

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1412

INTRODUCER: Senator Simmons

SUBJECT: Office of the Judges of Compensation Claims

DATE: January 24, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Pre-meeting
2.			AGG	
3.			AP	

I. Summary:

SB 1412 increases the initial term of judges of compensation claims to 6 years, which is 2 more than under current law, and provides that they “shall receive a salary equal to that of a county court judge.” However, the bill sets the Deputy Chief Judge of Compensation Claims’ annual salary at \$1,000 more than that of a county court judge. The salary of a county court judge is currently \$151,822 per year, which is \$27,257.80 more than the salary 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.

II. Present Situation:

The judges of compensation claims have exclusive jurisdiction over workers’ compensation cases.¹ 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). Even after a petition is filed, a workers’ compensation dispute may be resolved through mediation² or arbitration.³ But, when necessary, a judge of compensation claims may hold a hearing to resolve the matter.⁴ 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.⁵

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

² See s. 440.25, F.S.

³ See s. 440.1926, F.S.

⁴ See s. 440.25(4), F.S.

⁵ Section 440.271, F.S.

The OJCC is 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."⁶

Judges of compensation claims are nominated by a statewide nominating commission and appointed by the Governor to a 4-year term. The Governor may re-appoint a judge to successive 4-year terms and may remove a judge for cause during any term.⁷

Judges of compensation claims are paid \$124,564.20 per year, except the Deputy Chief Judge, who is paid \$127,422.12 per year.⁸

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 \$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.⁹

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.¹⁰ 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.¹¹

III. Effect of Proposed Changes:

The bill increases the initial term of judges of compensation claims to 6 years, which is 2 more than under current law, and states that they shall receive a salary "equal to that of a county court judge." However, the bill sets the Deputy Chief Judge of Compensation Claims' annual salary at \$1,000 more than that of a county court judge. The salary of a county court judge is currently \$151,822 per year, which is \$27,257.80 more than the salary 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, including the Deputy Chief Judge.

The bill does not appear to affect the salary of the Chief Judge of the Division of Administrative Hearings. 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 JCC.¹² Therefore, under the bill, the salary of the current DOAH

⁶ Section 440.45(1)(a), F.S. 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.

⁷ *Id.*

⁸ Div. of Admin. Hearings, *Analysis of Senate Bill 1412* (Jan. 4, 2018) (on file with the Senate Committee on Judiciary).

⁹ Conversation with Cindy Ardoin, Budget Officer, Florida Division of Administrative Hearings (Jan. 22, 2018).

¹⁰ Ch. 2017-88, s. 17, Laws of Fla.

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

¹² Office of the Judges of Compensation Claims, *Judges of Compensation Claims*, <https://www.jcc.state.fl.us/JCC/judges/> (last visited Jan. 22, 2018).

Chief Judge will be approximately \$7,500 less than that of the Deputy Chief Judge of Compensation Claims.

The bill takes effect July 1, 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.

D. Other Constitutional Issues:

Terms of Service of Officers

Art. III, s. 13, of the Florida Constitution provides:

Term of office.—No office shall be created the term of which shall exceed four years except as provided herein.

Although Florida law is silent on the issue of whether judges of compensation claims are public officers, the Attorney General's Office has classified as officers persons who preside over administrative hearings, such as special masters sitting for either value adjustment board hearings or probable cause determinations on the impoundment of vehicles used in crimes.¹³

In determining whether to classify members of the State Board of Bar Examiners as officers, the Florida Supreme Court focused on the nature of the functions to be served by the person employed:

That if the duty, charge and trust to be performed is conferred by public authority, for public purposes of important character, and are not transient, occasional, or incidental, but durable, permanent and continuous, then it is a public office, and the person having power to perform it is a public officer.¹⁴

¹³ Office of the Attorney General, *Dual Officeholding, An Informational Pamphlet on Florida's Dual Officeholding Prohibition*, http://myfloridalegal.com/_85256CC5006DFCC3.nsf/0/92E25864D475966F85256CC6007B96CB?Open&Highlight=0.dual.office.holding (last visited Apr. 14, 2017).

¹⁴ *State ex rel. Clyatt v. Hocker*, 22 So. 721, 722-723 (Fla. 1891).

In 1928, the Florida Supreme Court additionally stated as relevant to a determination of whether someone serves the state as an employee or an officer,

An employment does not authorize the exercise in one's own right of any sovereign power or any prescribed independent authority of a governmental nature; and this constitutes perhaps the most decisive difference between an employment and an office, and between an employee and an officer.¹⁵

The bill requires the appointment of a judges of compensation claims to 6-year terms. To the extent that a judge of compensation claims is an officer, the provisions of the bill requiring a 6-year initial term may be challenged as unconstitutional. Further, if the 6-year term is unconstitutional, then an order entered by a judge serving such a term may be challenged as invalid.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According the Division of Administrative Hearings, increasing the salaries of the judges of compensation claims will increase expenditures from the Workers' Compensation Administration Trust Fund by \$539,742 for each of the next 3 fiscal years.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 440.45 of the Florida Statutes.

¹⁵ *Dade County v. State*, 116 So. 72, 76 (Fla. 1928).

¹⁶ Div. of Admin. Hearings, *Analysis of Senate Bill 1412* (Jan. 4, 2018) (on file with the Senate Committee on Judiciary).

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
