**BILL NUMBER: H.R. 711 (Brady) as introduced February 4, 2015**

## SUMMARY

H.R. 711 establishes a new formula for the treatment of non-covered earnings in determining Social Security benefits to replace the Windfall Elimination Provision (WEP) for individuals who turn age 62 after 2016 and prescribes a rebate to lessen the effects of the WEP for current beneficiaries. The measure also directs the Commissioner of Social Security to recover overpayments from certain individuals.

## BOARD POSITION

**Watch.** This measure does not directly affect CalSTRS benefits, program or administration but addresses an issue of concern to the Teachers' Retirement Board.

## REASON FOR THE BILL

The WEP can unfairly reduce Social Security benefits for public employees who receive a government pension based on service not covered by Social Security.

## ANALYSIS

### Existing Law:

The WEP, enacted in 1983, reduces the Social Security benefits of individuals—including California educators—who meet both of the following conditions:

- Worked for a government agency—like a school district—long enough to receive a pension from employment not subject to Social Security taxes (non-covered employment).
- Worked other jobs for which they paid Social Security taxes long enough to qualify for Social Security benefits (covered employment).

Prior to the WEP, the Social Security benefit calculated for individuals who worked in non-covered employment was based on earnings that were less than the total income actually earned over the individual's career. This meant the individual received a higher benefit than was intended by the Social Security benefit formula. The WEP applies a modified formula to account for the portion of working years these individuals did not pay the Social Security payroll tax on earned wages.

The WEP reduces the Social Security benefit from covered employment, unless the individual has 30 years of Social Security-covered earnings. The benefit reduction under the WEP is less for individuals who have between 21 and 30 years of earnings under Social Security. The reduction under the WEP may be no more than one-half of the government agency pension to which the individual is entitled.

Under the WEP, the first tier percentage used to calculate the benefit is reduced from 90 percent to 40 percent. The other portions of the formula do not change. Specifically, the first tier benefit amount of Social Security is $743 (90 percent of the first $826 of earnings), while the first tier benefit under WEP is $330 (40 percent of $826). This is a reduction of $413, and it is the maximum reduction for a worker who retires in 2015 at age 62.

**This Bill:**

H.R. 711 replaces the statutory WEP offset formula with a formula based on actual work history for individuals turning age 62 after 2016. This bill expands the applicability of the new formula to all recipients of Social Security who have non-covered earnings in their work history regardless of whether they vested and receive a benefit for those earnings, expanding the affected population. It mandates enforcement of the current WEP for individuals who are already 62 as of 2016 and includes a provision for reduction of the WEP through a rebate distributed to individuals who are subject to the offset.

H.R. 711 amends the Social Security Act to replace the WEP and apply a new formula for individuals who:

- Become eligible for Social Security benefits after 2016 or would attain age 62 after 2016 and become eligible for benefits.
- Have earnings derived from non-covered service performed after 1977.

For individuals who become eligible for benefits after 2016, the bill establishes a new formula for the treatment of non-covered earnings in determining Social Security benefits. Under this bill, Social Security benefits would be calculated as if all the worker's earnings were subject to Social Security taxes (using the standard benefit formula). This amount would then be multiplied by the percent of earnings covered by Social Security. This ensures Social Security benefits are based only on Social Security wages.

Generally, the H.R. 711 benefit will be higher than the current WEP benefit. The offset under H.R. 711 becomes less favorable relative to the WEP for higher income individuals with shorter non-covered careers because the maximum offset under the WEP ($413 in 2015) is static, without regard to income. The H.R. 711 offset reflects the progressive nature of the Social Security benefit formula, which grants a lower replacement ratio for higher monthly earnings.

The H.R. 711 offset formula applies more broadly than the WEP to individuals who have non-covered service. Members who do not vest in CalSTRS, but receive a Social Security benefit, would have their Social Security benefits reduced, which does not occur under the current WEP.

The current WEP formula would remain in place for the population already eligible to receive a Social Security benefit, with provisions added that mandate enforcement by Social Security and reduce the offset.

