DEPARTMENT OF CONSUMER & BUSINESS SERVICES
Workers' Compensation Division

MEMORANDUM

February 9, 2017

To: Rep. Paul Holvey, Chair
House Business and Labor Committee

From: Lou Savage, Administrator

Subject: Follow up information - HB 2337

At your February 6th hearing on HB 2337, several questions were asked about permanent total disability benefits. We answered the questions below and also included a table illustrating the benefits under current law and the proposal under this bill.

Question: Why is the benefit range set at 33% to 133% of the State Average Weekly Wage?

The criteria to be declared permanently and totally disabled is that a worker is permanently incapacitated from regularly performing work at a gainful and suitable occupation. The current minimum benefit is extremely low (90% of the worker's wages or $50, whichever is less). The division chose a 33% minimum benefit as a modest proposal to ensure workers who are permanently unable to work because of their injury are reasonably compensated.

The upper limit is specifically set at 133% to be aligned with the maximum for temporary total disability benefits (ORS 656.210). The bill also ties the minimum and upper limits to the State Average Weekly Wage, which is determined by the Employment Department (ORS 656.211). This makes the ranges consistent with other types of benefits in workers' compensation law.

Question: How are benefits adjusted for existing permanent total disability recipients?

The bill applies to new claims on or after the effective date of the bill (Jan. 1, 2018). Under current law, insurers pay for benefits according to the law in effect at the time of injury, called the "statutory benefit." However, ORS 656.506(7) establishes the Retroactive Program to provide a process to increase benefit payments to workers or beneficiaries receiving permanent total disability, fatality, and certain temporary total disability benefits which are lower than currently being paid for similar injuries.

Each year the director determines the amount of adjustment, generally reflecting the change in the State Average Weekly Wage. The insurer or self insured employer pays the benefit determined by the director and requests reimbursement for the difference between the adjusted amount and the statutory benefit. The reimbursements are paid from the Workers' Benefit Fund. HB 2337 does not change the Retroactive Program or the reimbursement process. The Workers' Benefit Fund is expected to accommodate the increased reimbursements under the bill.

Permanent Total Disability Benefit Calculations
During my testimony, I provided some examples of permanent total disability benefit calculations. To assist the committee in understanding the examples, we prepared the summary below.

Permanent total disability benefits are calculated based on 66 2/3 percent of the worker's weekly wages, subject to a range set in statute. Under current law, the lower benefit range is tied to the worker's wages and the upper range to the State Average Weekly Wage.

HB 2337 proposes to have both the minimum and maximum benefit tied only to the State Average Weekly Wage. The table below shows the current law and proposed changes in HB 2337. For illustration purposes, the benefit calculation using the current State Average Weekly Wage ($974.20) is included, ***noted in blue italics in the table***.

	Current Law		**HB 2337**	
Minimum benefit (weekly)	90% of the worker's wage, or $50, whichever is less	***varies***	33% of the State Average Weekly Wage	***$321.49***
Maximum benefit (weekly)	100% of the State Average Weekly Wage	***$974.20***	133% of the State Average Weekly Wage	***$1,295.69***