

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 2409 HB	<b>Title:</b> Industrial insur./employers
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## Estimated Cash Receipts

Agency Name	2019-21		2021-23		2023-25	
	GF- State	Total	GF- State	Total	GF- State	Total
Office of Attorney General	0	121,000	0	242,000	0	242,000
Department of Labor and Industries	Non-zero but indeterminate cost and/or savings. Please see discussion.					
<b>Total \$</b>	<b>0</b>	<b>121,000</b>	<b>0</b>	<b>242,000</b>	<b>0</b>	<b>242,000</b>

## Estimated Operating Expenditures

Agency Name	2019-21			2021-23			2023-25		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Office of Attorney General	.5	0	121,000	.9	0	242,000	.9	0	242,000
Board of Industrial Insurance Appeals	Fiscal note not available								
Department of Labor and Industries	3.9	0	1,551,000	4.7	0	1,474,000	4.3	0	1,208,000
Department of Labor and Industries	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.								
<b>Total \$</b>	<b>4.4</b>	<b>0</b>	<b>1,672,000</b>	<b>5.6</b>	<b>0</b>	<b>1,716,000</b>	<b>5.2</b>	<b>0</b>	<b>1,450,000</b>

## Estimated Capital Budget Expenditures

Agency Name	2019-21			2021-23			2023-25		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Office of Attorney General	.0	0	0	.0	0	0	.0	0	0
Board of Industrial Insurance Appeals	Fiscal note not available								
Department of Labor and Industries	.0	0	0	.0	0	0	.0	0	0
<b>Total \$</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>

## Estimated Capital Budget Breakout

<b>Prepared by:</b> Anna Minor, OFM	<b>Phone:</b> (360) 902-0541	<b>Date Published:</b> Preliminary 1/29/2020
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# Individual State Agency Fiscal Note

<b>Bill Number:</b> 2409 HB	<b>Title:</b> Industrial insur./employers	<b>Agency:</b> 100-Office of Attorney General
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## Part I: Estimates

No Fiscal Impact

### Estimated Cash Receipts to:

ACCOUNT	FY 2020	FY 2021	2019-21	2021-23	2023-25
Legal Services Revolving Account-State 405-1		121,000	121,000	242,000	242,000
<b>Total \$</b>		121,000	121,000	242,000	242,000

### Estimated Operating Expenditures from:

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	0.0	0.9	0.5	0.9	0.9
<b>Account</b>					
Legal Services Revolving Account-State 405-1	0	121,000	121,000	242,000	242,000
<b>Total \$</b>	0	121,000	121,000	242,000	242,000

### Estimated Capital Budget Impact:

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Lily Smith	Phone: 360-786-7175	Date: 01/14/2020
Agency Preparation: Stacia Hollar	Phone: (360) 664-0865	Date: 01/21/2020
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 01/21/2020
OFM Review: Cheri Keller	Phone: 360-902-0563	Date: 01/22/2020

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.*

Section 1 amends RCW 51.48.010 to increase employer maximum penalties for worker injury claims.

Section 2 amends RCW 51.48.017 to address employer penalties for repeat violations.

Sections 3, 4, and 5 amend RCW 51.48.030, .040, and .060 to increase record keeping and reporting violation penalties.

Section 6 amends RCW 51.48.080 regarding violations of this title and increase penalties.

Section 7 adds a new section to RCW 51.48 addressing adjustment of minimum penalties.

Section 8 adds a new section to RCW 51.48 establishing and detailing an employer's fiduciary duties to workers. The Department of Labor and Industries (L&I) is authorized to investigate alleged violations of this section.

Section 9 adds a new section to RCW 51.14 providing that self-insured employers may either administer their own claims or have them administered by a third party. L&I must license administrators under either scenario and the agency shall adopt rules to administer the section.

### II. B - Cash receipts Impact

*Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.*

Cash receipts are assumed to equal the Legal Service Revolving Account (LSRA) cost estimates. These will be billed through the revolving account to the client agency.

The client agency is Labor & Industries (L&I). The AGO will bill all clients for legal services rendered.

These cash receipts represent the AGO's authority to bill and are not a direct appropriation to the AGO. The direct appropriation is reflected in the client agencies' fiscal note. Appropriation authority is necessary in the AGO budget.

### II. C - Expenditures

*Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.*

Assumptions for the AGO Labor & Industries (LNI) Legal Services for Labor & Industries (L&I):

1. This bill is assumed effective 90 days after the end of the 2020 legislative session.
2. The AGO will bill L&I for legal services based on the enactment of this bill.
3. The AGO typically uses 2.0 Assistant Attorney General (AAG) and 1.0 Paralegal (PL) for Self-insurance cases.

4. This bill calls for the regulation of Third Party Administrators for the first time in Washington. This will entail substantial rulemaking and potentially involve litigation challenges to the new rules.

