

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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**BILL:** PCS/CS/SB 1412 (617640)

**INTRODUCER:** Appropriations Subcommittee on General Government; Judiciary Committee and Senator Simmons

**SUBJECT:** Office of the Judges of Compensation Claims

**DATE:** February 12, 2018      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1412 requires the salary of a judge of compensation claims to be equal to the salary of a county court judge, which is \$151,822. Currently, a judge of compensation claims is paid \$124,564.20 annually, \$27,257.80 less than a county court judge is paid. The bill sets the salary of the Deputy Chief Judge of Compensation Claims at \$1,000 more than the salary of a judge of compensation claims.

The cost to implement this bill is approximately \$1.2 million annually from the Workers' Compensation Administration Trust Fund. The bill appropriates \$1,159,440 in recurring funds from the Operating Trust Fund to the Division of Administrative Hearings (costs to administer the operations of the Office of the Judges of Compensation Claims are funded by a transfer of funds from the Workers' Compensation Administration Trust Fund to this Operating Trust Fund) and authorizes associated salary rate of 870,392 to implement the provisions in the bill.

The bill takes effect July 1, 2018.

## II. Present Situation:

### Office of the Judges of Compensation Claims

The judges of compensation claims have exclusive jurisdiction over workers' compensation cases.<sup>1</sup> When an employer disputes an employee's claim for workers' compensation, the employee may initiate litigation of the matter by filing a petition with the Office of the Judges of Compensation Claims (OJCC). Injured employees may file a petition for benefits with the OJCC for any benefit that is ripe, due, and owing.<sup>2</sup> Within 14 days of receipt of the petition, the carrier is required to either pay the requested benefits or file a response to the petition.<sup>3</sup> Even after a petition is filed, a workers' compensation dispute may be resolved through mediation<sup>4</sup> or arbitration.<sup>5</sup> Forty days after the petition for benefits has been filed, the OJCC will notify the parties that a mediation conference has been scheduled. The mediation will take place within 130 days after the filing of the petition.<sup>6</sup> If mediation is unsuccessful in resolving the claim, a judge of compensation claims may hold a hearing to resolve the matter.<sup>7</sup> A final hearing must be held within 90 days of the mediation. The overall time limit for dispute resolution from the date of the petition for benefits to the issuance of a final order is 240 days. Upon the conclusion of the hearing, the judge's order may be appealed to the First District Court of Appeal, which has sole appellate jurisdiction.<sup>8</sup>

The OJCC is comprised of 31 judges of compensation claims positions and headed by the Deputy Chief Judge, who reports to the director and Chief Judge of the Division of Administrative Hearings (DOAH). The DOAH Chief Judge acts as the OJCC's "agency head for all purposes."<sup>9</sup>

Judges of compensation claims are nominated by a statewide nominating commission and appointed by the Governor to a four-year term. The Governor may reappoint a judge to successive four-year terms and may remove a judge for cause during any term.<sup>10</sup>

Judges of compensation claims are paid \$124,564.20 annually, except the Deputy Chief Judge is paid \$127,422.12 annually.<sup>11</sup>

These salaries are roughly equivalent to those of administrative law judges (ALJs), who preside at the DOAH. The standard ALJ salary is \$123,070 per year, while Senior ALJs are paid

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<sup>1</sup> See *Sanders v. City of Orlando*, 997 So. 2d 1089, 1094 (Fla. 2008).

<sup>2</sup> Section 440.192(1), F.S.

<sup>3</sup> Section 440.192(8), F.S.

<sup>4</sup> See s. 440.25, F.S.

<sup>5</sup> See s. 440.1926, F.S.

<sup>6</sup> Section 440.25, F.S.

<sup>7</sup> See s. 440.25(4), F.S.

<sup>8</sup> Section 440.271, F.S.

<sup>9</sup> Section 440.45(1)(a), F.S. The DOAH and the OJCC exist within the Department of Management Services, but the department may not direct DOAH or the OJCC in any way. Instead the department must "provide administrative support and service to the office to the extent requested by the director of the Division of Administrative Hearings." Section 440.45(1)(a), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Div. of Admin. Hearings, *Analysis of Senate Bill 1412* (Jan. 4, 2018) (on file with the Senate Committee on Judiciary).

