

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO SENATE, No. 1967

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 15, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1967, with committee amendments.

As amended, this bill provides, from July 1, 2019 forward, an annual cost of living adjustment (COLA) in the weekly workers' compensation benefit rate for any public safety worker who has become totally and permanently disabled from a workplace injury at any time after December 31, 1979 and for the surviving dependents of any public safety worker who died from a workplace injury after December 31, 1979. This adjustment is intended to mirror, to the extent possible, the COLA already in place for benefits arising from an injury occurring before 1980.

The bill provides for the COLA to be an amount such that, when added to the workers' compensation weekly benefit rate initially awarded, the sum will bear the same percentage relationship to the maximum benefit rate at the time of the adjustment that the initial rate bore to the maximum rate at the time of the initial award, except that:

(1) the bill reduces the amount of the adjustment as much as necessary to ensure that the sum of the adjustment and the amount initially awarded does not exceed the amount which would cause any reduction of Social Security disability benefits;

(2) in cases which are not subject to the provisions of point one above, the bill reduces the supplemental workers' compensation benefits (but not regular workers' compensation) for claimants injured after 1979 by the amount of any Social Security benefits (other than Social Security disability benefits and any 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; and

(3) the bill requires that the COLA benefits will not be paid to any individual who elects to not receive benefits under the Federal Old Age, Survivors and Disability Insurance Act for which the individual is eligible.

These reductions parallel the reductions provided under current law for claimants who were injured before 1980. The bill also provides that no supplemental benefits will be paid in any case in which they are calculated to be less than \$5 per week.

Current law requires such annual adjustments in the rate of workers' compensation benefits for death and permanent total disability to be paid from the Second Injury Fund (SIF), but only for cases of injury or death occurring before January 1, 1980. The bill extends the adjustments paid from the SIF to claims originating after December 31, 1979, although the adjustments apply only to benefits paid on those claims after July 1, 2017 to avoid a backlog of retroactive benefits.

The bill provides that COLA benefits will commence six months after the increased SIF assessment to ensure the SIF has sufficient funds to pay the benefits without using General Fund money. The supplemental benefit payments will start on July 1, 2019 and the Department of Labor and Workforce Development is required to take into account the supplemental benefits when calculating the amount of the SIF assessment which starts on January 1, 2019 to avoid the need for any General Fund appropriation.

The cost of living supplement that the bill provides to an individual for total permanent disability or survivor's benefits under workers' compensation will be reduced by the original amount of that individual's periodic Social Security survivors' or retirement benefits, but not reduced by subsequent cost of living increases in those Social Security benefits. In the case of an individual who initially received Social Security disability benefits and later receives Social Security retirement benefits, or who dies and has dependents who receive Social Security survivors' benefits, the workers' compensation supplement will then be reduced by the amount of the Social Security retirement or survivor benefits, exclusive of any cost of living increase in those Social Security retirement or survivor benefits.

The bill sets time limits for workers' compensation insurers and self-insured employers to notify the SIF when supplemental workers' compensation benefits are required under the bill. An insurer or self-insured employer is required to provide the notice not more than 60 days after the supplement is awarded or voluntary payment is to begin. If a failure to notify results in the payment of an incorrect amount of benefits, the liability for the payment of the supplemental benefits is transferred from the SIF to the insurer or employer until the required notice is provided.

The bill makes no change in the provisions of sections 1 and 9 of P.L.1980, c.83 (C.34:15-95.4 and 34:15-95.5), which provide for the reduction of certain portions of workers' compensation benefits by the amount of Social Security disability benefits paid. In addition, the bill expressly states that the supplemental benefits shall not be paid in a manner which in any way changes or modifies the provisions of those sections. The bill, therefore, will have no effect on existing provisions of State and federal law regarding offsets between workers' compensation and federal Social Security disability benefits.

COMMITTEE AMENDMENTS:

The committee amendments specify that the bill's provision apply only to public safety workers and their dependents, with the full benefits available immediately, rather than phased in over three years.

The amendments define "public safety worker" as a member, employer or officer of a paid, partially-paid, or volunteer fire or police department, fire company or district, including the State Police or a first aid or rescue squad.

FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that the bill will result in indeterminate annual expenditure and revenue increases to the Second Injury Fund (SIF) starting in FY 2020. The expenditure increase is attributable to the proposed annual cost of living adjustment (COLA) in the weekly workers' compensation benefit rate for any public safety worker who becomes totally and permanently disabled from a workplace injury and for the surviving dependents of any public safety worker who died from a workplace injury, and related administrative expenses. Under the existing statutory formula determining employer surcharge amounts to the SIF (an amount equal to 125 percent of the expected benefits to be paid in the upcoming year plus 100 percent of the anticipated administrative expenditures), the State-administered SIF will receive increased annual surcharge collections that are anticipated to equal the cost of the COLA benefit to be provided under the bill.

The OLS notes that as a self-insured employer, the State is not subject to the SIF surcharge. As a result, State-employed public safety workers and their dependents are eligible for the COLA benefit out of the SIF without the State incurring any additional surcharge obligations to the SIF. The same holds true for the majority of local governments that choose to self-insure. Only those local governments will experience an indeterminate annual increase in SIF surcharge amounts that opt to purchase a workers' compensation insurance policy instead of being self-insured. However, the OLS does not have sufficient information to quantify the number of local units that will be affected.