



## Regular Meeting

### Item Number 2 – Open Session

**Subject:** State and Federal Legislation

**Presenter(s):** Joycelyn Martinez-Wade

**Item Type:** Action

**Date & Time:** March 5, 2021 – 15 minutes

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**Attachment(s):** Attachment 1 – SB 294 (Leyva)

Attachment 2 – H.R. 82 (Davis)

Attachment 3 – Potential Legislation

**PowerPoint(s):** None

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#### **PURPOSE**

The purpose of this item is to seek the board's position on 2021 legislation affecting CalSTRS and to provide the board with an update on current state and federal legislation.

#### **SUMMARY**

##### **Action items for board position**

<u>Attachment</u>	<u>Bill Number</u>	<u>Author</u>	<u>Subject</u>
1	SB 294	Leyva	Elected Officer Service Credit
2	H.R. 82	Davis	Social Security Fairness Act of 2021

##### **Potential items for board position**

3	Potential Legislation
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**BILL NUMBER: [SB 294](#) (Leyva) as introduced February 2, 2021**

## **SUMMARY**

SB 294 removes the 12-year limitation for service credit earned by a member while on a compensated leave of absence for elected officer service under the Teachers' Retirement Law and the Public Employees' Retirement Law.

## **RECOMMENDATION**

**Neutral.** It is the board's policy to take a neutral position on bills that do not significantly or adversely impact the benefits or services provided through the funds administered by CalSTRS or the administration of the retirement plans.

## **REASON FOR THE BILL**

According to the author, removing the 12-year cap on the amount of service credit allowed for elected officer activities creates equity between school employees and other public employees who do not have such a limit.

## **ANALYSIS**

### **Existing Law:**

Education Code section 22711 grants members service credit, compensation earnable, interest and additional earnings credits for time during which they are on a compensated leave of absence to serve as an elected officer of an employee organization, provided the following criteria are met: the member performed creditable service under CalSTRS Defined Benefit (DB) Program during the month prior to the leave; the member makes contributions to the DB Program in the amount they would have contributed had they not been on leave; the employer makes contributions at a rate adopted by the board based upon the creditable compensation that would have been paid had the member not been on leave; and the service credit does not exceed 12 years.

The board sets the employer contribution rate at the higher of either the employer contribution rate then in effect or an amount necessary to cover the normal cost of the service. Employee organizations are required to reimburse employers for all compensation, including retirement plan contributions, paid to the employee on account of the leave of absence. Education Code sections 44987 and 87768.5 exclude elected officers on a leave of absence from receiving disability benefits from the DB Program.

### **This Bill:**

Specifically, SB 294 removes the 12-year limit on the maximum service credit a member may receive while on a leave of absence as an elected officer of an employee organization from the Teachers' Retirement Law, the broader Education Code and the Public Employees' Retirement Law. The bill applies to both current and future certificated and classified public school employees, regardless of how many years of elected officer service credit they have accumulated.

By removing the limitation on elected officer service credit, SB 294 eliminates the need to monitor such service for a very small population. In 2019-20, 40 members received service credit for a

leave of absence as an elected officer. Consequently, the overall impact of SB 294 on plan administration and funding of the DB Program is minimal. In addition, SB 294 conforms with SB 1085 (Skinner, Chapter 893, Statutes of 2018) and provides parity among public employees as described below.

## **PROGRAM BACKGROUND**

The provision to permit members to receive service credit under the DB Program while performing service as an elected officer of an employee organization was first enacted in 1978. CalSTRS originally opposed the legislation because it granted service credit for service not performed in California public schools. The board later changed to a support position with the agreement that the bill be amended to include funding, limit service to just four years and exclude members working under the provisions from disability eligibility. The funding and disability amendments were made, but the bill was enacted with an eight-year limit on service credit that could be purchased. In 1988, the law was amended to increase the service credit limit from eight years to 12 years. CalSTRS opposed the increase citing similar reasons.

More recently, SB 1085 added provisions to the Government Code requiring public employers, including those such as public schools and community colleges that are subject to the Educational Employment Relations Act, upon request of an exclusive representative, to grant reasonable leaves of absence without loss of compensation or other benefits for the purpose of enabling employees to serve as stewards or officers of the exclusive representative, or of any statewide or national employee organization. The bill required the compensation granted to the employee during the leave to include retirement fund contributions and the employee to earn full service credit during the leave. SB 1085 did not amend the Education Code, but it did set a new standard of providing “reasonable leaves of absence” without a time constraint for public employees serving as a steward or elected officer.

## **FISCAL IMPACT**

Program Costs/Savings – None.

Administrative Costs/Savings – None.

## **SUPPORT**

California Teachers Association (Sponsor)

## **ARGUMENTS**

- Pro: Members granted a compensated leave of absence to serve as elected officers of an employee organization would no longer be limited to receiving 12 years of service credit for that time.
- The need to monitor elected officer service credit would be eliminated.
- Con: Substantial service credit may be granted for service not performed in California public schools.

**BILL NUMBER:** [H.R. 82](#) (Davis-IL) as introduced January 4, 2021

## SUMMARY

H.R. 82 eliminates the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) from the Social Security Act.

## RECOMMENDATION

**Support.** The board’s policy is to support legislation that seeks to repeal or reform in a prudent manner the Social Security benefit offsets as a means of addressing concerns about their impact on educators. Staff also recommend considering efforts to make appropriate adjustments to the WEP and GPO as a potential alternative to complete repeal, which could be included in more comprehensive Social Security reform legislation.