5. Penalties are one of the most frequent issues that generate the need for legal services because L&I is more actively involved and less likely to be deferential to either party when penalties have been issued.

6. This bill will increase the penalty amount charged to self-insured employers under certain circumstances. It may also increase the frequency of penalties being assessed. Both factors will likely to lead to an increase in litigation.

7. This bill is assumed to generate substantial rulemaking, litigation involving the rulemaking, as well as more penalty appeals, and the AGO estimates a long-term 20% increase in workload for AAGs and PLs equating to a need for 0.4 AAG and 0.2 PL. AAG and PLs will provide additional legal services for litigation, to include mediation, discovery, advice, and the presentation of the L&I's case at hearing.

8. Total workload impact beginning in FY 2021: 0.4 AAG, 0.2 PL and 0.2 Legal Assistant at a cost of \$121,000 per FY.

Note: Agency administration support FTEs are included in the tables below, using a Management Analyst 5 as a representative classification.

### Part III: Expenditure Detail

#### III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2020	FY 2021	2019-21	2021-23	2023-25
405-1	Legal Services Revolving Account	State	0	121,000	121,000	242,000	242,000
<b>Total \$</b>			0	121,000	121,000	242,000	242,000

#### III. B - Expenditures by Object Or Purpose

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years		0.9	0.5	0.9	0.9
A-Salaries and Wages		77,000	77,000	154,000	154,000
B-Employee Benefits		27,000	27,000	54,000	54,000
E-Goods and Other Services		15,000	15,000	30,000	30,000
G-Travel		1,000	1,000	2,000	2,000
J-Capital Outlays		1,000	1,000	2,000	2,000
<b>Total \$</b>	0	121,000	121,000	242,000	242,000

#### III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2020	FY 2021	2019-21	2021-23	2023-25
Assistant Attorney General	108,156		0.4	0.2	0.4	0.4
Legal Assistant 3	54,108		0.2	0.1	0.2	0.2
Management Analyst 5	88,644		0.1	0.1	0.1	0.1
Paralegal 2	67,248		0.2	0.1	0.2	0.2
<b>Total FTEs</b>			0.9	0.5	0.9	0.9

#### III. D - Expenditures By Program (optional)

Program	FY 2020	FY 2021	2019-21	2021-23	2023-25
Labor & Industries Division (LNI)		121,000	121,000	242,000	242,000
<b>Total \$</b>		121,000	121,000	242,000	242,000

## **Part IV: Capital Budget Impact**

### **IV. A - Capital Budget Expenditures**

NONE

### **IV. B - Expenditures by Object Or Purpose**

NONE

### **IV. C - Capital Budget Breakout**

*Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods*

NONE

## **Part V: New Rule Making Required**

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 2409 HB	<b>Title:</b> Industrial insur./employers	<b>Agency:</b> 235-Department of Labor and Industries
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## Part I: Estimates

**No Fiscal Impact**

### Estimated Cash Receipts to:

**Non-zero but indeterminate cost and/or savings. Please see discussion.**

### Estimated Operating Expenditures from:

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	0.3	7.5	3.9	4.7	4.3
<b>Account</b>					
Accident Account-State 608-1	25,000	751,000	776,000	737,000	604,000
Medical Aid Account-State 609-1	25,000	750,000	775,000	737,000	604,000
<b>Total \$</b>	50,000	1,501,000	1,551,000	1,474,000	1,208,000

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

### Estimated Capital Budget Impact:

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Lily Smith	Phone: 360-786-7175	Date: 01/14/2020
Agency Preparation: Jenifer Colley	Phone: (360) 902-6983	Date: 01/27/2020
Agency Approval: Trent Howard	Phone: 360-902-6698	Date: 01/27/2020
OFM Review: Anna Minor	Phone: (360) 902-0541	Date: 01/29/2020

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

See attached

### II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

See attached

### II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

See attached.

## Part III: Expenditure Detail

### III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2020	FY 2021	2019-21	2021-23	2023-25
608-1	Accident Account	State	25,000	751,000	776,000	737,000	604,000
609-1	Medical Aid Account	State	25,000	750,000	775,000	737,000	604,000
<b>Total \$</b>			<b>50,000</b>	<b>1,501,000</b>	<b>1,551,000</b>	<b>1,474,000</b>	<b>1,208,000</b>

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

### III. B - Expenditures by Object Or Purpose

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	0.3	7.5	3.9	4.7	4.3
A-Salaries and Wages	23,000	619,000	642,000	666,000	596,000
B-Employee Benefits	7,000	216,000	223,000	249,000	224,000
C-Professional Service Contracts		316,000	316,000	158,000	
E-Goods and Other Services	10,000	285,000	295,000	395,000	382,000
G-Travel		5,000	5,000	6,000	6,000
J-Capital Outlays	10,000	60,000	70,000		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
<b>Total \$</b>	<b>50,000</b>	<b>1,501,000</b>	<b>1,551,000</b>	<b>1,474,000</b>	<b>1,208,000</b>

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.



