



COUNTY of VENTURA

COUNTY EXECUTIVE OFFICE
MICHAEL POWERS
County Executive Officer

Mike Pettit
Assistant County Executive Officer

Kaye Mand
County Chief Financial Officer

Shawn Atin
Assistant County Executive Officer/
Human Resources Director
Labor Relations

September 10, 2021

Ventura County Employees' Retirement Association
Board of Retirement
1190 S. Victoria Avenue, Suite 200
Ventura, California 93003

Re: Board of Retirement Meeting, Item VI.A. Staff Update on Assembly Bill 826 -
September 13, 2021

Dear Board:

In connection with Item Number VI.A., Staff Update on Assembly Bill 826, Impact, and Next Steps, on the Board of Retirement's Meeting Agenda for September 13, 2021, the County of Ventura has the following comments regarding Assembly Bill 826.

We were gratified to be able to remove most opposition to the measure, thanks to the hard work of our team, working in collaboration with our labor partners, as well as Assembly Members Irwin and Bennett, and their staffs. Additionally, we've enjoyed the strong support of Senator Limon and SEIU State Council, as well as a number of other local labor organizations.

AB 826 is currently on the Inactive File on the Senate Floor, where it will remain until the Legislature reconvenes in January 2022 for the second year of its two-year session. AB 826 was placed on the Inactive File at the request of the Governor's Office, to allow for additional conversation with the Governor's staff with the goal of ensuring the inclusion of the Flexible Benefit Allowance in the definition of "compensation" and "compensation earnable" for Ventura County's legacy employees.

The Governor's staff has committed to initiating such conversations in late October/early November in order to reach an understanding on an approach between the County, our labor partners, and the Administration by the time the Legislature returns for work in January 2022. All parties understand the urgency of clarifying this matter. We expect that there will be an opportunity for the Legislature to consider the measure early in 2022, possibly as part of current year budget matters that remain outstanding from 2021.

We are enclosing letters written in support of Assembly Bill 826 and request that they be read into the record in connection with your staff update on Assembly Bill 826. In addition, County of Ventura staff will be present at the meeting on September 13, 2021, to comment on this agenda item.

In closing, we urge your Board to take no action at this time with regard to the Flexible Benefit Allowance for Legacy Employees' Compensation Earnable. AB 826 continues to be very much under consideration, and we are hopeful that it will pass during the 2022 Legislative Session. Any action at this time by the Board of Retirement to exclude the Flexible Benefit Allowance is premature.

Please feel free to contact me at (805) 654-2681 with any questions regarding this matter.

Sincerely,



MICHAEL POWERS
County Executive Officer

Enclosures:

1. Letter from Michael Powers, Ventura County Executive Officer, regarding AB 826 (Irwin): Clarifying the Facts, dated September 8, 2021.
2. Letter from Ventura County Sheriff Bill Ayub Supporting AB 826, dated August 26, 2021.
3. Letter from Ventura County Professional Peace Officers' Association Supporting AB 826, dated September 2, 2021.
4. Letter from Ventura County Deputy Sheriffs' Association Supporting AB 826, dated August 30, 2021.
5. Joint Letter from Service Employees International Union and the County of Ventura Supporting AB 826, dated August 31, 2021.
6. Letter from Howard Jarvis Taxpayers Association Removing Opposition to AB 826, dated September 1, 2021.
7. Letter from Ventura County Taxpayers Association Removing Opposition to AB 826, dated August 27, 2021.



VENTURA COUNTY SHERIFF'S OFFICE

Bill Ayub
Sheriff

Monica McGrath
Undersheriff

800 South Victoria Avenue, Ventura CA 93009 | 805.654.2380 | VenturaSheriff.org

August 26, 2021

The Honorable Jacqui Irwin
California State Assembly
State Capitol
Sacramento, CA 95814

Re: **AB 829 (Irwin): County Employees Retirement Law of 1937: compensation earnable SUPPORT**

Dear Assembly Member Irwin:

I write to express my strong support of your Assembly Bill 826, a measure that seeks to clarify the definition of "compensation earnable" in the County Employees Retirement Law (CERL) of 1937 to ensure that pension calculations incorporate longstanding compensation practices like the County of Ventura's Flexible Benefit Allowance that helps pay for premiums for employee health plans. This important bill is necessary to ensure that County employees - including those in the Sheriff's Office - who have relied on this component of their compensation to be included in their retirement calculations are not unduly harmed.

