

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

SENATE, No. 613

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JANUARY 10, 2014

SUMMARY

- Synopsis:** Concerns certain workers' compensation supplemental benefits.
- Type of Impact:** Expenditure increase offset by revenue increase in the Second Injury Fund. No impact on the State General Fund. Possible indeterminate cost to political subdivisions.
- Agencies Affected:** Department of Labor and Workforce Development

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2016</u>	<u>Fiscal Year 2017</u>	<u>Fiscal Year 2018</u>
Second Injury Fund			
Revenue	\$18 million	\$38 million	\$58 million
Cost	<u>\$18 million</u>	<u>\$38 million</u>	<u>\$58 million</u>
Balance	\$0	\$0	\$0
Local Cost	Indeterminate	Indeterminate	Indeterminate

- The Office of Legislative Services (OLS) notes that the cost of this bill will be approximately \$58 million annually in FY2018, when it is 100 percent funded; however, all of these costs will be offset by additional surcharges levied on certain workers' compensation policyholders and self-insured employers and deposited in the Second Injury Fund.
- Due to a three-year phase-in of the program, beginning in Fiscal Year 2016, the cost of this bill to the Second Injury Fund will be approximately \$18 million in Fiscal Year 2016, \$38 million in Fiscal Year 2017 and \$58 million in Fiscal Year 2018 when completely funded. The cost will then continue to rise as the benefit rate for workers' compensation increases. The number of recipients should also rise each year, but it can not be determined what that increase will be and how it will be offset by attrition through the deaths of beneficiaries.
- The bill provides, from July 1, 2015 forward, an annual cost of living adjustment (COLA) in the weekly workers' compensation benefit rate for any 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 worker who died from a workplace injury after December 31, 1979.¹

- The Department of Labor and Workforce Development would establish each individual's COLA by determining the difference between the injured worker's compensation benefit rate (set at the year of injury) and the current benefit rate. In determining this rate, the department must account for any applicable offset from other benefit programs, such as Social Security Disability Insurance and Social Security Old-Age and Survivor benefits.
- The bill provides that the workers' compensation COLA will not be paid to an individual who elects to forego benefits under the Federal Old Age, Survivors and Disability Insurance Act for which the individual is eligible.
- The COLA is to be funded entirely through the Second Injury Fund (SIF). The SIF, pursuant to R.S.34:15-94, is financed through a direct annual surcharge (in an amount equal to 125 percent of the expected benefits to be paid in the upcoming year) levied on all employers who are workers' compensation and employer's liability insurance policyholders or who are self-insured employers under the workers' compensation law, except any reinsurance or retrocessional transactions and the State or any political subdivision thereof which acts as a self insured employer.
- The State, and a majority of its political subdivisions, choose to self-insure and do not contribute to the SIF.
- A number of political subdivisions choose not to self-insure and instead purchase a workers' compensation insurance policy. These entities currently pay the SIF annual surcharge levied on all policyholders (6.56 percent of premiums in 2014). If this legislation is approved, these political subdivisions will incur an increased SIF surcharge. However, no information is available to the OLS to quantify the number of political subdivisions affected.

BILL DESCRIPTION

Senate Bill No. 613 (3R) of 2012 provides, from July 1, 2015 forward, an annual cost of living adjustment (COLA) in the weekly workers' compensation benefit rate for any 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 worker who died from a workplace injury after December 31, 1979. To avoid an abrupt fiscal impact on the workers' compensation system, the bill provides for a three year phase-in of the benefit payment, resulting in 33 1/3 percent of the total payment in fiscal year 2016, 66 2/3 percent of the total payment in fiscal year 2017 and 100 percent payment in fiscal year 2018.

¹ Section 1 of P.L.1980, c.83 (C.34:15-95.4) provides for a COLA for any individual who became totally and permanently disabled from a workplace injury *prior* to January 1, 1980 and for the surviving dependents of any worker who died from a workplace injury *prior* to January 1, 1980 to be paid from the Second Injury Fund (SIF). This bill extends that same COLA to workers injured *after* December 31, 1979 in most cases.

The COLA would 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 disability benefits payable under the Federal Old Age, Survivors and Disability Insurance Act; and

2. The bill reduces the COLA 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.

3. The bill provides that a COLA, or supplemental benefits, will not be paid to an individual who foregoes 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 COLA benefits would be paid in any case in which they are calculated to be less than \$5 per week.

