LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1967

STATE OF NEW JERSEY

218th LEGISLATURE

DATED: FEBRUARY 21, 2019

SUMMARY

Synopsis: Concerns certain workers' compensation supplemental benefits.

Types of Impact: Annual State expenditure and revenue increases to Second Injury Fund. Annual expenditure reductions to State retirement systems. Annual expenditure increase to certain local units.

Agencies Affected: Department of Labor and Workforce Development. Department of the Treasury. Certain local governments.

Office of Legislative Services Estimate

Fiscal Impact	
Annual State Expenditure Increase, Second Injury Fund	Indeterminate
Annual State Revenue Increase, Second Injury Fund	Indeterminate
Annual State Expenditure Decrease, Retirement Systems	Indeterminate
Annual Local Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill will increase annual State workers' compensation (WC) benefit payments out of the Second Injury Fund (SIF) starting in FY 2020. Some of the increased WC payments will represent an expenditure shift that lowers State retirement system payments and contribution requirements, as current law requires that WC benefits reduce a retirement system member's accidental disability pension.

- Any growth in SIF disbursements will trigger corresponding SIF revenue increases. This is so because current law requires the Department of Labor and Workforce Development (DOLWD) to calculate the SIF assessment for each upcoming calendar year according to a formula that incorporates expected benefit payments as a variable.

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- The SIF assessment is paid by employers that are WC and employer's liability insurance policyholders or that are self-insured, except that the assessment is not imposed on the State or any political subdivision thereof which acts as a self-insured employer. An unknown number of political subdivisions do not self-insure and instead purchase WC insurance policies. These entities pay the SIF surcharge and will be subject to any SIF rate increase attributable to this bill.

- The OLS cannot quantify the several fiscal impacts because of the complex interrelated offset dynamics among the three wage replacement benefits that are available to career public safety workers and their surviving dependents: State pensions, WC, and federal Social Security benefits. Given the highly fact-sensitive impact of the bill on each affected WC recipient, a case-by-case analysis would have to be performed to assess the bill's aggregate fiscal impact on the SIF and the State retirement systems. This analysis requires access to individual WC, pension, and Social Security records; which the OLS does not have.

- Applying the interwoven offset rules set forth in current law and the bill to different hypothetical cases, the OLS concludes that the bill will not raise the combined amount of benefits from the three wage replacement programs for some targeted workers and only after many years for others.

BILL DESCRIPTION

This bill provides, from July 1, 2019 forward, an annual cost of living adjustment (COLA) in the weekly WC benefit rate for any public safety worker who has become totally and permanently disabled from a workplace injury after December 31, 1979 and for the surviving dependents of any public safety worker who died from a workplace injury after December 31, 1979. A public safety worker is an individual who is employed by or a member of a paid, partially-paid, or volunteer fire or police unit, including a first aid or rescue squad.

The annual COLA will equal the percentage increase in the annual Statewide average weekly wages earned by all employees covered by the "unemployment compensation law." For supplemental WC benefits paid for workplace injuries that occurred after December 31, 1979 but before July 1, 2019, the calculation will be performed relative to the Statewide average weekly wages in effect in the year of the injury. However, the calculation applies only to benefits paid beginning on July 1, 2019 without any retroactive benefit payment.

The COLA will be reduced for beneficiaries to the extent necessary to ensure that inflation-adjusted WC benefits do not cause a reduction of federal Social Security disability benefits.

COLA benefits are also to be reduced by the original amount of any Social Security benefits (but not the amount of any Social Security disability benefits and any subsequent cost-of-living increases in Social Security benefits), Black Lung benefits, or the employer's share of disability pension payments received from or on account of an employer.

In addition, COLA benefits will not be paid to any individual who elects not to receive Social Security benefits for which the individual is eligible, or in any case in which the COLA would be less than $5 per week.

COLA benefits are to be paid from the SIF starting on July 1, 2019. The DOLWD calculates the SIF assessment for each calendar year so that projected resources in the fund equal 125 percent of expected benefit payments in the upcoming year plus 100 percent of the projected cost of administration. The surcharge is levied on all employers that are WC and employer's liability insurance policyholders or that are self-insured, except for reinsurance or retrocessional transactions, and the State or any local units thereof which acts as a self-insured employer.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill will increase annual State WC benefit payments out of the SIF starting in FY 2020. Some of the increased WC payments will represent an expenditure shift that lowers State retirement system payments and contribution requirements, as current law requires that WC benefits reduce a retirement system member's accidental disability pension.

Any growth in SIF disbursements will trigger corresponding SIF revenue increases. This is so because current law requires the DOLWD to calculate the SIF assessment for each upcoming calendar year so that projected fund resources equal 125 percent of expected benefit payments plus 100 percent of the projected cost of administration.

The SIF assessment is paid by employers that are WC and employer's liability insurance policyholders or that are self-insured, except that the assessment is not imposed on the State or any political subdivision thereof which acts as a self-insured employer. An unknown number of political subdivisions do not self-insure and instead purchase WC insurance policies. These entities pay the SIF surcharge and will be subject to any SIF rate increase attributable to this bill.

The OLS cannot quantify the several fiscal impacts because of the complex interrelated offset dynamics among the three wage replacement benefits that are available to career public safety workers and their surviving dependents: State pensions, WC, and federal Social Security benefits. Given the highly fact-sensitive impact of the bill on each affected WC recipient, a case-by-case analysis would have to be performed to assess the bill's aggregate fiscal impact on the SIF and the State retirement systems. This analysis requires access to individual WC, pension, and Social Security records; which the OLS does not have.

