Individual State Agency Fiscal Note

Bill Number: 1406 HB	Title: Unemployment insurance prog	Agency: 540-Employment Security Department

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

FUND	FY 2008	FY 2009	2007-09	2009-11	2011-13
Administrative Contingency Account-State 120-1		280,000	280,000	504,000	504,000
Total $		280,000	280,000	504,000	504,000

Estimated Expenditures from:

	FY 2008	FY 2009	2007-09	2009-11	2011-13
FTE Staff Years	11.6	0.0	5.8	0.0	0.0
Fund					
Unemployment Compensation Administration Account-Federal 119-2	975,116	0	975,116	0	0
Total $	975,116	0	975,116	0	0

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:	Phone:	Date: 01/18/2007
Agency Preparation: Candria Rauser	Phone: 360-902-9564	Date: 01/23/2007
Agency Approval: Elise Greef	Phone: 360-902-9423	Date: 01/23/2007
OFM Review: Tammy Hay	Phone: 360-902-0553	Date: 01/25/2007

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.

Sections 1 and 2 – Benefit Charges for Inaccurate Reports: this bill would require overpaid benefits to be charged to the employer who provided the incorrect and/or missing hour and wage information that caused the overpayment. Current law requires that when an overpayment is caused by a redetermination of the amount of benefits, the benefits paid cannot be collected from the claimant, as the claimant did not cause the overpayment. Neither are those benefit amounts charged to the employer; so the benefits paid out are deemed an administrative overpayment, and the cost of those benefits is socialized to all employers. This bill would charge the employer who created the administrative overpayment for all benefits paid erroneously, based on what that employer had reported. This bill would result in a reduction of the amount of socialized costs related to inaccurate wage and hour information.

Section 3 – Employer Report Penalties: would change existing penalty statute (amended in 2003) to make penalties equal for any employer who submits a late, incomplete, and/or incorrectly-formatted tax report. The bill would standardize the tax reporting penalty system to:
• Provide a flat-rate penalty for late reports rather than benchmarked to taxes due,
• Provide for a warning letter for first-time occurrences,
• Provide the same minimum penalty to an employer, whether taxes are due or no taxes are due, while retaining the current statutory maximum of a $250 penalty for any occurrence.

The late report and no-taxes-due penalty rates are currently in effect in rules (since October 2005). The proposed minimum penalty rates when taxes are due are not currently in effect.

Sections 4, 5, 6 – Corporate Officer Coverage: would change unemployment coverage on corporate officers from voluntary to mandatory. Corporations would register their businesses and officers and obtain an account number, requiring identifying information on the Master Business Application. Officers would be deemed “unemployed” and potentially eligible for benefits if the corporation dissolved or if the officer permanently resigned or was removed from office.

Section 7 – Claimant Fraud Penalties: would amend RCW 50.20.070, which sets penalties for claimant fraud. The disqualification period for a second or subsequent fraud would be increased, and a civil penalty assessed, on fraud decisions mailed after January 1, 2008. The current law sets the penalty at 26 weeks, starting with the first week the claimant re-establishes eligibility for benefits. For decisions mailed after January 1, 2008, the penalties for claimant fraud would be:
• First offense – 26 week denial beginning with the week the decision is mailed,
• Second offense – 52 week denial plus a monetary penalty of 25 percent of benefits improperly paid,
• Third and subsequent offenses – 104 week denial plus a monetary penalty of 50 percent of overpaid benefits.
All monetary penalties would be in addition to the requirement that the claimant repay overpaid benefits. There would be no timeframe within which prior offenses would expire or “wash out.” The department would maintain records indefinitely of fraud decisions issued after January 1, 2008, in order to track subsequent offenses by an individual claimant.

Sections 8, 9, 10, 11, 12 – PEOs, Professional Employer Organizations or Third-Party Payers: would define Professional Employer Organizations (PEOs) for the first time, then specify registration and reporting requirements for PEOs and other third-party payers and their client companies.

The bill would clarify that the client company, and not the PEO, is the employer for unemployment tax liability and that the experience rating of a client company would follow the client when entering or leaving a contractual relationship with a PEO. This would require a separate tax report for each client company, using that company’s account number and tax rate. Finally, it would stipulate the PEO maintain accurate payroll records for each client company and make those records available in Washington State for review and inspection upon request.