\$124,320 per year, and the Deputy Chief ALJ is paid \$125,820 per year. The Chief Judge determines these salaries, except for his own, which is \$131,409.36 and was set by the Florida Cabinet upon his hiring.<sup>12</sup>

Until January 1, 1994, the salary of the judges of compensation claims was linked to the salary of Circuit Court judges, who are now paid \$160,688.04 annually.<sup>13</sup> But since 1994, the salary of judges of compensation claims has increased only when the Legislature has appropriated general state-employee salary increases. The salaries and other expenses of the OJCC are paid from the Workers' Compensation Administration Trust Fund.<sup>14</sup>

### **Workers' Compensation Administration Trust Fund**

Section 440.50, F.S., creates the Workers' Compensation Administration Trust Fund. The revenue sources for this fund are fees, licenses and taxes as provided by ch. 440, F.S., including an assessment paid by carriers writing workers' compensation insurance in the state and self-insurers. This fund pays for expenses related to the administration of ch. 440, F.S. The fund is administered by the Division of Workers' Compensation within the Department of Financial Services.

### **III. Effect of Proposed Changes:**

The bill requires a judge of compensation claims be paid "a salary equal to that of a county court judge," which is currently \$27,257.80 higher than the salary of a judge of compensation claims. County court judges are currently paid \$151,822 per year. The salary of the Deputy Chief Judge of Compensation Claims, however, is set by the bill at \$1,000 more than that of a judge of compensation claims. Accordingly, if the salary of the county court judges rises or falls, so will that of the judges of compensation claims.

The bill does not appear to affect the salary of the Chief Judge of the DOAH. Though the Chief Judge serves as the "agency head" of the OJCC, he is not listed as a judge of compensation claims on the OJCC's website, nor does the statutory description of his position include service as a judge of compensation claims.<sup>15</sup> Under the bill, the salary of the current DOAH Chief Judge will be approximately \$21,413 less than that of the Deputy Chief Judge of Compensation Claims.

The bill also appropriates \$1,159,440 in recurring funds from the Operating Trust Fund to the DOAH and authorizes associated salary rate of 870,392 to implement the provisions in the act related to the OJCC salary increase.

The bill takes effect July 1, 2018.

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<sup>12</sup> Conversation with Cindy Ardoin, Budget Officer, Florida Division of Administrative Hearings (Jan. 22, 2018).

<sup>13</sup> Ch. 2017-88, s. 17, Laws of Fla.

<sup>14</sup> Div. of Admin. Hearings, *Analysis of Senate Bill 1412* (Jan. 4, 2018) (on file with the Senate Committee on Judiciary).

<sup>15</sup> Office of the Judges of Compensation Claims, *Judges of Compensation Claims*, <https://www.jcc.state.fl.us/JCC/judges/> (last visited Jan. 22, 2018).

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The Workers' Compensation Administration Trust Fund's main revenue source is an assessment on Florida employers. The Chief Financial Officer (CFO) sets the assessment rate for each year. As of January 1, 2018, the assessment rate is set at 0.97 percent. Although there are funds available in the trust fund to support the bill, the assessment percentage is adjusted annually by the CFO to ensure the trust fund remains solvent.

**C. Government Sector Impact:**

The bill requires judges of compensation claims be paid a salary equal to that of a county court judge. The Deputy Chief Judge is to be paid \$1,000 more than that of a judge of compensation claims. Currently, the OJCC is comprised of 31 judges of compensation claims positions and a Deputy Chief Judge. The bill effectively increases the salary of each judge of compensation claims by \$27,257.80 and by \$25,399.88 for the Deputy Chief Judge of the OJCC. Implementation of the bill is expected to increase salary and benefits expenditures from the Workers' Compensation Administration Trust Fund by \$1,159,440 annually. Funds are appropriated from the Operating Trust Fund to the DOAH.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 440.45 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on General Government on February 8, 2018:**

The committee substitute provides an appropriation to the Division of Administrative Hearings to implement the bill.

**CS by Judiciary on January 25, 2018:**

The committee substitute removed the provision of the bill that would have increased the initial term of a judge of compensation claims to six years, which is two more than under current law.

- B. **Amendments:**

None.