Applying the interwoven offset rules set forth in current law and the bill to different hypothetical cases, the OLS concludes that the bill will not raise the combined amount of benefits from the three wage replacement programs for some targeted workers and only after many years for others. Two examples illustrate the effects of the bill and the offsets.

<u>Example 1 – Career Public Safety Worker Receiving Accidental Disability State Pension, WC Disability Benefits, and Social Security Disability Benefits:</u> The bill will not increase the combined benefit amount a disabled career public safety worker receives from all three wage replacement disability programs until the WC benefit amount, inclusive of the COLA, is larger than the worker's accidental disability State pension. In the following example, a worker with an annual income of $90,000 before sustaining a totally disabling workplace injury will need a WC COLA of more than $12,000 before the combined benefit amount will rise.

Starting with the first COLA, however, the bill will change the amounts the individual will receive as WC benefits and accidental disability State pension. The changes will completely offset one another as long as the WC COLA is not greater than $12,000. Notably, the bill will increase the individual's WC benefits, with the SIF funding the WC COLA. In accordance with N.J.S.A.43:16A-15.2, the individual's accidental disability State pension, in turn, will be reduced by an equivalent amount. This cost shift from the State pension system to the SIF ends once the inflation-adjusted WC benefit will exceed the pension amount, or when the WC COLA is larger than $12,000 in the example, assuming the State pension will not be adjusted for inflation.

The individual's progression toward a WC benefit that exceeds the pension amount will be considerably slowed in accordance with federal law once the individual's combined WC and Social Security disability benefits are more than 80 percent of average current earnings as the term is defined in federal law. At that point, the individual's WC benefits are reduced by the amount of the individual's Social Security disability benefits until the combined benefits are no larger than 80 percent of the individual's average current earnings. In this example, the offset will become a concern at $72,000, or 80 percent of $90,000; not taking into account the triennial federal inflation adjustment to the individual's average current earnings amount.

Example 1: PFRS Accidental Disability Pensioner with Annual $90,000 Pre-Injury Income

	Current Law	**Bill**	**Change**
<u>Benefits Before Offsets:</u>			
Social Security Disability Benefits	$20,000	$20,000	$0
Workers' Compensation	$48,000	$48,000	$0
Workers' Compensation COLA paid out of SIF	$0	$4,000	$4,000
PFRS Accidental Disability Pension	$60,000	$60,000	$0
Total Benefits	**$128,000**	**$132,000**	**$4,000**
<u>Benefits After Offsets:</u>			
Social Security Disability Benefits	$20,000	$20,000	$0
Workers' Compensation	$48,000	$48,000	$0
Workers' Compensation COLA paid out of SIF	$0	$4,000	$4,000
PFRS Accidental Disability Pension	$60,000 - $48,000 = $12,000	$60,000 - $48,000 - $4,000 = $8,000	($4,000)
Total Benefits	**$80,000**	**$80,000**	**$0**

In performing this analysis, the OLS assumes that:

1) a member of the Police and Firemen's Retirement System (PFRS) making $90,000 a year before the workplace injury would receive an accidental disability State pension of $60,000 per year, or two-thirds of the member's annual income when the workplace injury occurred;

2) an individual making $90,000 would receive the maximum allowable WC benefit under current law of $921 per week in 2019, or a little under $48,000 for the year;

3) the individual would receive Social Security disability benefits of $20,000 per year;

4) the individual's WC COLA would be $4,000;

5) the offset of Social Security disability benefits against WC benefits beginning once the individual's average current earnings exceed 80 percent will start at $72,000; and

6) the person is under 62 years of age because WC and Social Security disability benefits offset rules change at 62 years of age.

<u>Example 2 – Surviving Spouse of Career Public Safety Worker who Died in the Line of Duty:</u> Current law includes no benefit offsets for surviving spouses of career public safety workers who

died in the line of duty. This bill would establish a new offset: the WC COLA is to be reduced by the non-inflation-adjusted base amount of the Social Security survivor benefit and the surviving spouse's Social Security retirement benefits for the surviving spouse's own employment history. As a result, surviving spouses will only receive higher WC payments under the bill once their WC COLA exceeds their own Social Security base benefits.

In the example below, the surviving spouse has a Social Security retirement base benefit for the spouse's own employment history of $20,000. Accordingly, the WC COLA must exceed $20,000 before the surviving spouse will see the first increase in WC survivor benefits.

Example 2: Surviving Spouse of PFRS Member with $90,000 Annual Income when Killed in the Line of Duty

Benefit	Current Law	Bill	Change
Workers' Compensation	$48,000	$48,000	$0
Workers' Compensation COLA paid out of SIF	$0	$14,000 - $14,000 = $0	$0
Survivor's own Social Security Retirement Benefit, Base Amount	$20,000	$20,000	$0
PFRS Accidental Death Pension	$63,000	$63,000	$0
Total Benefits	**$131,000**	**$131,000**	**$0**

In performing this analysis, the OLS assumes that:

1) the surviving spouse of a PFRS member who made $90,000 a year before dying in the line of duty would receive a State accidental death pension of $63,000 per year, or 70 percent of the member's annual pre-death income;

2) the surviving spouse would receive the maximum allowable WC benefit under current law of $921 per week in 2019, or a little under $48,000 for the year;

3) the surviving spouse would not receive Social Security survivor benefits because the deceased PFRS member did not have sufficient service credit to receive Social Security benefits;

4) the surviving spouse would receive Social Security retirement benefits equal to $20,000 per year for the surviving spouse's own work history; and

5) the surviving spouse's WC COLA would be $14,000.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).