

INITIAL STATEMENT OF REASONS

Proposed Amendment to Section 574 of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations

The proposed regulatory amendment is necessary to describe how a classified member's full-time payrate shall be reported to the California Public Employees' Retirement System (CalPERS) in accordance with Government Code (GC) section 20636.1. By proposing this regulatory amendment, the CalPERS Board of Administration (Board) seeks to explicitly define how to determine a classified member's hourly, daily, and monthly full-time equivalent (FTE) payrates. This amendment would provide clarity and uniformity for CalPERS, its classified members, and CalPERS-covered school employers in reporting a classified member's full-time payrate to CalPERS. In addition, the Board proposes amending the title of Section 574 of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (hereinafter referred to as CCR section 574) to "Definition and Reporting of Full-Time Employment."

PROBLEM THE PROPOSED AMENDED REGULATION INTENDS TO ADDRESS

Assembly Bill 2177 (Stats. 2000, Chapter 1030) established GC section 20636.1 to clarify and standardize the reporting of compensation to CalPERS for classified members. Under GC section 20636.1, "classified members" means members who retain membership under CalPERS while employed with a CalPERS-covered school employer in positions not subject to coverage under the Defined Benefit Program under the State Teachers' Retirement System. Prior to this bill, CalPERS-covered school employers had discretion to establish how many hours were considered full-time employment for their classified members, and overtime work was considered to be hours in excess of what the CalPERS-covered school employer considered to be full-time, which resulted in inconsistent reporting among CalPERS-covered school employers. GC section 20636.1 defines full-time employment for classified members as "40 hours per week," and further states that "payments for services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed."

In 2019, CalPERS promulgated CCR section 574 to define "full-time" employment for purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation. Consistent with GC section 20636.1, the regulation provides that full-time employment for classified members means 40 hours per week.

While GC section 20636.1 and CCR section 574 standardized the definition of full-time employment for classified members, it is necessary to describe how CalPERS-covered school employers determine full-time payrates for purposes of reporting payrates to CalPERS. For example, some CalPERS-covered school employers report classified members' earnings as payrate, but the earnings are not based on a 40-hour work week. Since GC section 20636.1 explicitly defines full-time employment as 40 hours per week,

the full-time payrate reported to CalPERS must be based on a 40-hour work week regardless of whether the classified member works 40 hours per week.

By proposing this regulatory amendment, the Board seeks to explicitly define how to determine a classified member's hourly, daily, and monthly FTE payrates. This proposed regulatory amendment is intended to benefit CalPERS, its classified members, and CalPERS-covered school employers by providing clarity and uniformity for reporting a classified member's full-time payrate to CalPERS. The Board also proposes amending the title of CCR section 574 to "Definition and Reporting of Full-Time Employment" in order to reflect the proposed regulatory amendment.

PURPOSE, BENEFITS, OR GOALS OF THE AUTHORIZING STATUTES

Under GC section 20121, the Board has authority to make rules as it deems proper.

GC sections 20630 and 20635.1 define compensation as the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours or for time during which the member is excused from work, and exclude overtime in the definition of compensation, for the purposes of reporting compensation to CalPERS.

GC section 20636.1 defines full-time employment for classified members as 40 hours per week and provides that "payments for services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed."

RATIONALE FOR DETERMINATION THAT ADOPTION IS REASONABLY NECESSARY TO ADDRESS THE PROBLEM

The proposed regulatory amendment is necessary to define how to determine a classified member's hourly, daily, and monthly FTE payrates in accordance with GC sections 20630, 20635.1, 20636.1, and 20967 and CCR section 574(c). Adoption of this proposed regulatory amendment will benefit CalPERS, its classified members, and CalPERS-covered school employers by providing clarity and uniformity for reporting a classified member's full-time payrate to CalPERS.

SPECIFIC PURPOSE FOR THE ADOPTION OF THE PROPOSED AMENDED REGULATION

Purpose of the Proposed Amended Regulation Section 574. – Definition and Reporting of Full-Time Employment

Section 574, Title: The purpose of this change is to reflect the proposed regulatory amendment and convey that this regulation describes how a classified member's full-time payrate shall be reported to CalPERS in addition to the definition of full-time employment.