Current law requires these 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 would apply only to benefits paid on those claims after July 1, 2015, thus avoiding 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 COLA benefit payments would start on July 1, 2015 (FY 2016) and the Department of Labor and Workforce Development is required to take into account the COLA benefits when calculating the amount of the Second Injury Fund assessment which starts on January 1, 2015, thus avoiding the need for any General Fund appropriation.

The bill sets time limits for workers' compensation insurers and self-insured employers to notify the SIF when COLA 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 COLA 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 COLA 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 COLA benefits shall not be paid in a manner which in any way changes or modifies the provisions of those sections.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

While there is uncertainty about a number of relevant variables, the OLS estimates that the cost of this program will be approximately \$58 million in FY 2018 when the workers' compensation supplemental COLA benefits are fully funded. The cost is phased in, and will be approximately \$18 million in FY 2016 (1/3 of the total cost), \$38 million in FY 2017 (2/3 of the total cost) and \$58 million (100 percent) in FY 2018. The cost will then continue to increase at a rate equal to the rise in the benefit of workers compensation (WC).

The cost for this program will be funded entirely through the Second Injury Fund (SIF). The SIF, pursuant to P.L.1988, c.26, is financed through a direct annual surcharge (in an amount equal to 125 percent of the expected benefits to be paid in the upcoming year) levied on all employers who are workers' compensation and employer's liability insurance policyholders or who are self-insured employers under the workers' compensation law, except any reinsurance or retrocessional transactions and the State or any political subdivision thereof which acts as a self insured employer. The State, and a majority of its political subdivisions, choose to self-insure and do not contribute to the SIF.

However, certain political subdivisions choose not to self-insure and instead purchase a workers' compensation insurance policy. These entities currently pay the SIF annual surcharge levied on all policyholders (6.56 percent of premiums in 2014). If this legislation is approved, these political subdivisions will incur an increased SIF surcharge. However, no information is available to the OLS to quantify the number of political subdivisions affected.

The Department of Labor and Workforce Development did not provide a formal cost estimate for Senate Bill No. 613 (3R). However, the Office of Special Compensation within the department conducted an analysis of previous similar legislation in 2006 and an updated analysis of the pending legislation for a workers' compensation committee within the department in July, 2009. Much of that information has been shared by the department with OLS and is relied on heavily for this analysis.

Determining the initial cost of providing the COLA begins with a simple calculation: the cost should equal the number of individuals who are currently collecting total permanent disability or death workers' compensation benefits multiplied by the difference between their average current benefit and the current WC benefit amount. For example, an individual who became totally disabled in 1980 and awarded the maximum weekly benefit rate in 1980 of \$185, would be entitled to a COLA of \$641 per week in 2013. This amount is calculated by determining the difference between the current maximum benefit rate per week, \$826 in 2013, and the amount of the individual's benefit from time of injury, \$185, resulting in a \$641 per week COLA or an additional \$33,332 a year.

However, there are many complicating factors in considering the cost of this legislation, including: determining the number of total beneficiaries; the number of beneficiaries who are also receiving Social Security Old-Age Pension or Social Security Disability Insurance that will offset the workers' compensation COLA; and, finally, the amount of each current benefit and thus the COLA supplement.

First, one must determine the number of individuals who are currently receiving workers' compensation benefits for total disability or death. Workers' compensation benefits are provided through private insurers or through self-insurance for certain public subdivisions and large organizations in the State. Since the State is not responsible for paying the benefit, the State does not collect data on the number of individuals who are currently receiving the benefit. The State does collect data on those individuals who are receiving workers' compensation through the

State's self-insured workers' compensation insurance system and through the Second Injury Fund (SIF)².

However, the remaining categories' information (municipal, county, school district, self-insured employers and private workers' compensation insurance carriers) is not collected by the State. To determine these numbers, the Office of Special Compensation within the department conducted a survey in 2006 (updated in 2009). The survey indicated that there was a total of 14,047 beneficiaries in each of the following categories: Second Injury Fund – 7,410; State workers – 312; municipal - 429; county - 108; school district - 362; self-insured - 1,666; private carrier workers - 3,760. Information provided by the department and an informal survey, conducted by the OLS, of State data results in an updated number of 8,717 Second Injury Fund beneficiaries and 219 State workers. The remainder of the numbers can not be confirmed at this time and the numbers from the 2009 survey will be used for this analysis.

The second determination that must be made when calculating the cost of this bill is to determine certain demographics of the beneficiaries. Many of the beneficiaries who receive workers' compensation are also receiving Social Security benefits which may affect payments in several ways, depending on the type of Social Security benefits being received.