H.R. 711 represents program savings for Social Security through its enforcement of existing WEP provisions and by expanding the population of those who are subject to offset under the new formula, offset to some extent by program costs associated with the new formula for those who turn age 62 after 2016. The bill attains a neutral projected cost through the provision of a rebate that would effectively reduce the current offset for individuals currently subject to the WEP. The rebate would be a percentage based on a calculation by the Chief Actuary of Social Security and was most recently estimated for a duplicate bill put forth in 2014 (H.R. 5697–Brady, R-TX) at a 32 percent reduction in the WEP offset for Social Security benefits beginning in January 2017.

**LEGISLATIVE HISTORY**

H.R. 5697 (Brady, 2014) would have replaced the WEP with a new offset formula that includes both covered and non-covered employment in its calculation. H.R. 5697 was held in House Ways and Means Committee.

H.R. 2797 (Brady, 2011)/S. 113 (Hutchison, 2011) would have replaced the WEP with a new offset formula that includes both covered and non-covered employment in its calculation. H.R. 2797 and S. 113 were held in the House Ways and Means Committee and the Senate Finance Committee, respectively.

H.R. 1221 (Brady, 2009)/S. 490 (Hutchison, 2009) would have replaced the WEP with a new offset formula that includes both covered and non-covered employment in its calculation. H.R. 1221 and S. 490 were held in the House Ways and Means Committee and the Senate Finance Committee, respectively.

H.R. 2145 (Frank, 2009) would have amended the Social Security Act to restrict the application of the WEP to individuals whose combined monthly income, from both covered and non-covered benefits, exceeded a minimum COLA-adjusted amount of $2,500. The bill also would have provided for a graduated application of the offset for amounts above the new threshold. H.R. 2145 was held in the House Ways and Means Committee.

**PROGRAM BACKGROUND**

H.R. 711 has 27 cosponsors from five states (Texas, Massachusetts, Ohio, Louisiana and California); in each of these states, a significant portion of the public workforce is not covered by Social Security.

The CalSTRS Retirement Readiness Assessment indicates that 63 percent of retired CalSTRS members earn a Social Security benefit, and 41 percent are currently affected by the WEP. As of June 30, 2014, there are 146,471 inactive nonvested members who could potentially be affected by the expanded application of the new formula provided under H.R. 711.

Under H.R. 711, Social Security would be required to obtain certification that a person has not received any periodic payments as a result of his or her employment from all employers who paid non-covered wages after 1977 to a worker not currently subject to the WEP. If certification is not provided to Social Security's satisfaction, that individual would be subject to the WEP. In theory, this enforcement should not affect CalSTRS retirees because nonvested members have not received any periodic payments, and members receiving an ongoing CalSTRS benefit are already subject to the WEP. However, CalSTRS would probably need to work with employers and the Social Security Administration to facilitate an administratively reasonable mechanism for reporting vesting status for those who performed service after 1977, and CalSTRS would monitor any future regulations that are passed in regards to this requirement.

**OTHER STATES' INFORMATION**

As of December 2011, about 1.4 million Social Security beneficiaries in the United States were affected by the WEP.

**FISCAL IMPACT**

Program Costs/Savings – None.

Administrative Costs/Savings – Modest cost associated with the revision of member publications and educational materials, internal training materials and system-generated and manual award letters that reference the WEP. Potential costs associated with coordinating with Social Security or employers to provide information regarding the vesting status of individuals with service reported after 1977.

**SUPPORT**

ACSA
CalRTA
National Association of Police Organizations

**OPPOSITION**

None known.

**ARGUMENTS**

Pro: Social Security benefit amount increases for members subject to the WEP.

Con: Any member who works in a CalSTRS-covered position, but does not vest in CalSTRS, and receives a Social Security benefit would be subject to a reduced benefit.

For current Social Security beneficiaries, a portion of Social Security benefits already received may be considered overpayments, which will be collected from future benefits.

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