

**34:15-95.6 & 34:15-95.7**  
**LEGISLATIVE HISTORY CHECKLIST**

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**LAWS OF:** 2019                     **CHAPTER:** 127

**NJSA:** 34:15-95.6 & 34:15-95.7                     (Concerns certain workers' compensation supplemental benefits)

**BILL NO:** S1967                     (Substituted for A3635)

**SPONSOR(S)** Stephen M. Sweeney and others

**DATE INTRODUCED:** 2/22/2018

**COMMITTEE:**                     **ASSEMBLY:** Appropriations

**SENATE:** Labor  
   Budget & Appropriations

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                     **ASSEMBLY:** 6/10/2019

**SENATE:** 5/30/2019

**DATE OF APPROVAL:** 6/17/2019

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Second reprint enacted)                     Yes

**S1967**

**SPONSOR'S STATEMENT:** (Begins on page 3 of introduced bill)                     Yes

**COMMITTEE STATEMENT:**                     **ASSEMBLY:** Yes Appropriations

**SENATE:** Yes Labor  
   Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:**                     No

**LEGISLATIVE FISCAL ESTIMATE:**                     Yes 2/21/2019  
   6/10/2019

**A3635**

**SPONSOR'S STATEMENT:** (Begins on page 3 of introduced bill)                     Yes

**COMMITTEE STATEMENT:**                     **ASSEMBLY:** Yes Appropriations

**SENATE:** No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:**                     No

**LEGISLATIVE FISCAL ESTIMATE:**                     Yes 2/21/2019

(continued)

**VETO MESSAGE:** Yes (conditional)

**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

RWH/CL

P.L. 2019, CHAPTER 127, *approved June 17, 2019*  
Senate, No. 1967 (*Second Reprint*)

1 AN ACT concerning workers' compensation <sup>2</sup>death<sup>2</sup> benefits and  
2 supplementing chapter 15 of Title 34 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. a. Beginning <sup>2</sup>[with the fiscal year 2020, commencing July  
8 1, 2019] on January 1, 2020<sup>2</sup>, and <sup>2</sup>in<sup>2</sup> each fiscal year thereafter,  
9 <sup>2</sup>[a person who is]<sup>2</sup> <sup>1</sup>[an employee] <sup>2</sup>[a public safety worker<sup>1</sup>,  
10 or]<sup>2</sup> a dependent of <sup>2</sup>[the] a<sup>2</sup> <sup>1</sup>[employee] public safety worker<sup>1</sup>,  
11 who is receiving weekly benefits pursuant to <sup>2</sup>[subsection (b) of  
12 R.S.34:15-12,]<sup>2</sup> R.S.34:15-13 <sup>2</sup>[, or R.S.34:15-95]<sup>2</sup> for a  
13 <sup>2</sup>[disability or]<sup>2</sup> death that occurred after December 31, 1979, and  
14 who is not entitled to receive special adjustment benefits pursuant  
15 to section 1 of P.L.1980, c.83 (C.34:15-95.4), shall be entitled to  
16 receive weekly supplemental benefits from the Second Injury Fund  
17 during the period in which the <sup>2</sup>[person] dependent<sup>2</sup> is eligible to  
18 receive the initially-awarded weekly benefits, whenever the amount  
19 of the initially-awarded weekly benefits is less than the total amount  
20 of weekly benefits that would be payable to the <sup>2</sup>[person]  
21 dependent<sup>2</sup> if that total amount included weekly supplemental  
22 benefits calculated in the manner indicated in subsection b. of this  
23 section. In making the determination of the aggregate annual  
24 surcharge for the Second Injury Fund to be levied pursuant to  
25 paragraph (4) of subsection c. of R.S.34:15-94 for calendar year  
26 <sup>2</sup>[2019] 2020<sup>2</sup> and each subsequent calendar year, the  
27 <sup>1</sup>[commissioner] Commissioner of Labor and Workforce  
28 Development<sup>1</sup> shall include the anticipated additional amounts,  
29 including administrative costs, required for payment of  
30 supplemental benefits pursuant to this section during the fiscal year  
31 which begins on July 1 of the respective calendar year.

32 b. The base amount of the weekly supplemental benefits to be  
33 paid pursuant to this section during each fiscal year shall be  
34 calculated in a manner so that when it is added to the workers'  
35 compensation weekly <sup>2</sup>death<sup>2</sup> benefits initially awarded, the sum of  
36 the initial award and the base weekly supplemental benefits shall

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SBA committee amendments adopted October 15, 2018.

<sup>2</sup>Senate amendments adopted in accordance with Governor's recommendations May 13, 2019.

1 bear the same percentage relationship to the maximum workers'  
2 compensation <sup>2</sup>death benefit<sup>2</sup> rate for the current fiscal year that the  
3 <sup>2</sup>[person's] dependent's<sup>2</sup> initial <sup>2</sup>[compensation] weekly death  
4 benefits<sup>2</sup> bore to the maximum workers' compensation <sup>2</sup>death  
5 benefit<sup>2</sup> rate in effect at the time of the <sup>2</sup>[injury or]<sup>2</sup> death <sup>1</sup>[. The  
6 actual amount of the supplemental benefits paid pursuant to this  
7 section shall be 33 1/3% of the base amount during fiscal year  
8 2020; 66 2/3% of the base amount during fiscal year 2021; and  
9 100% of the base amount during fiscal year 2022 and thereafter]<sup>1</sup>,  
10 except that:

11 (1) <sup>2</sup>[The actual amount of the supplemental benefits paid  
12 pursuant to this section shall be reduced if necessary, and as much  
13 as is needed, to ensure that the sum of disability benefits provided  
14 under the Federal Old Age, Survivors and Disability Insurance Act,  
15 the weekly supplemental benefits and the workers' compensation  
16 initially awarded does not, with respect to any particular case,  
17 exceed the amount which would cause any reduction pursuant to 42  
18 U.S.C. 424a of the amount of disability benefits for which the  
19 individual is eligible under the Federal Old Age, Survivors and  
20 Disability Insurance Act;