The beneficiaries who are below 62 years of age and are permanently disabled and receiving workers' compensation may also be receiving Social Security Disability Insurance (SSDI). In New Jersey, individuals who are eligible for different State benefits as well as SSDI benefits receive the federal SSDI benefit first and then the State benefit (in this instance, workers' compensation) is reduced, thus saving State dollars. The person does not receive more than a maximum amount based on their earnings at time of injury, determined by the Social Security Administration. This is called a "reverse offset."³ Therefore, if beneficiaries are receiving SSDI benefits, the COLA will be reduced as much as needed to avoid the total of the workers' compensation and SSDI benefits exceeding 80 percent of the individual's pre-injury earnings, referred to as the Average Current Earnings (ACE) and determined by the Social Security Administration. Black Lung program benefits and the employer's share of any disability pension benefit would also be used to reduce COLA benefits for these individuals. For example, if the individual who was injured in 1980 and received \$185 in workers compensation is also receiving SSDI with an 80 percent ACE of \$240, the COLA benefit of \$641 a week would be reduced to ensure that the sum of the awarded weekly workers' compensation rate (\$185), the COLA benefit (\$641) and the SSDI (\$240) does not exceed the 80 percent ACE of \$240. In this example, the worker would receive no COLA.

Beneficiaries who are 62, 63 and 64 years old (approximately 10 percent of the population) and who are receiving SSDI are no longer subject to the reverse offset. These individuals are paid workers' compensation benefits first, including the workers' compensation COLA under this legislation, and then their SSDI, up to their 80 percent ACE. These individuals may cost the workers' compensation program more, but it is not possible to quantify this cost due to uncertainty about the benefits paid to these individuals and the ACE of each individual. For purposes of this analysis, they are included in the over 62 and survivor population.

Beneficiaries who are over 65 or are a dependent of a deceased individual collect Social Security Old-Age or Survivor benefits. The workers' compensation COLA benefit is offset by

² The SIF's purpose is to pay benefits to workers who suffered a second injury during employment and are eligible for workers compensation benefits for total disability or death. These individuals are not covered by their employers' workers' compensation insurance but rather collect the workers' compensation benefits from the SIF. According to the department, there are 8,717 individuals who have a date of injury post – 1980 and are receiving benefits through the SIF. These individuals will also be eligible for the supplemental COLA benefit.

³ In other states, the amount of federal Social Security is reduced and the workers' compensation (and other benefits) are paid first, thus saving federal funds.

the base Social Security benefits pursuant to Section 1.b.(2) of the legislation which states that the “actual amount of the supplemental benefits paid pursuant to this section to any individual shall be reduced by an amount equal to the individual’s benefit payable under the Federal Old-Age, Survivors’ and Disability Insurance Act.” It is important to note that Section 1.b.(2) of S-613(3R) excludes the Social Security COLA received by the individual from offsetting the workers’ compensation COLA. This may result in large workers’ compensation COLAs for certain individuals who are survivors and collecting social security survivor benefits for a long period of time. The OLS is not able to quantify the number of survivors and their date of benefits to determine the cost of the workers’ compensation COLA for these individuals, but in certain instances it may be significant. This cost may also be significant for individuals who receive Social Security Old Age benefits for a long period of time and thus receive a large Social Security COLA. For the purposes of this estimate, the over 65 year olds and survivors benefit calculation is based on the survey that the department did of this population.

In its first survey of 2006, the department determined that approximately 52 percent of the respondents were over 62 years of age and 48 percent were under 62 years of age. In its second survey, the department determined that 60 percent of the respondents were over 62 years of age and 40 percent were under 62. However, OLS in its study of respondents determined that 35 percent of the respondents were dependents (on average a much younger population) and 65 percent were disabled. For the purposes of this estimate, an even split of 50/50 is used but the result is not substantially different.

The cost for these populations is the next factor in this analysis. The department did an exhaustive case by case analysis of individuals collecting SIF benefits in 2006. In this analysis, the department determined that the average COLA for those individuals who are over 64 would be \$57.04 a week, due to the Social Security offset. Extrapolating this number to 2015 benefit levels results in an increase to a \$74 per week COLA for this population. Since OLS does not have the data on those who are between the ages of 62 and 64 and for those survivors under 65 who are also collecting the Social Security Old-Age and Survivor benefit, the same rate will be applied to those populations. Please see the following chart for the cost analysis of this population.

