

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed regulatory action.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes adding Section 579.9, "Significant Increase in Actuarial Liability Due to Increased Compensation Paid to a Non-Represented Employee" under Article 6 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR). By proposing the regulation in this Article, CalPERS seeks to implement Government Code (GC) Section 20791 by defining a significant increase in actuarial liability due to increased compensation paid to a nonrepresented employee and establishing criteria to identify the impacted and causative agency or agencies. The proposed regulation also clarifies how actuarial liability will be allocated between the impacted agency and the causative agency or agencies and specifies when CalPERS will determine whether a contracting agency has had a significant increase in actuarial liability for purposes of GC Section 20791.

II. WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period has been established commencing on **February 16, 2018** and closing on **April 2, 2018** at 5:00 pm. The Regulation Coordinator must receive all written comments by the close of the comment period. Comments may be submitted by FAX at (916) 795-4607, by e-mail to Regulation_Coordinator@calpers.ca.gov, or mailed to the following address:

Evan Bailey, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Telephone: (916) 795-3038

III. PUBLIC HEARING

A public hearing will not be scheduled unless an interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days before the close of the written

comment period. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with CalPERS.

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and the room can be made accessible to persons with hearing or visual impairments upon advance request to the CalPERS Regulation Coordinator.

V. AUTHORITY AND REFERENCE

The Board has authority to take regulatory action under GC Section 20121. The proposed regulation implements GC Section 20791.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

On September 12, 2012, Governor Brown signed into law AB 340 which included the California Public Employees' Pension Reform Act and related amendments to the Public Employees' Retirement Law. These statutory provisions became effective on January 1, 2013. This legislation added GC Section 20791, which requires the Board to define a significant increase in actuarial liability due to increased compensation paid to a nonrepresented employee. It also requires the Board to implement program changes to ensure that a contracting agency that creates the significant increase in actuarial liability bears the increased liability.

This rulemaking action helps implement GC Section 20791 by defining a significant increase in actuarial liability due to increased compensation paid to a nonrepresented employee. The proposed regulation also defines impacted and causative agencies, and clarifies when the significant increase in actuarial liability will be determined and how it will be allocated between the impacted agency and the respective causative agency or agencies. GC Section 20791 only requires allocation of actuarial liability between CalPERS contracting agencies. Therefore, the actuarial liability of the State and most school employers will not be impacted by GC Section 20791 and the proposed regulation.

Consistency Evaluation

CalPERS conducted a review for any related state regulation and found that there are no related regulations addressing GC Section 20791. Therefore, CalPERS has determined that the proposed regulation is not inconsistent or incompatible with existing regulations.

Anticipated Benefit

Adoption of this regulation will provide transparency and consistency with respect to the implementation of GC Section 20791 and provide clarity to contracting agencies and CalPERS members on the system's interpretation of GC Section 20791.

VII. PRENOTICE CONSULTATION WITH THE PUBLIC

No prenotice consultation with the public was done, as all public comments and hearing requests can be submitted during the written comment period.

VIII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to CalPERS and its contracting agencies.

IX. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Board has made the following initial determinations:

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose mandates on local agencies and school districts.
- B. **COSTS OR SAVINGS TO ANY STATE AGENCY:** Costs estimated to be incurred by CalPERS, a state agency, will be absorbed into its existing budget and resources.
- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** Local agencies that participate in CalPERS may incur costs associated with complying with the proposed regulatory action, but the extent of these costs is unknown until the proposed regulation is implemented. The proposed regulatory action will not result in costs or savings for any local agency program or school district that would qualify for reimbursement under GC Section 17500, et seq.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** Local agencies that participate in CalPERS may incur nondiscretionary costs associated with complying with the proposed regulatory action, but the extent of these costs is unknown until the proposed regulation is implemented.

- E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action will not result in costs or savings in federal funding to the State of California.
- F. ADVERSE ECONOMIC IMPACT: The proposed regulatory action will not have a significant statewide adverse economic impact affecting businesses including the ability of businesses in California to compete with businesses in other states.
- G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action because GC Section 20791 and the proposed regulatory action only apply to CalPERS and its contracting agencies.
- H. RESULTS OF THE ECONOMIC IMPACT ANALYSIS: The primary benefit of the proposed regulatory action is that it will provide transparency and consistency with respect to the implementation of GC Section 20791. The proposed regulatory action is not intended to create or eliminate jobs within California; and will not: (1) create new businesses or eliminate existing businesses within California; (2) affect the expansion of businesses currently doing business within California; or (3) affect the health and welfare of California residents, worker safety or the State's environment.
- I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no effect on housing costs.
- J. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GC Section 17500 THROUGH Section 17630: There are no costs to any local agency or school district which must be reimbursed in accordance with GC Section 17500 through Section 17630.

X. CONSIDERATION OF ALTERNATIVES

In accordance with GC Section 11346.5(a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be:

- more effective in carrying out the purpose of the proposed action,
- as effective as, and less burdensome to affected private persons than the proposed action, or
- more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at a hearing or during the written comment period.

XI. CONTACT PERSON

Inquiries concerning the proposed administrative action may be delivered to:

Evan Bailey, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Telephone: (916) 795-3038

The backup contact person for these inquiries is:

Anthony Martin
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Telephone: (916) 795-3038

Please direct requests for copies of the proposed text of the regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Evan Bailey, Regulation Coordinator at the above address.

XII. AVAILABILITY OF THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. Copies may be obtained by contacting the CalPERS Regulation Coordinator at the address or phone number listed above.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' website at <https://www.calpers.ca.gov/page/about/laws-regulations/regulatory-actions>.

XIII. AVAILABILITY OF CHANGED OR MODIFIED TEXT

After receiving comments from the public and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulation as revised. Please send requests for copies of any modified regulation to the attention of the CalPERS Regulation Coordinator at the address indicated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

XIV. AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the CalPERS Regulation Coordinator at the address shown in Section II.