21 (2)<sup>2</sup> The actual amount of the supplemental benefits paid  
22 pursuant to this section to any <sup>2</sup>[individual] dependent<sup>2</sup> shall <sup>2</sup>[, in  
23 cases not subject to the provisions of paragraph (1) of this  
24 subsection,]<sup>2</sup> be reduced by an amount equal to the <sup>2</sup>[individual's]  
25 dependent's<sup>2</sup> benefit payable under the Federal Old-Age, Survivors'  
26 and Disability Insurance Act <sup>2</sup>[(except for] excluding any<sup>2</sup>  
27 disability benefits paid to that <sup>2</sup>[individual] dependent<sup>2</sup> under that  
28 act and any cost of living increases in benefits paid to that  
29 <sup>2</sup>[individual] dependent<sup>2</sup> under that <sup>2</sup>[act),] act, or<sup>2</sup> Black Lung  
30 benefits <sup>2</sup>[, or the employer's share of disability pension payments  
31 received from or on account of an employer]<sup>2</sup>;

32 <sup>2</sup>[(3)] (2)<sup>2</sup> A supplemental benefit shall not be paid if the actual  
33 amount of the benefit to be paid is calculated to be less than \$5 per  
34 week, and

35 <sup>2</sup>[(4)] (3)<sup>2</sup> A supplemental benefit shall not be paid to <sup>2</sup>[an  
36 individual] a dependent<sup>2</sup> who elects to not receive benefits under  
37 the Federal Old Age, Survivors and Disability Insurance Act for  
38 which the <sup>2</sup>[individual] dependent<sup>2</sup> is eligible.

39 c. Notwithstanding any other provision of this section, weekly  
40 supplemental benefits paid pursuant to this section shall not be paid  
41 in a manner which in any way changes or modifies the provisions of  
42 sections 1 or 9 of P.L.1980, c.83 (C.34:15-95.4 and 34:15-95.5).

43 d. An insurance carrier or self-insured employer responsible for  
44 the payment of workers' compensation <sup>2</sup>death benefits<sup>2</sup> to <sup>2</sup>[an  
45 individual] a dependent<sup>2</sup> shall notify the Division of Workers'  
46 Compensation of the need to have the Second Injury Fund make  
47 supplemental benefit payments to the <sup>2</sup>[individual] dependent<sup>2</sup>

1 pursuant to this section not later than the 60th day after the date on  
2 which it is determined that the payment of supplemental benefits is  
3 required pursuant to this section. If the insurance carrier or self-  
4 insured employer fails to notify the division and that failure results  
5 in the payment of an incorrect amount of benefits, the liability for  
6 the payment of the supplemental benefits shall be transferred from  
7 the Second Injury Fund to the employer until the time at which the  
8 insurance carrier or self-insured employer provides the required  
9 notice.

10 <sup>1</sup>e. For the purposes of this section, “public safety worker”  
11 means a member, employee, or officer of a paid, partially-paid, or  
12 volunteer fire or police department, force, company or district,  
13 including the State Police or a first aid or rescue squad.<sup>1</sup>

14

15 <sup>2</sup>2. In making the determination of the aggregate annual  
16 surcharge for the Second Injury Fund to be levied pursuant to  
17 paragraph (4) of subsection c. of R.S.34:15-94 for calendar year  
18 2020, the Commissioner of Labor and Workforce Development  
19 shall include the anticipated additional amounts, including  
20 administrative costs, required for the payment of supplemental  
21 benefits which shall begin on January 1, 2020 pursuant to section 1  
22 of P.L. , c. (C. ) (pending before the Legislature as this bill).<sup>2</sup>

23

24 <sup>2</sup>[2.] 3.<sup>2</sup> This act shall take effect immediately.

25

26

27

28

29 Concerns certain workers' compensation supplemental benefits.

**SENATE, No. 1967**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

INTRODUCED FEBRUARY 22, 2018

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator FRED H. MADDEN, JR.**

**District 4 (Camden and Gloucester)**

**SYNOPSIS**

Concerns certain workers' compensation supplemental benefits.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/11/2018)**

1 AN ACT concerning workers' compensation benefits and  
2 supplementing chapter 15 of Title 34 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. a. Beginning with the fiscal year 2020, commencing July 1,  
8 2019, and each fiscal year thereafter, a person who is an employee,  
9 or a dependent of the employee, who is receiving weekly benefits  
10 pursuant to subsection (b) of R.S.34:15-12, R.S.34:15-13, or  
11 R.S.34:15-95 for a disability or death that occurred after December  
12 31, 1979, and who is not entitled to receive special adjustment  
13 benefits pursuant to section 1 of P.L.1980, c.83 (C.34:15-95.4),  
14 shall be entitled to receive weekly supplemental benefits from the  
15 Second Injury Fund during the period in which the person is eligible  
16 to receive the initially-awarded weekly benefits, whenever the  
17 amount of the initially-awarded weekly benefits is less than the total  
18 amount of weekly benefits that would be payable to the person if  
19 that total amount included weekly supplemental benefits calculated  
20 in the manner indicated in subsection b. of this section. In making  
21 the determination of the aggregate annual surcharge for the Second  
22 Injury Fund to be levied pursuant to paragraph (4) of subsection c.  
23 of R.S.34:15-94 for calendar year 2019 and each subsequent  
24 calendar year, the commissioner shall include the anticipated  
25 additional amounts, including administrative costs, required for  
26 payment of supplemental benefits pursuant to this section during the  
27 fiscal year which begins on July 1 of the respective calendar year.