Table I - Total cases and COLA cost for all beneficiaries over 62 and survivors

Category	# of cases	Cases over age 62 and survivors (50%)	Avg. Weekly supplement COLA (\$74)¹	Avg Yearly Supplement COLA (\$3,848)
Second Injury Fund	8,717	4,359	\$322,529	\$16,771,508
State workers	219	110	\$8,103	\$421,356
Municipal workers	429	215	\$15,873	\$825,3960
Private ins. workers	3,760	1,880	\$139,120	\$7,234,240
Self-Insurer	1,666	833	\$61,642	\$3,205,384
County workers	108	54	\$3,996	\$207,792
School District workers	362	181	\$13,394	\$696,488
Total beneficiaries and cost	15,261	7,631	\$564,657	\$29,362,164

¹The department in their analysis of the SIF recipients (2006) determined that those active SIF beneficiaries over 64 would receive \$57.04 a week in the supplement, increased to \$77 in this analysis due to inflation .

The next population to be analyzed are those who are under age 62. This population may be collecting SSDI benefits and thus, may not receive the COLA because of that offset. The department analyzed case by case this population collecting benefits from the SIF in its 2006 survey and determined that 28 percent of the population receiving workers’ compensation would

also receive the COLA. The department did this analysis by looking at each individual case and determining their current workers' compensation rate, their current SSDI benefit (if any) and what the COLA would be if the individual was eligible. After this analysis, the department determined that on average these individuals would have received a COLA of \$202 per week in 2006. Extrapolating this number to 2015 benefit levels results in a \$264 per week COLA for this population. The chart below illustrates the costs associated with this population.

Table II - Total cost and number of beneficiaries for WC COLA for beneficiaries under 62

Category	# of cases	Cases under 62 years of age (approx. 50%) ¹		Average weekly supplement COLA (\$264) ²	Average annual supplement COLA (\$13,728)
			24% of cases ²		
Second Injury Fund	8,717	4,359	1,046	\$276,155	\$14,360,037
State workers	219	110	26	\$6,938	\$360,772
Municipal workers	429	215	51	\$13,591	\$706,717
Private ins. workers	3,760	1,880	451	\$119,117	\$6,194,074
Self-Insurers	1,666	833	200	\$52,779	\$2,744,502
County workers	108	54	13	\$3,421	\$177,915
School District workers	362	181	43	\$11,468	\$596,344
Total beneficiaries and cost	15,261	7,631	1,831	\$483,468	\$25,140,361

¹Approximately 50% of active beneficiaries are collecting workers compensation for permanent disabilities and are under 62 years of age, thus they may be eligible for Social Security Disability Insurance.

²The department in the 2006 analysis of SIF cases indicated that 24% of those surveyed would receive a COLA supplement at an average cost of \$202 a week in 2006, (\$264 a week in 2015).

The total expected average cost of the COLA to the SIF is the sum of the total cost of the COLA for beneficiaries over 62 and survivors, \$29.36 million (first table), and the total cost of the COLA for beneficiaries under 62, \$25.14 million (second table), or a total cost of \$54.5 million.

However, the legislation implements a gradual phase-in of the COLA in order to avoid an undue hardship on the employers of the State that will be assessed for the cost of the COLA through an assessment on their workers' compensation premiums (pursuant to section 1 of P.L.1988, c.26). Relying on historical analysis of the workers compensation premium, it appears that the cost of the COLA could increase approximately 3 to 4 percent each year. Please see the following chart for the expected cost of the COLA for the first three years of implementation (starting FY 2016).

Total Annual Benefit (FY2016)	Total Annual Benefit (FY2017)	Total Annual Benefit (FY2018)
\$54.5 million	\$56.1 million	\$57.8 million
Total SIF Cost (1/3 of that benefit)	Total SIF Cost (2/3 of that benefit)	Total SIF Cost (100% of that benefit)
\$18 million	\$38 million	\$58 million

The preceding analysis represents the best estimate that the OLS can make at this time; however, it is important to note that there are many variables affecting this estimate. For example, federal interpretation of the Social Security law could affect the costs of this

legislation. In 2006, the Social Security Administration did confirm that the reverse offset will still apply for those individuals receiving Social Security Disability Insurance.

Furthermore, the OLS is estimating these costs without access to all of the actual claims data that would include the time of injury, average weekly benefit and other benefits received.

Section: Commerce, Labor and Industry

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