

Legislation Text

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DATE OF MEETING: 04/19/21

SUBJECT:

CITY COUNCIL AUTHORIZATION TO RATIFY OPPOSITION LETTER FROM SAN PABLO MAYOR PABON-ALVARADO ON STATE OF CALIFORNIA PROPOSED LEGISLATION RELATED TO PUBLIC EMPLOYEES' RETIREMENT SYSTEM GIFT OF PUBLIC FUNDS - SENATE BILL 278 (LEYVA)

CITY MANAGER RECOMMENDATION

Approve by Minute Order

COMPLIANCE STATEMENTS

Major Policy Goal: *Enhance Community Resilience* are an adopted policy item contained in the adopted FY 2021-23 City Council Priority Workplan, effective March 15, 2021.

CEQA Compliance Statement

This is not a project as defined by CEQA pursuant to 14 Cal. Code of Regulations section 15378.

BACKGROUND

The California Public Employees' Pension Reform Act of 2013 (PEPRA) generally requires a public retirement system, as defined, to modify its plan or plans to comply with the act. PEPRA, among other things, establishes new defined benefit formulas and caps on pensionable compensation.

Proposed State Legislation SB 278 (Leyva)

SB 278, proposed by State Senator Connie Leyva (20th District), would establish new procedures under Public Employees Retirement Law (PERL) for cases in which PERS determines that the benefits of a member or annuitant are, or would be, based on disallowed compensation that conflicts with PEPRA and other specified laws, and thus is impermissible under PERL.

The proposed bill would also apply these procedures retroactively to determinations made on or after January 1, 2017, if an appeal has been filed and the employee member, survivor, or beneficiary has not exhausted their administrative or legal remedies. At the threshold, after determining that compensation for an employee member reported by the state, school employer, or a contracting agency is disallowed, the bill would require the applicable employer to discontinue the reporting of the disallowed compensation.

SB 278 is a reintroduction of SB 266 (Leyva, 2019) and will require public agencies to directly pay retirees and/or their beneficiaries, disallowed retirement benefits using general fund dollars. SB 278 places 100 percent of the total liability for such overpayments on public agencies (local cities), thus 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, which will further strain local agency budgets at a time where retirement obligations are crowding out funding for critical services to the public. Since this bill's inception, Cal-Cities has noted its objections to this measure rooted in policy, operational, cost, and legal concerns that every local government agency will face if this bill is signed into law. This proposal raises serious legal issues for local government and compounds the pension-related issues cities face. Moreover, these perceived-giveaways of public funds will further undermine the public's perception and trust of local governments.

Gift of Public Funds is a Violation of the California Constitution

Under SB 278, the City of San Pablo 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.

At urgency expressed by Cal-Cities, all local cities are being requested to send opposition letters to the bill's authors and to various scheduled Committees as this bill is being fast-tracked this past month.

Therefore, at request of Cal-Cities' representatives, a letter of opposition was developed and executed by San Pablo Mayor Pabon-Alvarado and transmitted officially on April 12, 2021 via the City's lobbyist, Townsend Public Affairs (TPA), to State Senator Dave Cortese (15th District) who serves as Chair, Senate Labor, Public Employment and Retirement Committee who was scheduled to hear SB 278 (Leyva).

UPDATE: At agenda deadline, TPA advised the City that the proposed bill has now been referred to Senate Appropriations Committee for a hearing on April 19, 2021.

City Manager Recommendation

This evening, the City Manager requests ratification approval by majority vote (via minute order) of the conceptual letter of support executed and transmitted on April 12, 2021 by Mayor Pabon-Alvarado to State Senator Dave Cortese (15th District) who serves as Chair, Senate Labor, Public Employment and Retirement Committee, with copies to State Senator Leyva (20th District), local State Legislators, and Cal-Cities representatives.

FISCAL IMPACT

No fiscal impact associated with this agenda item.

ATTACHMENT:

- 1) Letter of Conceptual Support dated April 5, 2021 re: SB 619 (Laird) transmitted by San Pablo Mayor to State Senator Ben Allen (26th District), Chair of the Senate Environmental Quality Committee,