28 b. The base amount of the weekly supplemental benefits to be  
29 paid pursuant to this section during each fiscal year shall be  
30 calculated in a manner so that when it is added to the workers'  
31 compensation weekly benefits initially awarded, the sum of the  
32 initial award and the base weekly supplemental benefits shall bear  
33 the same percentage relationship to the maximum workers'  
34 compensation rate for the current fiscal year that the person's initial  
35 compensation bore to the maximum workers' compensation rate in  
36 effect at the time of the injury or death. The actual amount of the  
37 supplemental benefits paid pursuant to this section shall be 33 1/3%  
38 of the base amount during fiscal year 2020; 66 2/3% of the base  
39 amount during fiscal year 2021; and 100% of the base amount  
40 during fiscal year 2022 and thereafter, except that:

41 (1) The actual amount of the supplemental benefits paid  
42 pursuant to this section shall be reduced if necessary, and as much  
43 as is needed, to ensure that the sum of disability benefits provided  
44 under the Federal Old Age, Survivors and Disability Insurance Act,  
45 the weekly supplemental benefits and the workers' compensation  
46 initially awarded does not, with respect to any particular case,  
47 exceed the amount which would cause any reduction pursuant to 42  
48 U.S.C. 424a of the amount of disability benefits for which the

1 individual is eligible under the Federal Old Age, Survivors and  
2 Disability Insurance Act;

3 (2) The actual amount of the supplemental benefits paid  
4 pursuant to this section to any individual shall, in cases not subject  
5 to the provisions of paragraph (1) of this subsection, be reduced by  
6 an amount equal to the individual's benefit payable under the  
7 Federal Old-Age, Survivors' and Disability Insurance Act (except  
8 for disability benefits paid to that individual under that act and any  
9 cost of living increases in benefits paid to that individual under that  
10 act), Black Lung benefits, or the employer's share of disability  
11 pension payments received from or on account of an employer;

12 (3) A supplemental benefit shall not be paid if the actual amount  
13 of the benefit to be paid is calculated to be less than \$5 per week,  
14 and

15 (4) A supplemental benefit shall not be paid to an individual  
16 who elects to not receive benefits under the Federal Old Age,  
17 Survivors and Disability Insurance Act for which the individual is  
18 eligible.

19 c. Notwithstanding any other provision of this section, weekly  
20 supplemental benefits paid pursuant to this section shall not be paid  
21 in a manner which in any way changes or modifies the provisions of  
22 sections 1 or 9 of P.L.1980, c.83 (C.34:15-95.4 and 34:15-95.5).

23 d. An insurance carrier or self-insured employer responsible for  
24 the payment of workers' compensation to an individual shall notify  
25 the Division of Workers' Compensation of the need to have the  
26 Second Injury Fund make supplemental benefit payments to the  
27 individual pursuant to this section not later than the 60th day after  
28 the date on which it is determined that the payment of supplemental  
29 benefits is required pursuant to this section. If the insurance carrier  
30 or self-insured employer fails to notify the division and that failure  
31 results in the payment of an incorrect amount of benefits, the  
32 liability for the payment of the supplemental benefits shall be  
33 transferred from the Second Injury Fund to the employer until the  
34 time at which the insurance carrier or self-insured employer  
35 provides the required notice.

36

37 2. This act shall take effect immediately.

38

39

40

#### STATEMENT

41

42 This bill provides, from July 1, 2019 forward, an annual cost of  
43 living adjustment (COLA) in the weekly workers' compensation  
44 benefit rate for any worker who has become totally and permanently  
45 disabled from a workplace injury at any time after December 31,  
46 1979 and for the surviving dependents of any worker who died from  
47 a workplace injury after December 31, 1979. This adjustment is



1 intended to mirror, to the extent possible, the COLA already in  
2 place for benefits arising from an injury occurring before 1980.

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

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

13 (2) in cases which are not subject to the provisions of point one  
14 above, the bill reduces the supplemental workers' compensation  
15 benefits (but not regular workers' compensation) for claimants  
16 injured after 1979 by the amount of any Social Security benefits  
17 (other than Social Security disability benefits and any cost of living  
18 increases in Social Security benefits), Black Lung benefits, or the  
19 employer's share of disability pension payments received from or  
20 on account of an employer; and

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

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

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

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

45 To avoid an abrupt fiscal impact on the workers' compensation  
46 system, the bill provides that one third of the supplemental benefit  
47 rate be paid during the first year (fiscal year 2020), two thirds of the  
48 rate be paid during the second year (fiscal year 2021), and the full

1 amount be paid during the third year (fiscal year 2022) and  
2 subsequent years thereafter.

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

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

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

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 1967**

# **STATE OF NEW JERSEY**

DATED: JANUARY 28, 2019

The Assembly Appropriations Committee reports favorably Senate Bill No. 1967 (1R).

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.

As reported, this bill is identical to Assembly Bill No. 3635 (1R), as amended and reported by the committee.

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.

# SENATE LABOR COMMITTEE

## STATEMENT TO

### SENATE, No. 1967

# STATE OF NEW JERSEY

DATED: SEPTEMBER 13, 2018

The Senate Labor Committee reports favorably Senate Bill, No. 1967.

This bill provides, from July 1, 2019 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. 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.

To avoid an abrupt fiscal impact on the workers' compensation system, the bill provides that one third of the supplemental benefit rate be paid during the first year (fiscal year 2020), two thirds of the rate be paid during the second year (fiscal year 2021), and the full amount be paid during the third year (fiscal year 2022) and subsequent years thereafter.

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.

# 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.

# 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.

- 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.

Example 1 – Career Public Safety Worker Receiving Accidental Disability State Pension, WC Disability Benefits, and Social Security Disability Benefits: 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.