**III. C - Operating FTE Detail:** *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

<b>Job Classification</b>	<b>Salary</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>2019-21</b>	<b>2021-23</b>	<b>2023-25</b>
Fiscal Analyst 5	69,265		0.5	0.3	0.3	0.3
IT Business Analyst - Senior Specialist	106,827		1.0	0.5		
IT Project Management - Senior/Specialist	112,179		1.0	0.5		
WMS1	89,413	0.3	1.0	0.7	0.4	
Workers' Compensation Adjudicator 4	69,265		3.0	1.5	3.0	3.0
Workers' Compensation Adjudicator 5	74,605		1.0	0.5	1.0	1.0
<b>Total FTEs</b>		0.3	7.5	3.9	4.7	4.3

**III. D - Expenditures By Program (optional)**

NONE

**Part IV: Capital Budget Impact**

**IV. A - Capital Budget Expenditures**

NONE

**IV. B - Expenditures by Object Or Purpose**

NONE

**IV. C - Capital Budget Breakout**

*Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods*

NONE

None

**Part V: New Rule Making Required**

*Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.*

See attached

## **Part II: Explanation**

This bill:

- Adds new sections and amends existing law to increase several penalties that are assessed by the Department of Labor and Industries (L&I) under RCW 51.48.010, 51.48.040, and 51.48.080.
- It requires L&I to investigate when an employer violates its fiduciary duty to a worker. It requires L&I to adopt rules that define criteria for “good faith” and “fair dealing”.

### **II. A – Brief Description of What the Measure Does that Has Fiscal Impact**

#### **Section 1**

RCW 51.48.010 allows the department to assess a penalty to employers that fail to open an L&I account before operating with covered workers. This bill amends existing law to increase the maximum penalty from \$500 to \$1,700 or a sum double the amount of premiums incurred prior to securing an L&I account.

#### **Section 2**

Increases employer penalties for unreasonable delay of benefits from \$500, or 25 percent of the amount due, to \$1,700 or 25 percent, whichever is higher, for each act of unreasonable delay.

#### **Section 3**

RCW 51.48.030 allows the department to assess a penalty of \$250 or 200 percent of the quarterly tax for each such offense, whichever is greater, to employers that fail to keep and provide records during the audit process. This bill amends existing law to increase the maximum penalty to \$850 or 200 percent of the quarterly tax for each offense, whichever is greater.

#### **Section 4**

Increases employer penalties for refusal to submit books, records, payroll to L&I from a maximum of \$250 for each offense to \$850 per offense.

### **Section 5**

Increases physician or licensed advanced registered nurse practitioner civil penalties for failure to file reports within prescribed reporting periods from \$250 to \$850.

### **Section 6**

Expands authority to levy rule violations to include statutory violations as well and increases the penalty amount from \$500 to \$1700.

### **Section 7**

Applies a cost of living adjustment (COLA) to penalties covered by chapter 51.48 RCW, effective July 1, every year by the percentage change in the average monthly wage in the previous year.

### **Section 8**

- (1) Establishes that employers and their representatives have a duty to act in good faith with workers.
- (2) Establishes that persuading a worker to accept less than they are entitled to in compensation (wage replacement) or Permanent Partial Disability (PPD) or induces or coerces a worker to return to work beyond the limitations given by their medical provider, is failing to act in good faith.
- (3) Requires the department to investigate violations of this section when we receive a written request or on our own merit. Requires employers or representatives to respond in writing regarding the complaint within 15 working days of the department's request. Requires L&I to issue an order determine whether a violation has occurred with 30 days of receiving the complaint. Establishes a penalty of 1-10 times the average weekly wage at the time of the order, for the benefit of the worker.

### **Section 9**

- (1) Self-insured employers may elect to have their claims administered by a third party or they may elect to self-administer their claims. Regardless of which method of claims administration chosen by the self-insured employers, persons, and businesses who are given the responsibility of administering the claims of workers shall be licensed by the

department.

(2) The department shall adopt rules to administer this section.

## **II. B – Cash Receipt Impact**

L&I cannot determine the number of penalties that will be assessed as a result of this bill and the cash receipts are indeterminate.

## **II. C – Expenditures**

This proposed bill increases expenditures to the Accident Account, 608, and the Medical Aid Account, 609. The following assumptions were used to estimate the resources requested to implement this bill.

### **Staffing**

The expenditure calculations in this fiscal note includes the compensation and benefit changes approved in the 19-21 Biennial Budget.

3.0 FTE, Workers' Compensation Adjudicator 4s (WCA4), permanent. Duties include training, testing, and licensing approximately an additional 600 individuals and 100 businesses.

