

SENATE BILL REPORT

SB 5137

As Reported by Senate Committee On:
Labor, Commerce & Tribal Affairs, February 15, 2021

Title: An act relating to suspending workers' compensation cost-of-living adjustments for fiscal year 2022, changing the basis of certain future adjustments to the consumer price index, and capping the rate of increase for future adjustments.

Brief Description: Suspending workers' compensation cost-of-living adjustments for fiscal year 2022, changing the basis of certain future adjustments to the consumer price index, and capping the rate of increase for future adjustments. [**Revised for 1st Substitute:** Suspending workers' compensation cost-of-living adjustments for fiscal year 2022.]

Sponsors: Senators King, Dozier, Gildon, Honeyford, Muzzall, Short and Wagoner.

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/21/21, 2/15/21 [DPS, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Eliminates the workers' compensation time-loss and maximum benefits for time-loss and pensions cost-of-living adjustment from July 1, 2021 to June 30, 2022.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Majority Report: That Substitute Senate Bill No. 5137 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; King, Ranking Member; Braun, Honeyford and Schoesler.

Minority Report: Do not pass.

Signed by Senator Stanford, Vice Chair, Commerce & Tribal Affairs.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senators Conway, Vice Chair, Labor; Robinson and Saldaña.

Staff: Susan Jones (786-7404)

Background: Under the state's industrial insurance laws, employers must insure through the State Fund administered by the Department of Labor and Industries (L&I) or, if qualified, may self-insure. Workers temporarily unable to work receive time-loss benefits. A worker who suffers specified catastrophic injuries or other condition permanently incapacitating the worker from performing any work at any gainful occupation is entitled to permanent total disability, also referred to as pension benefits.

The amount of the time-loss or pension benefits is a percentage of the worker's wages, depending on the worker's family status and number of dependents, and subject to minimum and maximum amounts. Certain survivors are also entitled to benefits.

Workers receiving time-loss, and workers receiving a pension and their survivors receive a cost-of-living adjustment (COLA) on July 1st of each year, except for time-loss for injuries after July 1, 1971, where the COLA is not made until the second July 1st following the date of the injury. The COLA is based on the average monthly wage (AMW), and the formula depends on whether the worker began receiving compensation before, on, or after July 1, 1971. There is a maximum monthly payment for time loss and pensions that may not exceed a certain percentage of the AMW. The percentage is 120 percent of the AMW. Average monthly wage is the average annual wage, determined by the Employment Security Department in June of each year, divided by 12.

The Supplemental Pension Fund Assessments cover increases in claims costs due to COLAs. Assessments for the Supplemental Pension Fund are paid equally by the worker and the employer.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): There are no COLAs for maximum benefits for time-loss and pensions and time-loss COLA from July 1, 2021 to June 30, 2022.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & TRIBAL AFFAIRS COMMITTEE (First Substitute):

- Maintains maximum monthly time loss payments based on the average monthly wage, instead of the consumer price index.
- Removes the 3 percent cap on future adjustments.
- Amends the title.

Appropriation: None.

Fiscal Note: Requested on January 13, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: This is an attempt to help employers by reducing the workers' compensation premiums. Employers have been going through a challenging time with COVID. Businesses are having to layoff and furlough people. Washington State has the highest workers' compensation disability benefits. The COLA increases automatically every year. In 2020, the increase was 6.7 percent. The COLA increase is estimated by L&I to be 7.4 percent in 2021, which is in contrast to what is happening in the world around us.

This is a unique situation. The average annual wage (AAW) is the basis for funding the supplemental pension fund and the COLAs. It is paid by employers and employees. During a pandemic, the AAW goes up because a lot of the lost jobs are the lower paid jobs. This causes the AAW to artificially increase in times of greater job loss. The increases are inconsistent with what is happening in the labor market. The consumer price index (CPI) is more fair. Minimum wage uses the CPI. The CPI increase for 2020 would have been 1.4 percent. Let us take a break in 2021 after two huge increases and smooth the increase. Averaging over three years, it is still over a 4 percent increase. This would be more fair and reasonable.

The supplemental pension fund pays out about \$700 million a year. It has grown to about an \$18 billion unfunded liability in the workers' compensation system. L&I might have to take loans from other workers' compensation funds to pay these increases. You are hearing about a double digit rate increase to cover the liability. This bill would slow the growth of future liability.

CON: We oppose this bill. For decades, we have tied COLAs to wage growth. When workers are on time loss or pension because they are permanently or partially disabled, they give up a lot, including 24 to 40 percent of wage, retirement plans, pay increase from advancing in a career, and good health care. Tying COLAs to CPI does not compensate for lost wage earning capacity. They need the increase to support their families. Most states use the wage increase for COLAs.

Washington is a high benefit, low cost state for workers' compensation. The increase amounts to \$0.01 an hour and may be split with employees. Washington State is the only state where workers contribute to the workers' compensation system.

Examples were given of various industries and the nature of the injuries. We have fought for high safety standards. When an injury occurs, it is the result of the difficult and

physically demanding nature of the work. If we fail to support injured workers, we will have to assist them in other ways. We should find other ways to help employers without harming disabled workers.

OTHER: In 2011, during the Great Recession, there was a statutory one year freeze in COLAs but not a change in method. This was to reduce the impact on the supplemental pension fund and reduce the fund's liability.

Persons Testifying: PRO: Senator Curtis King, Prime Sponsor; Kris Tefft, Washington Self Insurers Association; Bob Battles, Association of Washington Business.

CON: Brian Wright, Washington State Association for Justice; Joe Kendo, Washington State Labor Council, AFL-CIO; Erin Frasier, Washington State Building and Construction Trades Council; Marilyn Kennedy, Cement Masons local 528; Brian Wright, Washington State Association for Justice; AJ Johnson, Washington State Council of Fire Fighters; Jason Chan, International Association of Machinists District 751; Samantha Grad, United Food and Commercial Workers, Local 21.

OTHER: Vickie Kennedy, Labor & Industries; Tammy Fellin, Labor & Industries.

Persons Signed In To Testify But Not Testifying: No one.