<b>Example 1: PFRS Accidental Disability Pensioner with Annual \$90,000 Pre-Injury Income</b>			
	<b>Current Law</b>	<b>Bill</b>	<b>Change</b>
<b><u>Benefits Before Offsets:</u></b>			
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
<b>Total Benefits</b>	<b>\$128,000</b>	<b>\$132,000</b>	<b>\$4,000</b>
<b><u>Benefits After Offsets:</u></b>			
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)
<b>Total Benefits</b>	<b>\$80,000</b>	<b>\$80,000</b>	<b>\$0</b>

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.

Example 2 – Surviving Spouse of Career Public Safety Worker who Died in the Line of Duty:  
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.

<b>Example 2: Surviving Spouse of PFRS Member with \$90,000 Annual Income when Killed in the Line of Duty</b>			
<b>Benefit</b>	<b>Current Law</b>	<b>Bill</b>	<b>Change</b>
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
<b>Total Benefits</b>	<b>\$131,000</b>	<b>\$131,000</b>	<b>\$0</b>

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.

*Section: Commerce, Labor and Industry*

*Analysts: Juan C. Rodriguez  
Associate Fiscal Analyst*

*Thomas Koenig  
Assistant Legislative Budget and Finance Officer*

*Approved: Frank W. Haines III  
Legislative Budget and Finance Officer*

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.).

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

**SENATE, No. 1967**

## **STATE OF NEW JERSEY 218th LEGISLATURE**

DATED: JUNE 10, 2019

### SUMMARY

- Synopsis:** Concerns certain workers' compensation supplemental benefits.
- Types of Impact:** Annual State expenditure and revenue increases to Second Injury Fund. Annual expenditure increase to certain local governments.
- Agencies Affected:** Department of Labor and Workforce Development.  
Certain local governments.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>CY 2020</u></b>	<b><u>CY 2021 and Every CY Thereafter</u></b>
<b>State Expenditure Increase, Second Injury Fund</b>	Up to \$1,100,000	Up to \$1,100,000
<b>State Revenue Increase, Second Injury Fund</b>	Up to \$1,400,000	Up to \$1,100,000
<b>Local Expenditure Increase</b>	Indeterminate	Indeterminate

- The Office of Legislative Services (OLS) projects that the bill will increase annual State workers' compensation (WC) benefits paid out of the Second Injury Fund (SIF) to surviving dependents of public safety workers who died in the line of duty after December 31, 1979 by at most \$1.1 million starting in calendar year (CY) 2020. The annual expenditure increase is likely to fall significantly below \$1.1 million because the estimate does not take into account that certain Social Security benefits will reduce or even negate a qualified dependent's WC annual cost of living adjustment (COLA) under the bill.
- 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 to calculate the SIF assessment for each upcoming calendar year according to a formula that incorporates expected benefit payments as a variable. Accordingly, the OLS forecasts that additional SIF revenues will not exceed \$1.4 million in CY 2020 and \$1.1 million annually thereafter.



- 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.

## **BILL DESCRIPTION**

This bill provides, from January 1, 2020 forward, an annual COLA in the weekly WC benefit rate 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 January 1, 2020, 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 January 1, 2020 without any retroactive benefit payment.

COLA benefits are to be reduced by the original amount of any Social Security benefits a surviving dependent receives (but not the amount of any Social Security disability benefits and any subsequent cost-of-living increases in Social Security benefits) or Black Lung benefits.

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 January 1, 2020. The Department of Labor and Workforce Development 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 projects that the bill will increase annual State WC benefits paid out of the SIF to surviving dependents of public safety workers who died in the line of duty after December 31, 1979 by a maximum of \$1.1 million starting in CY 2020. The annual expenditure increase is likely to fall significantly below \$1.1 million because the estimate does not take into account that

certain Social Security benefits will reduce or even negate a qualified dependent's WC COLA benefits under the bill.

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 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. Accordingly, the OLS forecasts that additional SIF revenues in CY 2020 will not exceed \$1.4 million, or 125 percent of the estimated maximum \$1.1 million in additional SIF benefit payments under the bill. Because the required build-up of SIF reserves for additional benefit payments will be completed in CY 2020, the OLS anticipates that the annual revenue gain to the SIF will at most total \$1.1 million in each calendar year starting in CY 2021, or 100 percent of estimated maximum additional benefit disbursements per year.

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.

Estimation Method: The OLS uses the following method to estimate that the bill will increase annual State WC benefits paid out of the SIF by no more than \$1.1 million starting in CY 2020.

First, according to the most recent data compiled by the Division of Fire Safety in the Department of Community Affairs and the Division of State Police, 122 firefighters and 21 police officers have died in the line of duty since 1988.

Next, the OLS estimates the average annual WC COLA benefit that surviving dependents of public safety workers who died in the line of duty after December 31, 1979 will receive. Under current law, surviving dependents of workers who died as a result of a workplace injury that occurred before January 1, 1980 are eligible for an annual COLA to their WC benefits. According to the Department of Labor and Workforce Development's response to an FY 2020 OLS Discussion Point, there are 324 surviving dependents who currently receive an annual WC COLA averaging \$14,287. Given that beneficiaries under the bill will have fewer COLA years as compared to pre-1980 beneficiaries, the OLS assumes that the average beneficiary's COLA benefit under the bill will be one-half of the average COLA benefit for pre-1980 beneficiaries, and adjusts the total for inflation. Accordingly, the OLS calculates that the bill will increase annual State WC benefit payments out of the SIF by \$1.1 million.

The \$1.1 million is a maximum. The actual expenditure increase is probable to be significantly less because the analysis rests on three simplifying assumptions that inflate the estimate: 1) each public safety worker has a dependent who is eligible for WC COLA benefits under the bill; 2) all surviving dependents are still alive; and 3) no surviving dependents will have their WC COLA reduced by the amount of certain Social Security benefits.