- There are approximately 350 individuals and business are licensed by L&I.
  - Until recent rule changes in July 2019, only one certified claims administrator was required at each location where claims are managed.
  - The new rule required that all out-of-state claim managers be certified, which was a limited number of the over-all claim managers.
  - The proposed law requires all claim managers (in-state and out-of-state) to be licensed (certified).
  - Many Third Party Administrators handle more than one employer account, some only one
  - L&I estimates, on average, there will now be at least two for each site (350 x 2 = 700).
  - The Self-Insurance program currently has 3.0 FTEs doing this work.

- Doubling the amount of claims managers needing to be licensed will require 6.0 FTE, or 3.0 additional FTEs
  - L&I also estimates periodic updates, training activities, communications, and tracking requirements will double.

1.0 FTE, Workers' Compensation Adjudicator 5, permanent. Duties include reviewing, adjudicating and issuing orders of penalty requests.

- From 2016 – 2019, there were 1,891 penalties adjudicated (average of 472 per year). L&I currently has two Penalty Adjudicators. One Penalty Adjudicator processes approximately 236 penalties per year. L&I anticipates an increase of 1.5 times the number of current penalties processed due to the increased penalty amount structure ( $472 \times 1.5 = 708$ ) and increase of 236 penalties per year.

1.0 FTE, WMS1, project from April 1, 2020 to March 31, 2022. Duties include managing the implementation of this bill including training, licensing, and rule making.

Section 8 of this bill creates a new violation requiring investigations. Additional Investigator 2s will be needed but at this time L&I has no way to estimate the increase in investigations.

- These investigations will require travel, witness interviews, report writing, testifying, and gathering evidence. Each Investigator 2 completes approximately 96 investigative assignments per year.

### **Information Technology Applications/Systems**

\$316,000 is needed in FY 2021 and \$158,000 in FY 2022 for 3,734 contractor hours to modify the Quickcards, Self-Insurance Claims Administration Tracking System, Accounts Receivable Collection System, and the Referral Tracking System systems. In addition, the following Information Technology staff are required:

- One (1.0) FTE IT Project Management - Senior/Specialist, from July 1, 2020 through June 30, 2021. Duties include planning and managing implementation of all of the phases of modifying, implementing, and testing multiple computer applications that will need to be updated or created.

- One (1.0) FTE IT Business Analyst – Senior/Specialist, business analyst, from July 1, 2020 through June 30, 2021. Duties include working with program staff to develop the business requirements and process impacts.

The expenditure calculations in this fiscal note includes changes to the hourly rates for contract technology based on an annual analysis completed by L&I. These changes include rates based on expert skill level and an inflationary factor in all categories.

### **Printing & Mailing**

\$1,400 is needed for printing and/or mailing costs for:

- Printing 2,000 Record Keeping & Reporting forms at \$0.70 each for a total cost of \$1,400, to be spent in fiscal year 2021.

### **Rule making**

\$10,000 is needed for 4 rule making hearings to occur between July 2020 and June 2021. The average cost of one rule making hearing is \$2,500. (4 hearings x \$2,500 each = \$10,000)

### **Attorney General-Legal Services**

\$121,000 is needed for legal services. The following assumptions were used to calculate the estimates:

- The AGO typically uses 2.0 Assistant Attorney General (AAG) and 1.0 Paralegal (PL) for Self-Insurance cases.
- This bill is assumed to generate substantial rulemaking, litigation involving the rulemaking, as well as more penalty appeals, and the AGO estimates a long-term 20 percent increase in workload for AAGs and PLs equating to a need for 0.4 AAG and 0.2 PL. AAGs and PLs will provide additional legal services for litigation, to include mediation, discovery, advice, and the presentation of the L&I's case at hearing.
- Total workload impact beginning in FY 2021: 0.4 AAG, 0.2 PL and 0.2 Legal Assistant at a cost of \$121,000 per fiscal year.

### **Indirect Costs**

The amount included in this fiscal note for indirect is:

Fund Name		FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
608	Accident	600	23,500	16,000	13,000	13,000	13,000
609	Medical Aid	600	23,500	16,000	13,000	13,000	13,000
	Total:	\$1,200	\$47,000	\$32,000	\$26,000	\$26,000	\$26,000

The department assesses an indirect rate to cover agency-wide administrative costs. Labor and Industries indirect rate is applied on salaries, benefits, and standard costs. For fiscal note purposes the total indirect amount is converted into salary and benefits for partial or full indirect FTEs. Salary and benefits costs are based on a Fiscal Analyst 5 (Range 59, Step G).

#### **Part IV: Capital Budget Impact**

None.

#### **Part V: New Rule Making Required**

This legislation would result in rule changes to:

- WAC 296-17-35204
- WAC 296-17-35201
- WAC 296-15-350
- RCW 51.48.030
- RCW 51.48.010