AB 826 contains an important clarification of ambiguities that have arisen in the reading of the recent opinion in *Alameda Deputy Sheriff's Association v. Alameda County Employee Retirement Association* (2020). The *Alameda* decision did not specifically address compensation, like Ventura's Flexible Benefit Allowance, but some have argued that these payments could fall outside the allowed compensation under CERL. In Ventura's case, however, the County has included the Flexible Benefit Allowance in the pension calculation for legacy employees because employees receive the full cash value and it is a regular, set amount paid every pay period; it is not subject to pension spiking or any other manipulation.

The County of Ventura has a long history of fiscal responsibility and structurally sustainable labor agreements and other investments. We have managed our retirement benefits prudently and, as a result, our retirement system has a funding ratio of approximately 90 percent. Our Flexible Benefit Allowance has been jointly funded by the County and legacy employees for 30 years. We have worked collaboratively with our partners to ensure that pension reforms contained in PEPRA and the *Alameda* decision remain untouched. AB 826 simply maintains the status quo for County legacy employees.

I sincerely appreciate your willingness to assist the County in helping resolve this important issue and support AB 826. Please contact me if I can offer additional information or assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. J. Ayub".

Bill Ayub
Sheriff

cc: County of Ventura Legislative Delegation



VENTURA COUNTY TAXPAYERS ASSOCIATION

August 27, 2021

Hon. Jacqui Irwin
State Capitol Building Room 5119
Sacramento, Ca. 94249

Re: **Assembly Bill 826 (Irwin)**

Dear Assemblywoman Irwin,

After careful consideration and conversation with the County of Ventura, the Ventura County Taxpayers' Association is prepared to remove its opposition to AB 826. We appreciate the opportunity to understand better the County's retirement benefits and the goals of AB 826, including the author's and sponsors' work to ensure it is narrowly crafted and does not impact other retirement systems or allow for pension spiking.

Sincerely,

David Grau
President, Ventura County Taxpayers Association



FIFTY YEARS OF REPRESENTING THE FRONT-LINE PROTECTORS KEEPING VENTURA COUNTY SAFE

August 30, 2021

The Honorable Jacqui Irwin
California State Assembly
State Capitol
Sacramento, CA 95814

Re: **AB 826 (Irwin): County Employees Retirement Law of 1937: Compensation Earnable SUPPORT**

Dear Assembly Member Irwin:

On behalf of VCDSA, I write to express my strong support of your Assembly Bill 826, a measure that seeks to clarify the definition of "compensation earnable" in the County Employees Retirement Law (CERL) of 1937 to ensure that pension calculations incorporate longstanding compensation practices like the County of Ventura's (County) Flexible Benefit Allowance that helps pay for premiums for employee health plans. This important bill is necessary to ensure that County employees - including those in the Sheriff's Office - who have relied on this component of their compensation to be included in their retirement calculations are not unduly harmed.

AB 826 contains an important clarification of ambiguities that have arisen in the reading of the recent opinion in *Alameda Deputy Sheriff's Association v. Alameda County Employee Retirement Association* (2020). The *Alameda* decision did not specifically address compensation, like the County's Flexible Benefit Allowance, but some have argued that these payments could fall outside the allowed compensation under CERL. In the County's case, however, the Flexible Benefit Allowance has been included since 1989 in the pension calculation for legacy employees because employees receive the full cash value and it is a regular, set amount paid every pay period; it is not subject to pension spiking or any other manipulation.

The County has a long history of fiscal responsibility and structurally sustainable labor agreements and other investments. We have managed our retirement benefits prudently and, as a result, our retirement system has a funding ratio of approximately 90 percent. Our Flexible Benefit Allowance has been jointly funded by the County and legacy employees for 30 years. We have worked collaboratively with our partners to ensure that pension reforms contained in PEPRA and the *Alameda* decision remain untouched. AB 826 simply maintains the status quo for County legacy employees.

I sincerely appreciate your willingness to assist the County and VCDSA in helping resolve this important issue and support AB 826. Please contact me at nodenath@vcdsa.org if I can offer additional information or assistance.