The OLS lacks information on Social Security benefits of surviving dependents of public safety workers who died in the line of duty after December 31, 1979 that will offset WC COLA benefits accorded under the bill. Therefore, the OLS has no empirical basis to adjust its \$1.1 million cost estimate downward, but the offset amount could be substantial. Specifically, the WC COLA is to be reduced by the non-inflation-adjusted base amount of any Social Security survivor or retirement benefit the beneficiary may receive, including for the surviving dependent's own employment history. As a result, surviving dependents will only receive higher WC payments under the bill once their WC COLA exceeds their concerned Social Security base benefits. Given the highly fact-sensitive nature of the bill's impact 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. This analysis requires access to individual WC and Social Security records, which the OLS does not have.

*Section: Commerce, Labor and Industry*

*Analysts: Juan C. Rodriguez  
Associate Fiscal Analyst*

*Thomas Koenig  
Assistant Legislative Budget and Finance Officer*

*Approved: Frank W. Haines III  
Legislative Budget and Finance Officer*

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.).

# ASSEMBLY, No. 3635

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 12, 2018

**Sponsored by:**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex and Morris)**

**Assemblyman ADAM J. TALIAFERRO**

**District 3 (Cumberland, Gloucester and Salem)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Concerns certain workers' compensation supplemental benefits.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 9/25/2018)

A3635 JASEY, TALIAFERRO

2

1 AN ACT concerning workers' compensation benefits and  
2 supplementing chapter 15 of Title 34 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. a. Beginning with the fiscal year 2020, commencing July 1,  
8 2019, and each fiscal year thereafter, a person who is an employee,  
9 or a dependent of the employee, who is receiving weekly benefits  
10 pursuant to subsection (b) of R.S.34:15-12, R.S.34:15-13, or  
11 R.S.34:15-95 for a disability or death that occurred after December  
12 31, 1979, and who is not entitled to receive special adjustment  
13 benefits pursuant to section 1 of P.L.1980, c.83 (C.34:15-95.4),  
14 shall be entitled to receive weekly supplemental benefits from the  
15 Second Injury Fund during the period in which the person is eligible  
16 to receive the initially-awarded weekly benefits, whenever the  
17 amount of the initially-awarded weekly benefits is less than the total  
18 amount of weekly benefits that would be payable to the person if  
19 that total amount included weekly supplemental benefits calculated  
20 in the manner indicated in subsection b. of this section. In making  
21 the determination of the aggregate annual surcharge for the Second  
22 Injury Fund to be levied pursuant to paragraph (4) of subsection c.  
23 of R.S.34:15-94 for calendar year 2019 and each subsequent  
24 calendar year, the commissioner shall include the anticipated  
25 additional amounts, including administrative costs, required for  
26 payment of supplemental benefits pursuant to this section during the  
27 fiscal year which begins on July 1 of the respective calendar year.

28 b. The base amount of the weekly supplemental benefits to be  
29 paid pursuant to this section during each fiscal year shall be  
30 calculated in a manner so that when it is added to the workers'  
31 compensation weekly benefits initially awarded, the sum of the  
32 initial award and the base weekly supplemental benefits shall bear  
33 the same percentage relationship to the maximum workers'  
34 compensation rate for the current fiscal year that the person's initial  
35 compensation bore to the maximum workers' compensation rate in  
36 effect at the time of the injury or death. The actual amount of the  
37 supplemental benefits paid pursuant to this section shall be 33 1/3%  
38 of the base amount during fiscal year 2020; 66 2/3% of the base  
39 amount during fiscal year 2021; and 100% of the base amount  
40 during fiscal year 2022 and thereafter, except that:

41 (1) The actual amount of the supplemental benefits paid  
42 pursuant to this section shall be reduced if necessary, and as much  
43 as is needed, to ensure that the sum of disability benefits provided  
44 under the Federal Old Age, Survivors and Disability Insurance Act,  
45 the weekly supplemental benefits and the workers' compensation  
46 initially awarded does not, with respect to any particular case,  
47 exceed the amount which would cause any reduction pursuant to 42  
48 U.S.C. 424a of the amount of disability benefits for which the

1 individual is eligible under the Federal Old Age, Survivors and  
2 Disability Insurance Act;

3 (2) The actual amount of the supplemental benefits paid  
4 pursuant to this section to any individual shall, in cases not subject  
5 to the provisions of paragraph (1) of this subsection, be reduced by  
6 an amount equal to the individual's benefit payable under the  
7 Federal Old-Age, Survivors' and Disability Insurance Act (except  
8 for disability benefits paid to that individual under that act and any  
9 cost of living increases in benefits paid to that individual under that  
10 act), Black Lung benefits, or the employer's share of disability  
11 pension payments received from or on account of an employer;

12 (3) A supplemental benefit shall not be paid if the actual amount  
13 of the benefit to be paid is calculated to be less than \$5 per week,  
14 and

15 (4) A supplemental benefit shall not be paid to an individual  
16 who elects to not receive benefits under the Federal Old Age,  
17 Survivors and Disability Insurance Act for which the individual is  
18 eligible.

19 c. Notwithstanding any other provision of this section, weekly  
20 supplemental benefits paid pursuant to this section shall not be paid  
21 in a manner which in any way changes or modifies the provisions of  
22 sections 1 or 9 of P.L.1980, c.83 (C.34:15-95.4 and 34:15-95.5).

