndale  
City of Livermore  
City of Madera  
City of Morgan Hill  
City of Murrieta  
City of Pleasanton  
City of Rancho Cucamonga  
City of Thousand Oaks  
City of Torrance  
City of Tracy  
City of Tulare  
City of Visalia  
City of Vista  
County of Nevada  
League of California Cities  
League of California Cities, Los Angeles County Division  
Los Angeles County Superintendent of Schools  
Orange County Department of Education  
Riverside County Office of Education  
San Bernardino District Advocates for Better Schools  
School Employers Association of California  
Town of Apple Valley

Town of Los Gatos  
Town of Truckee

### **RELATED LEGISLATION**

#### **Pending Legislation:**

SB 634 (Senate Labor, Public Employment and Retirement Committee, 2021) provides that any overpayment issued after the date of death to a member, retired member, or beneficiary, made to or on behalf of any member, retired member, or beneficiary, including, but not limited to, contributions, interest, retirement allowance, payments of any kind, or federal or state tax, shall be deducted from any subsequent payment or benefit that is payable by this system as a result of the death. SB 634 is pending before the Senate Appropriations Committee.

SB 411 (Cortese, 2021) provides that the circumstances in which an improperly reinstated employee who had already retired, and that employee's employer, must reimburse the system for improperly paid contributions or retirement allowances, include specified certain violates of PEPRA relating to employee reinstatement. SB 411 is pending before the Senate Labor, Public Employment and Retirement Committee.

#### **Prior Legislation:**

SB 266 (Leyva, 2019) was similar to this bill and would have implemented substantially similar procedures by which the entity that reported disallowed compensation would bear the cost of the over-reporting for a retired member. SB 266 died in the Assembly.

SB 1124 (Leyva, 2018) was similar to this bill and would have implemented substantially similar procedures by which the entity that reported disallowed compensation would bear the cost of the over-reporting for a retired member, but did not contain this bill's provision allowing an entity to confer with CalPERS about including items as compensation before doing so. SB 1124 was vetoed by Governor Brown.

### **PRIOR VOTES:**

Senate Labor, Public Employment and Retirement Committee (Ayes 5, Noes 0)

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