Section 574(c): The purpose of this change is to reorganize and renumber subsection (c) to include the necessary amendment.

Section 574(c)(1): The purpose of this paragraph is to provide the requirements for reporting a classified member's full-time payrate and calculating a classified member's FTE payrates.

Section 574(c)(1)(A): The purpose of this paragraph is to provide the method of calculation for a classified member's hourly FTE payrate.

Section 574(c)(1)(B): The purpose of this paragraph is to provide the method of calculation for a classified member's daily FTE payrate.

Section 574(c)(1)(C): The purpose of this paragraph is to provide the method of calculation for a classified member's monthly FTE payrate.

Section 574(c)(2): The purpose of this paragraph is to define "classified members" for purposes of subsection (c). This paragraph was originally included in the first paragraph of subsection (c) of section 574 and was moved as a part of the reorganization and renumbering necessary for inclusion of the proposed amendments to subsection (c).

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

This proposed amendment to CCR section 574 will standardize how classified members' FTE payrates are determined to ensure CalPERS-covered school employers report accurate full-time payrates to CalPERS as defined by GC section 20636.1.

NECESSITY

Section 574, Title: The adjustment to the title is necessary to reflect the proposed regulatory amendment and describe the contents of the regulation. CCR section 574 currently defines "full-time" employment for purposes of determining CalPERS membership eligibility, reporting overtime positions, and determining compensation earnable and pensionable compensation. With the addition of the proposed regulatory amendment, CCR section 574 will also provide the requirements for determining and reporting a classified members' full-time payrate.

Section 574(c): The reorganization of this paragraph is necessary to include the proposed amendments. The definition of "classified members" is deleted in this paragraph and moved to the proposed subsection 574(c)(2) in order to clarify that the definition applies to all of subsection (c), as amended.

Section 574(c)(1): This paragraph is necessary to specify that the full-time payrate to be reported to CalPERS shall be the classified member's hourly, daily, or monthly FTE payrate, calculated to the nearest cent as set forth in this regulation. To ensure accurate FTE payrates are calculated and to instruct employers regarding how the FTE payrates are to be reported, it is necessary to specify the payrate is to be calculated to the nearest cent. CalPERS-covered school employers report hourly, daily, and monthly payrates to CalPERS. Since GC section 20636.1 defines full-time employment for classified members as 40 hours per week, the full-time payrates reported to CalPERS must be based on and equivalent to a 40-hour work week regardless of whether the classified member works 40 hours per week. Therefore, the payrates reported to CalPERS must be FTE payrates. Reporting earnings as payrate when the earnings are

not based on 40 hours per week results in noncompliant full-time payrates. To account for the possibility that CalPERS-covered school employers may exclude time off or include overtime in the calculation, this paragraph also clarifies that the number of work days per year and the number of hours in a work day include days and hours during which the member is excused from work in accordance with GC section 20630 and that overtime and any compensation based on overtime are excluded in accordance with GC section 20635.1.

Section 574(c)(1)(A): This paragraph is necessary to instruct CalPERS-covered school employers on how to calculate a classified member's hourly FTE payrate. Since GC section 20636.1 defines full-time employment for classified members as 40 hours per week, the full-time payrates reported to CalPERS must be based on and equivalent to a 40-hour work week regardless of whether the classified member works 40 hours per week. Therefore, the payrates reported to CalPERS must be FTE payrates. The classified member's hourly FTE payrate is calculated by dividing the classified member's annual base salary by the number of work days per year, then dividing that result by the number of hours in the classified member's work day.

Section 574(c)(1)(B): This paragraph is necessary to instruct CalPERS-covered school employers on how to calculate a classified member's daily FTE payrate. Since GC section 20636.1 defines full-time employment for classified members as 40 hours per week, the full-time payrates reported to CalPERS must be based on and equivalent to a 40-hour work week regardless of whether the classified member works 40 hours per week. Therefore, the payrates reported to CalPERS must be FTE payrates. Based on full-time employment of 40 hours per week being equivalent to 8 hours per work day and 5 work days per week, the classified member's daily FTE payrate is calculated by dividing the classified member's annual base salary by the number of work days per year, then dividing that result by the number of hours in the classified member's work day, and then multiplying that result by 8.