23 d. An insurance carrier or self-insured employer responsible for  
24 the payment of workers' compensation to an individual shall notify  
25 the Division of Workers' Compensation of the need to have the  
26 Second Injury Fund make supplemental benefit payments to the  
27 individual pursuant to this section not later than the 60th day after  
28 the date on which it is determined that the payment of supplemental  
29 benefits is required pursuant to this section. If the insurance carrier  
30 or self-insured employer fails to notify the division and that failure  
31 results in the payment of an incorrect amount of benefits, the  
32 liability for the payment of the supplemental benefits shall be  
33 transferred from the Second Injury Fund to the employer until the  
34 time at which the insurance carrier or self-insured employer  
35 provides the required notice.

36

37 2. This act shall take effect immediately.

38

39

40

#### STATEMENT

41

42 This bill provides, from July 1, 2019 forward, an annual cost of  
43 living adjustment (COLA) in the weekly workers' compensation  
44 benefit rate for any worker who has become totally and permanently  
45 disabled from a workplace injury at any time after December 31,  
46 1979 and for the surviving dependents of any worker who died from  
47 a workplace injury after December 31, 1979. This adjustment is

1 intended to mirror, to the extent possible, the COLA already in  
2 place for benefits arising from an injury occurring before 1980.

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

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

13 (2) in cases which are not subject to the provisions of point one  
14 above, the bill reduces the supplemental workers' compensation  
15 benefits (but not regular workers' compensation) for claimants  
16 injured after 1979 by the amount of any Social Security benefits  
17 (other than Social Security disability benefits and any cost of living  
18 increases in Social Security benefits), Black Lung benefits, or the  
19 employer's share of disability pension payments received from or  
20 on account of an employer; and

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

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

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

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

45 To avoid an abrupt fiscal impact on the workers' compensation  
46 system, the bill provides that one third of the supplemental benefit  
47 rate be paid during the first year (fiscal year 2020), two thirds of the  
48 rate be paid during the second year (fiscal year 2021), and the full

1 amount be paid during the third year (fiscal year 2022) and  
2 subsequent years thereafter.

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

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

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



# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3635

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 28, 2019

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 3635.

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.

As amended and reported, this bill is identical to Senate Bill No.1967 (1R), as also reported by the committee.

#### COMMITTEE AMENDMENTS

The committee amendments make the bill identical to Senate Bill No.1967 (1R). They specify that the bill's provisions 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.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## ASSEMBLY, No. 3635

### 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.

- 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.

Example 1 – Career Public Safety Worker Receiving Accidental Disability State Pension, WC Disability Benefits, and Social Security Disability Benefits: 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.

<b>Example 1: PFRS Accidental Disability Pensioner with Annual \$90,000 Pre-Injury Income</b>			
	<b>Current Law</b>	<b>Bill</b>	<b>Change</b>
<b><u>Benefits Before Offsets:</u></b>			
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
<b>Total Benefits</b>	<b>\$128,000</b>	<b>\$132,000</b>	<b>\$4,000</b>
<b><u>Benefits After Offsets:</u></b>			
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)
<b>Total Benefits</b>	<b>\$80,000</b>	<b>\$80,000</b>	<b>\$0</b>

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.

Example 2 – Surviving Spouse of Career Public Safety Worker who Died in the Line of Duty:  
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.

<b>Example 2: Surviving Spouse of PFRS Member with \$90,000 Annual Income when Killed in the Line of Duty</b>			
<b>Benefit</b>	<b>Current Law</b>	<b>Bill</b>	<b>Change</b>
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
<b>Total Benefits</b>	<b>\$131,000</b>	<b>\$131,000</b>	<b>\$0</b>

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.

*Section: Commerce, Labor and Industry*

*Analysts: Juan C. Rodriguez  
Associate Fiscal Analyst*

*Thomas Koenig  
Assistant Legislative Budget and Finance Officer*

*Approved: Frank W. Haines III  
Legislative Budget and Finance Officer*

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.).



**SENATE BILL NO. 1967**  
**(First Reprint)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1967 (First Reprint) with my recommendations for reconsideration.

Senate Bill No. 1967 (First Reprint) provides, from July 1, 2019 forward, weekly supplemental benefits to any public safety worker who suffers a work-related total disability after December 31, 1979, and to the surviving dependents of any public safety worker who dies because of a workplace injury after December 31, 1979. Current law requires the State to provide weekly supplemental benefits for death and permanent total disability from the Second Injury Fund ("SIF"), but only for cases of injury or death occurring before January 1, 1980. This bill extends the weekly supplemental benefits paid from the SIF to claims by public safety workers originating after December 31, 1979.

The legislative history accompanying this bill indicates that it was initially introduced more than a decade ago. As originally conceived, the bill would have provided weekly supplemental benefits to any worker who has become totally and permanently disabled from a workplace injury at any time after December 31, 1979 and to the surviving dependents of any worker who died from a workplace injury after December 31, 1979. In October 2018, the Legislature narrowed the bill's application to specify that only public safety workers and their dependents are eligible for the weekly supplemental benefits provided under the bill.

I commend the bill's sponsors for seeking to ensure that the compensation benefits provided to our public safety workers are commensurate with the annual cost of living. Our first responders who are severely injured on the job and the survivors of those who

make the ultimate sacrifice should receive fair and appropriate financial compensation.

While the bill's objectives are laudable, I am advised by counsel that, due to arcane federal funding rules that would likely be triggered by the passage of certain provisions of this bill, many of the bill's intended beneficiaries could find themselves worse off financially should I sign the bill in its current form. This is due to the somewhat complicated interplay between New Jersey's workers' compensation laws and the Federal Social Security Act. Federal law prohibits a permanently disabled individual under retirement age from receiving combined workers' compensation and social security disability income ("SSDI") benefits of more than 80 percent of the individual's wages prior to becoming totally disabled. Because New Jersey is considered a "reverse offset" state under the Federal Social Security Act, an individual's workers' compensation benefit - and not his or her SSDI benefit - will be reduced when necessary to preclude a combined payment in excess of the 80 percent limit. In practice, the reverse offset helps to protect the continued viability of New Jersey's workers' compensation system by allowing the State to offset some portion of its workers' compensation liability with federal dollars. New Jersey is one of just a handful of states that enjoy this reverse offset status. In the majority of states, the offset works in the other direction: SSDI benefits are reduced by the amount an injured worker is receiving in state workers' compensation benefits.