Sincerely,

Nick Odenath
VCDSA President

cc: County of Ventura Legislative Delegation



COUNTY of VENTURA

August 31, 2021

The Honorable Jacqui Irwin
California State Assembly
State Capitol
Sacramento, CA 95814

Re: **AB 826 (Irwin): County Employees Retirement Law of 1937: compensation earnable
As amended 8/31/21 – SPONSOR**

Dear Assembly Member Irwin:

On behalf of the Service Employees International Union and the Ventura County Board of Supervisors, we write in strong support of your Assembly Bill 826, a measure that seeks to clarify that the County of Ventura's Flexible Benefit Allowance that helps pay for premiums for employee health plans may be included in the definition of "compensation" and "compensation earnable" if certain requirements are met. This important clarification is critically necessary to ensure that Ventura County employees who have relied on this component of their compensation to be included in their retirement calculations are not unduly harmed.

AB 826 addresses an issue that has arisen from the California Supreme Court decision in *Alameda County Deputy Sheriff's Assn. v. Alameda County Employee Retirement Assn.*, in which the court ruled that for employees in CERL counties, the Public Employee Pension Reform Act (PEPRA) modified the definition of "compensation earnable" to exclude certain pay items that constituted "pension spiking." Pension spiking is commonly understood to include certain compensation components that employees are able to manipulate to increase pension calculations prior to retirement, such as, pay for additional services beyond an employee's regular schedule, excessive leave cashouts, and other specialty pay.

The *Alameda* decision created confusion among some county retirement systems governed by CERL about how to correctly apply the PEPRA definitions to long-standing compensation practices, including the Flexible Benefit Allowance in Ventura County. The *Alameda* decision did not specifically address compensation like Ventura's Flexible Benefit Allowance, but some have argued that these payments could fall outside the allowed compensation under CERL. In Ventura's case, however, the County has included the Flexible Benefit Allowance in the pension calculation for legacy employees because these employees receive the full cash value and it is a regular, set amount paid every pay period; it is not subject to pension spiking or any other manipulation.

AB 826 specifically authorizes Ventura County's Flexible Benefit Allowance, as a cafeteria plan benefit authorized by Section 125 of the Internal Revenue Code, to be included in compensation earnable if the

following conditions are met: (1) it is made available to all employees in the same grade or class of positions, (2) if it is not expressly excluded by statute, and (3) if the employer and employee made contributions on the remuneration prior to *Alameda* and continue to make such contributions.

The County of Ventura and employees who are pre-PEPRA legacy members of the pension plan (generally those hired prior to January 1, 2013) have paid contributions to the retirement system based on the Flexible Benefit Allowance for over thirty years. Exclusion of the County's Flexible Benefit Allowance from compensation earnable would have a significant impact on these members, especially those who are the lowest paid. Legacy members could see a reduction in their monthly pension benefit of as much as 10 percent, which could be catastrophic to members who budgeted and planned their retirements around their expected benefit amount, particularly lower wage workers.

Our organizations have worked collaboratively to ensure that this language is specific to Ventura County, consistent with the provisions of PEPRA, and addresses the uncertainty that has resulted from the *Alameda* case. We greatly appreciate your efforts on our behalf and stand ready to help support its passage. Please reach out if we can provide additional assistance.

Sincerely,



Terry Brennand
Service Employees International Union, California



Michael Powers
County Executive, County of Ventura

cc: County of Ventura Legislative Delegation



September 1, 2021

Hon. Jacqui Irwin
State Capitol Building Rm. 5119
Sacramento, CA 94249

Re: Assembly Bill 826 (Irwin)

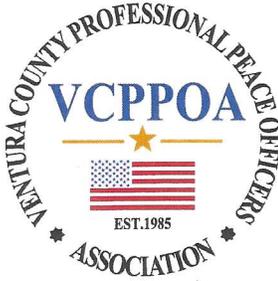
Dear Assemblywoman Irwin,

This is to inform you that the Howard Jarvis Taxpayers Association **removes its opposition to AB 826**. While we remain concerned with flexible benefit plans as administered by the County of Ventura, we thank the author for the recent amendments that take our issues with this bill into consideration and make changes to narrow its focus and acknowledge PEPRA and the Supreme Court's decision in *Alameda*.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott Kaufman', written in a cursive style.