Section 574(c)(1)(C): This paragraph is necessary to instruct CalPERS-covered school employers on how to calculate a classified member's monthly FTE payrate. Since GC section 20636.1 defines full-time employment for classified members as 40 hours per week, the full-time payrates reported to CalPERS must be based on and equivalent to a 40-hour work week regardless of whether the classified member works 40 hours per week. Therefore, the payrates reported to CalPERS must be FTE payrates. Considering that there are 52 weeks in a year, 40 hours per week for full-time employment, and 12 months in a year, the classified member's monthly FTE is calculated by dividing the classified member's annual base salary by the number of work days per year, then dividing that result by the number of hours in the classified member's work day, and then multiplying that result by the result of multiplying 52 by 40 then dividing by 12.

Section 574(c)(2): This paragraph is necessary to conform with the proposed amendment to this subsection and to describe that the definition of "classified members" applies to all of subsection (c), as amended. This paragraph was originally included in the first paragraph of subsection (c) of section 574 and was moved as a part of the reorganization and renumbering of section 574(c).

DOCUMENTS RELIED UPON BY THE AGENCY

The following documents were relied upon in developing this proposed regulatory amendment:

- GC section 20630
- GC section 20635.1
- GC section 20636.1
- 2 CCR section 574
- Assembly Bill 2177 (Stats. 2000, Ch. 1030), 08/29/2000 - Assembly Floor Analysis
- Economic and Fiscal Impact Statement (STD. 399)

BUSINESS IMPACT

The proposed regulatory amendment will not have any impact on private businesses. The proposed regulatory amendment will only directly impact CalPERS, CalPERS-covered school employers, and classified members.

ECONOMIC IMPACT ASSESSMENT

In accordance with GC section 11346.3(b), CalPERS has made the following assessments regarding the proposed regulatory amendment:

Creation or Elimination of Jobs within the State of California

The proposed regulatory amendment is not intended to create or eliminate any jobs within the State of California. The proposed regulatory amendment serves only to define how to determine a classified member's hourly, daily, and monthly FTE payrates and provide clarity and uniformity for CalPERS, its classified members, and CalPERS-covered school employers in reporting a classified member's full-time payrate to CalPERS.

Creation of New Businesses or Elimination of Existing Businesses within the State of California

The proposed regulatory amendment will not create new businesses or eliminate any existing businesses. The proposed regulatory amendment serves only to define reporting for a classified member's full-time payrate and will only directly impact CalPERS, CalPERS-covered school employers, and classified members.

Expansion of Businesses within the State of California

The proposed regulatory amendment will not expand or prevent the expansion of any existing businesses within the State of California. The proposed regulatory amendment serves only to define reporting for a classified member's full-time payrate and will only directly impact CalPERS, CalPERS-covered school employers, and classified members.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulatory amendment will not affect the health and welfare of California residents, worker safety, or the State's environment. The proposed regulatory amendment serves only to define reporting for a classified member's full-time payrate and will only directly impact CalPERS, CalPERS-covered school employers, and classified members.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed regulatory amendment will not have a significant statewide adverse economic impact directly affecting businesses, including the ability for businesses in California to compete with businesses in other states. The proposed regulatory amendment serves only to define reporting for a classified member's full-time payrate and will only directly impact CalPERS, CalPERS-covered school employers, and classified members.

ALTERNATIVES TO THE REGULATORY ACTION AND CALPERS' REASON FOR REJECTING THOSE ALTERNATIVES

CalPERS has not identified any reasonable alternatives that would be as effective and less burdensome than the proposed regulatory amendment. Regulatory action was determined to be the most transparent and consistent means of providing clarity to CalPERS-covered school employers and classified members regarding how to determine a classified member's hourly, daily, and monthly FTE payrates. CalPERS will consider any reasonable alternatives proposed through the public comment period associated with this regulatory action.

ALTERNATIVES TO THE REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The proposed regulatory amendment will only apply to CalPERS, CalPERS-covered school employers, and classified members. CalPERS has not identified any adverse impacts on small private businesses. Therefore, CalPERS has not identified any reasonable alternatives that would lessen the impact on small businesses.

DUPLICATION OR CONFLICT WITH OTHER STATE OR FEDERAL REGULATIONS

The proposed regulatory amendment does not duplicate and is not in conflict with other state and federal regulations.