Unfortunately, the federal government does not recognize new reverse offset plans or expansions of prior plans put into effect after February 18, 1981. Because of this, enactment of the proposed changes to disability benefits contemplated in this bill

could jeopardize New Jersey's reverse offset status with respect to disability benefits. This concern is particularly relevant given the Trump Administration's general hostility toward the reverse offset. In the last three budgets proposed by President Trump, his administration has called for an elimination of the reverse offset laws for the few remaining states that benefit from them.

If New Jersey were to lose its reverse offset status, the fiscal repercussions on the affected State funds could significantly harm the disabled workers and their families who rely upon these benefits. The loss of federal funding could lead to the insolvency of several State funds used to benefit not just disabled workers, but also the dependents of those who lose their lives in workplace accidents. As an example, consider the effect of the reverse offset on the SIF. Currently, approximately \$59.5 million of payable benefits comes from the SIF. Of this, the State share is about \$34.7 million; the remainder comes from federal funding. Thus, due to the reverse offset, the State is not responsible for having to pay nearly \$25 million, or approximately forty percent of the otherwise payable benefits. Without the additional federal funding made available through the reverse offset, it would be nearly impossible for the SIF to meet the needs of injured and deceased workers and their families, including the public safety workers who are the intended beneficiaries of this bill.

Apart from jeopardizing New Jersey's reverse offset status, there are also practical considerations that limit the bill's impact on disabled workers. According to the Fiscal Estimate prepared for this bill by the Office of Legislative Services, due to the "interwoven offset rules set forth in current law[,] . . .

the bill will not raise the combined amount of benefits . . . for some targeted workers and only after many years for others." Under federal and State law, workers' compensation disability benefits are capped and are reduced by the amount of the accidental disability pension received by a public safety worker who experiences a workplace injury. This means that any increase in workers' compensation attributable to the bill would accrue only to the minority of disabled beneficiaries who have not already reached the cap. In most instances, the bill would have no impact on the compensation provided to a disabled beneficiary. Instead, the bill would simply shift some of the cost of providing the disability benefits from the State's accidental disability pension and onto the SIF, which is funded through a surcharge on workers' compensation insurance policyholders. In other words, the bill would shift onto the State's private sector employers the obligation to subsidize the State's pension funds without actually increasing the compensation of disabled public safety workers.

In light of the unintended consequences the State and its beneficiaries would face from the loss of the State's reverse offset status and the fact that many disabled public safety workers would not actually see an increase in their total compensation from the supplemental benefits provided by this bill, I am recommending amendments that will limit the supplemental benefit payments to the dependents of public safety workers killed in the line of duty. Unlike disability benefits, death benefits are not governed by the federal statutory provisions governing the reverse offset. As a result, expanding survivor benefits does not provide an avenue for the federal government to revoke the State's reverse offset status. Additionally, the recipients of death benefits stand to realize an immediate and substantial benefit from this

bill, unlike recipients of disability benefits who would not due to the pension offset required under current law.

Because I believe that we can accomplish a primary goal of this bill in assisting the survivors of public safety workers without jeopardizing the financial solvency of some of the State's most important funds, I herewith return Senate Bill No. 1967 (First Reprint) and recommend that it be amended as follows:

<u>Page 2, Title, Line 1:</u>	After "compensation" insert "death"
<u>Page 2, Section 1, Line 7:</u>	Delete "with the fiscal year 2020, commencing July 1,"
<u>Page 2, Section 1, Line 8:</u>	Delete "2019" and insert "on January 1, 2020"
<u>Page 2, Section 1, Line 8:</u>	After "and" insert "in"
<u>Page 2, Section 1, Line 8:</u>	Delete "a person who is"
<u>Page 2, Section 1, Line 9:</u>	Delete "a public safety worker, or"
<u>Page 2, Section 1, Line 9:</u>	Delete "the" and insert "a"
<u>Page 2, Section 1, Line 11:</u>	Delete "subsection (b) of R.S.34:15-12,"
<u>Page 2, Section 1, Line 11:</u>	After "R.S.34:15-13" delete ","
<u>Page 2, Section 1, Line 12:</u>	Delete "or R.S.34:15-95"
<u>Page 2, Section 1, Line 12:</u>	Delete "disability or"
<u>Page 2, Section 1, Line 17:</u>	Delete "person" and insert "dependent"
<u>Page 2, Section 1, Line 20:</u>	Delete "person" and insert "dependent"
<u>Page 2, Section 1, Line 25:</u>	Delete "2019" and insert "2020"
<u>Page 2, Section 1, Line 34:</u>	After "weekly" insert "death"
<u>Page 2, Section 1, Line 37:</u>	After "compensation" insert "death benefit"
<u>Page 2, Section 1, Line 37:</u>	Delete "person's" and insert "dependent's"
<u>Page 2, Section 1, Line 38:</u>	Delete "compensation" and insert "weekly death benefits"
<u>Page 2, Section 1, Line 38:</u>	After "workers' compensation" insert "death benefit"
<u>Page 2, Section 1, Line 39:</u>	Delete "injury or"