Scott Kaufman
Legislative Director



Ventura County Professional Peace Officers' Association

September 2, 2021

The Honorable Jacqui Irwin
California State Assembly
State Capitol
Sacramento, CA 95814

Re: **AB 826 (Irwin): County Employees Retirement Law of 1937: Compensation Earnable SUPPORT**

Dear Assembly Member Irwin:

On behalf of Ventura County Professional Peace Officers' Association (VCPPOA), I write to express my strong support of your Assembly Bill 826, a measure that seeks to clarify the definition of "compensation earnable" in the County Employees Retirement Law (CERL) of 1937 to ensure that pension calculations incorporate longstanding compensation practices like the County of Ventura's (County) Flexible Benefit Allowance that helps pay for premiums for employee health plans. This important bill is necessary to ensure that County employees - including my members - who have relied on this component of their compensation to be included in their retirement calculations are not unduly harmed.

AB 826 contains an important clarification of ambiguities that have arisen in the reading of the recent opinion in *Alameda Deputy Sheriff's Association v. Alameda County Employee Retirement Association* (2020). The *Alameda* decision did not specifically address compensation, like the County's Flexible Benefit Allowance, but some have argued that these payments could fall outside the allowed compensation under CERL. In the County's case, however, the Flexible Benefit Allowance has been included since 1989 in the pension calculation for legacy employees because employees receive the full cash value and it is a regular, set amount paid every pay period; it is not subject to pension spiking or any other manipulation.

The County has a long history of fiscal responsibility and structurally sustainable labor agreements and other investments. We have managed our retirement benefits prudently and, as a result, our retirement system has a funding ratio of approximately 90 percent. Our Flexible Benefit Allowance has been jointly funded by the County and legacy employees for 30 years. We have worked collaboratively with our partners to ensure that pension reforms contained in PEPR and the Alameda decision remain untouched. AB 826 simply maintains the status quo for County legacy employees.

I sincerely appreciate your willingness to assist the County and VCPPOA in helping resolve this important issue and support AB 826. Please contact me at 805 889 4646 if I can offer additional information or assistance.

Sincerely,

President, VCPPOA



COUNTY of VENTURA

September 8, 2021

To: Honorable Members of the Senate

From: Michael Powers, County Executive Officer, County of Ventura

Re: **AB 826 (Irwin): Clarifying the Facts**

A recent letter circulating in opposition to AB 826 (Irwin) provides inaccurate information about the County's pension system policies. Due to the importance of this matter, the County of Ventura is compelled to ensure you have complete and accurate information.

The benefit in question, the flexible benefit allowance, is a fixed amount of money, negotiated by the unions and the County as part of compensation, and provided to employees as a line item on their biweekly paystubs as part of the County of Ventura's Internal Revenue Code Section 125 cafeteria plan. Its exclusion from pension calculation would affect our lowest income workers, who could see as much 10 percent of their retirement income lost.

The letter claims that the Public Employees' Pension Reform Act of 2013 (PEPRA) banned this benefit for those legacy employees hired prior to 2013. This is not the case.

The letter also claims this benefit was excluded by the California Supreme Court's *Alameda* decision of July 31, 2020. Ventura County was not part of the *Alameda* case. The flexible benefit allowance is never mentioned in any of the court filings, transcripts, or the final decision of the court.

Fundamentally, *Alameda* said legacy employees did not have a constitutional right to benefits that could be spiked. The County wholeheartedly agrees. In fact, since this benefit is a fixed amount of money, paid in the same amount, every pay period, it simply cannot be spiked.

The County of Ventura not only fully embraced PEPRA, we have acted, in collaboration with our labor partners, to achieve pension reform beyond what PEPRA requires. The County has been widely recognized as one of the most proactive pension reform counties in the state and has one of the most highly funded pension systems at 90 percent funding.

The County does not seek to enhance a benefit. AB 826 simply provides clarification of the intent of the Legislature and validates the provision of a benefit that has been fully funded, by both the employee and employer, and has been provided to its employees for decades.

The Ventura County Board of Retirement have put their employees on notice that members who retired after the *Alameda* ruling face potential elimination of the benefit and pay back of payments related to this benefit. There is uncertainty for thousands of our employees. Particularly for low-income workers, this potential loss of income is an additional significant stress factor during COVID.

Please note, once the Howard Jarvis Taxpayer's Association learned more about AB 826, it dropped its opposition. The same is true for our local Ventura County Taxpayers' Association. We deeply appreciate your consideration of this information and look forward to connecting with you in the future on this important legislation.