## REASON FOR THE BILL

California educators, having earned pension benefits from employment not covered by Social Security, are often subject to the WEP and the GPO of the Social Security Act. The WEP and GPO reduce or eliminate Social Security benefits that California educators may have earned through other employment or are eligible for through their spouses. CalSTRS members represent the largest single group of state and local government employees in the country who do not participate in Social Security.

## ANALYSIS

### Existing Law:

The WEP and the GPO attempt to address a perceived advantage that occurs when Social Security benefits are calculated for individuals whose primary employment is covered by a pension plan and who do not participate in Social Security.

The Social Security Act of 1935 excluded state and local government employees from coverage. In 1954, those employees were given the opportunity to elect to participate in Social Security. In 1956, as part of an overall study of survivor benefits, the California Teachers Association surveyed its membership to gauge interest in either pursuing legislation to establish survivor benefits through CalSTRS or joining Social Security. Members voted 4 to 1 in support of seeking the establishment of a survivor benefits program through CalSTRS rather than joining Social Security.

In 1977, the U.S. Supreme Court ruled that a requirement for husbands and widowers to prove they were financially dependent upon their wife to receive benefits was unconstitutional sex discrimination because wives and widows were not similarly required to prove dependency. In order to avoid the cost of providing the husband and widower benefits, the GPO was introduced in the Social Security Amendments of 1977 to treat all spouses and widow(er)s with government employment not covered by Social Security in a manner similar to those with Social Security benefits who were, therefore, subject to the “dual entitlement rule.” Under the dual entitlement rule, which has operated since 1939, a person effectively receives a Social Security benefit equal to the greater of the benefit from the person’s own employment or that derived from a spouse’s

employment. As enacted in 1977, the GPO produced an identical result to the dual entitlement rule by reducing the spousal benefit by 100% of the pension earned from non-covered employment. In 1983, the GPO offset was reduced to two-thirds of the pension earned from non-covered employment.

The WEP was introduced in the Social Security Amendments of 1983 to remove a perceived advantage for individuals with employment not covered by Social Security. Under the Social Security benefit formula, work performed in a position not covered by Social Security is given a zero value when averaging an individual's lifetime earnings. In effect, the formula cannot distinguish between individuals with low or no earnings and individuals with additional non-covered earnings. This proved problematic because Social Security benefits are designed to provide a greater proportional benefit to workers with low average lifetime earnings than workers with high average lifetime earnings. To illustrate the progressive nature of the Social Security formula, the bend points for an individual turning 62 in 2021 are:

- 90% of first \$996 in average indexed monthly earnings; plus
- 32% of average indexed monthly earnings over \$996 through \$6,002; plus
- 15% of average indexed monthly earnings over \$6,002.

As a result, without the WEP, the formula produces a higher wage replacement ratio than would have otherwise been received if all employment had been covered by Social Security. The WEP addressed the resulting perceived "windfall" for public employees by reducing the first-tier percentage used to calculate the Social Security benefit from 90% to 40%. The remaining two calculation tiers were not altered.

The reduction under the WEP may be no more than one-half of the non-covered pension to which the individual is entitled. This benefit reduction is less for individuals who have between 21 and 30 years of earnings under Social Security, and there is no offset if the individual has 30 or more years of Social Security-covered earnings.

**This Bill:**

H.R. 82 eliminates the GPO and the WEP from the Social Security Act.

**PROGRAM BACKGROUND**

Since 2001, a bill repealing or reforming the WEP and GPO has been introduced in almost every session of Congress. The bill generally receives widespread bipartisan support in states with public employees that do not participate in Social Security, but none of them have progressed out of committee. They have been stymied by the direct cost of repeal, which the Social Security Administration estimated in 2016 would increase the long-term cost of the program by 0.13% of payroll, and by the uncertainty surrounding Social Security's overall financial future.

Full repeal of the WEP and GPO presents political and financial risks to schools and CalSTRS members. The offsets were established to address perceived inequities around Social Security benefits for covered employment versus non-covered employment. Full repeal could resurrect these perceived inequities and, with them, the most obvious alternative to mandate Social Security participation for all government employees, including CalSTRS members.

The board has opposed mandatory Social Security participation for CalSTRS members, citing studies that show the move would increase costs or reduce total retirement benefits. Additionally, there are potential costs associated with the overlap of CalSTRS' disability and survivor benefits and comparable Social Security benefits.

Efforts to reform the WEP and GPO are distinct from repeal efforts, focusing on the inequitable application of the offsets rather than seeking outright repeal. A focus on eliminating the inequities of the offsets, rather than full repeal, may result in a successful outcome and lower the likelihood that policymakers pursue mandatory Social Security coverage for all government employees.

## **FISCAL IMPACT**

Program Cost – None identified.

Administrative Costs/Savings – The repeal of the WEP and GPO may result in minor costs associated with updating member-facing communications and staff training. Temporarily, staff may spend more time answering member questions related to repeal, but these costs should decrease over time.

## **SUPPORT**

California Retired Teachers Association  
Fraternal Order of Police  
National Active and Retired Federal Employees Association  
National Association of Police Organizations  
National Education Association

## **OPPOSITION**

None known.

## **ARGUMENTS**

Pro: CalSTRS members eligible for Social Security benefits would no longer have their Social Security benefits reduced or eliminated if the WEP and GPO are repealed.

A teaching career would be more attractive to individuals considering a mid-career change because previously earned Social Security benefits would retain their full value if the WEP and GPO are repealed.

Con: Future mandatory Social Security participation may be considered to offset WEP and GPO repeal costs or as an alternative to repealing the WEP and GPO.

**POTENTIAL LEGISLATION**

Analyses of bills affecting CalSTRS will be provided at a later date if any are introduced.