<u>Page 3, Section 1, Line 1:</u>	Delete "The actual amount of the supplemental benefits paid"
<u>Page 3, Section 1, Lines 2-10:</u>	Delete in their entirety
<u>Page 3, Section 1, Line 11:</u>	Delete "(2)"
<u>Page 3, Section 1, Line 12:</u>	Delete "individual" and insert "dependent"
<u>Page 3, Section 1, Line 12:</u>	Delete ", in cases not subject"
<u>Page 3, Section 1, Line 13:</u>	Delete "to the provisions of paragraph (1) of this subsection,"
<u>Page 3, Section 1, Line 14:</u>	Delete "individual's" and insert "dependent's"
<u>Page 3, Section 1, Line 15:</u>	Delete "(except"
<u>Page 3, Section 1, Line 16:</u>	Delete "for" and insert ", excluding any"
<u>Page 3, Section 1, Line 16:</u>	Delete "individual" and insert "dependent"
<u>Page 3, Section 1, Line 17:</u>	Delete "individual" and insert "dependent"
<u>Page 3, Section 1, Line 18:</u>	Delete "act)," and insert "act, or"
<u>Page 3, Section 1, Line 18:</u>	Delete ", or the employer's share of disability"
<u>Page 3, Section 1, Line 19:</u>	Delete "pension payments received from or on account of an employer"
<u>Page 3, Section 1, Line 20:</u>	Delete "(3)" and insert "(2)"
<u>Page 3, Section 1, Line 23:</u>	Delete "(4)" and insert "(3)"
<u>Page 3, Section 1, Line 23:</u>	Delete "an individual" and insert "a dependent"
<u>Page 3, Section 1, Line 25:</u>	Delete "individual" and insert "dependent"
<u>Page 3, Section 1, Line 32:</u>	After "compensation" insert "death benefits"
<u>Page 3, Section 1, Line 32:</u>	Delete "an individual" and insert "a dependent"
<u>Page 3, Section 1, Line 35:</u>	Delete "individual" and insert "dependent"
<u>Page 2, Section 2, Line 49:</u>	After "2." insert "In making the determination of the aggregate annual surcharge for the Second Injury Fund to be levied pursuant to paragraph (4) of subsection c. of R.S.34:15-94 for calendar year

2020, the Commissioner of Labor and Workforce Development shall include the anticipated additional amounts, including administrative costs, required for the payment of supplemental benefits which shall begin on January 1, 2020 pursuant to section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill). 3."

Respectfully,

/s/ Philip D. Murphy

Governor

[seal]

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

# Governor Murphy Takes Action on Legislation

06/17/2019

**TRENTON** – Today, Governor Phil Murphy signed the following bills into law:

**S150 (Singleton, Greenstein/Zwicker, Benson, Sumter)** - Concerns disclosure requirements by independent expenditure committees.

[Copy of Statement on S150](#)

**S393 w/GR (Madden, Singleton/DeAngelo, Murphy, Verrelli)** - Establishes Talent Network Program in DOLWD.

**S844 w/GR (Turner, Cruz-Perez/Sumter, Mukherji, Pintor Marin, Wimberly)** - Establishes a partial return to work TDI program.

**S1967 w/GR (Sweeney, Madden/Jasey, Taliaferro, Benson)** - Concerns certain workers' compensation supplemental benefits.





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## Newark, N.J.

# Governor Murphy Takes Action on Legislation

05/13/2019

**A809 (Andrzejczak, Houghtaling, Taliaferro, Mazzeo, Space/Van Drew, Cruz-Perez)** – Revises law concerning alternate members for farmers on State Agriculture Development Committee.

[Copy of Statement on A809](#)

**A5000 (Mosquera, Reynolds-Jackson, Wimberly/Singleton, Oroho, Addiego)** – Requires DCA to produce and maintain database and interactive map concerning residential properties under foreclosure; increases certain recording fees as funding mechanism.

[Copy of Statement on A5000](#)

**S362 (Rice/Sumter, Jasey, Reynolds-Jackson)** – Provides that deed restrictions on affordable housing units are not extinguished by foreclosure proceedings.

[Copy of Statement on S362](#)

**S1758 (Weinberg, Ruiz/Murphy, Benson, Zwicker)** – Codifies donated leave program for State employees in career, senior executive, and unclassified service.

[Copy of Statement on S1758](#)

**S1967 (Sweeney, Madden/Jasey, Taliaferro, Benson)** – Concerns certain workers' compensation supplemental benefits.

[Copy of Statement on S1967](#)

**S2475 (Sweeney, Pou/Coughlin, McKeon, DeCroce, Murphy)** – Prohibits application of fiduciary standard to insurance producers; specifies qualifications of persons providing affidavit of merit in lawsuits against insurance producers.

[Copy of Statement on S2475](#)

**S3240 (Singer, Scutari/Armato, Mukherji, Murphy, Kean, Calabrese, Thomson)** – “Charlie's Law”; requires pharmacy practice sites and hospice programs to furnish patients with information and products to safely dispose of unused prescription drugs and medications.

[Copy of Statement on S3240](#)

**S3369 (Scutari/Munoz, Webber, Holley)** – Prohibits all locally elected officials from receiving retroactive salary increases.

[Copy of Statement on S3369](#)

**S3375 (Ruiz, Greenstein/Carter, Chaparro, Vainieri Huttle)** – Establishes maternal health care pilot program to evaluate shared decision-making tool developed by DOH and used by hospitals providing maternity services, and by birthing centers.

[Copy of Statement on S3375](#)

**S3465 (Pou, Kean/Bramnick, Jimenez, Carter)** – Revises requirements for examination and license to practice mortuary science.

[Copy of Statement on S3465](#)

Governor Murphy absolute vetoed the following bill:

**S1246 (Rice, Cunningham/Sumter, Murphy, Downey)** – Requires NJTA to implement certain roadside maintenance safety policies.

[Copy of Statement on S1246](#)

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## Governor Phil Murphy

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