The bill would provide that client company owners are not eligible for unemployment insurance coverage and that corporate officers would be covered for unemployment insurance.

The bill states that PEOs (and other third-party payers) could not have joint accounts.

The bill includes definition clarification on temporary-staffing-services companies and services-referral agencies, as well as common pay agent and common paymaster relationships.

Sections 13 and 14 – Corporate Officer Liability for Unpaid Taxes: the bill would allow Employment Security Department (ESD) to collect Unemployment Insurance (UI) tax debt from individuals who restructure or close their businesses in order to avoid paying UI taxes. The bill would extend liability for UI taxes to corporate officers and Limited Liability Company (LLC) members when those persons willfully by intentional, conscious, and voluntary action fail to pay UI taxes; making them personally responsible for paying the tax, legal fees, accrued penalties, and interest when the business is dissolved. ESD would have the same authority as Labor & Industries and Department of Revenue to collect taxes owed from individual corporate officers and members of limited liability companies when they are responsible to pay and willfully fail to pay those taxes, interest, and penalties — but only when there is no reasonable means to collect the debts directly from the business. For the first time, corporate officers and LLC members would have the same responsibility for their UI tax debts as all other business owners. Exceptions for personal hardship would be permitted, as would situations involving bankruptcy or receivership. These collections could be appealed. All usual UI tax collection processes would apply to debt collection on outstanding balances.

Sections 15 and 16 – Severability Clauses

Sections 17 and 18 – Effective Dates. Section 3 would take effect for employer reports due October 1, 2007. Employer Benefit Charges for Inaccurate Reporting, Corporate Officer Coverage, and Professional Employer Organizations would take effect January 1, 2008.

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.

Sections 1 and 2 – Inaccurate Hours/Wages Reported: Experience-rated taxes could increase because employers who report incorrectly would be charged for all benefits paid as a result of incorrect wages/hours. However, it is anticipated this bill would deter employers from incorrectly reporting – resulting in fewer benefit overpayments and thereby offsetting possible increases in experience tax rates. Social taxes may decrease as a result of either an increase in correct reporting or the decrease in socializing the cost of the benefits paid due to incorrect reporting. Therefore, no net additional revenue is projected.

Section 3 – Employer Reporting Penalties: It is assumed this legislation would result in improved tax-reporting compliance rather than in additional penalty revenue. Since existing rules are already collecting most penalty amounts at the bill's proposed levels, it is likely there would be minimal increased penalty revenues. In January 2006, the department estimated this change in statute would yield additional net collections of $40,000 the first year and $10,000 annually thereafter, based on the majority of the penalty levels having been in effect in rules since October 2005. At the time, the assumption was that first-year revenue would net slightly higher, then move closer to a steady state where higher penalties would be offset by higher compliance. Over the intervening months, additional experience indicates compliance is higher than anticipated and, therefore, penalties collected lower than assumed in January 2006.

For the purposes of this fiscal note, recognizing that the bill will impose additional penalties, the assumption is they would be generally offset by improved compliance.

Sections 4, 5, 6 – Corporate Officer Coverage: Although it is assumed that this bill will result in more taxes paid into the non-appropriated UI Trust Fund and fewer benefits paid out, estimates for impacts to the Trust Fund could not be extrapolated from available data.

Section 7 – Claimant Fraud Penalties: The effect of the monetary penalties is uncertain. In the last 12 years, 2,300 repeat offenders have committed almost $20 million in fraud - some have defrauded the system as many as six times. About 1,400 second-offense fraud decisions were written within a year of the first offense. If this rate of fraud were to continue, claimants would be assessed an estimated $2 million or more in civil penalties (note: actual collection of those penalties would not approach that amount). However, claimants would begin with a "clean slate" on 1/1/08 and it is expected that publicity about the increased penalties would have a deterrent effect on the rate of claimant fraud, especially for second and subsequent offenses and, therefore, on the amount of civil monetary penalties that could be collected.

Estimated Collections from the Penalty Fee (returns to Penalties and Interest Account): Based on historical recovery rates on fraud overpayments, if $2 million per year were identified as penalties, and at a historical rate of 14 percent of fraud overpayments recovered, a potential of $280,000 a year would be collected ($2,000,000 X 0.14 = $280,000). Payments from claimants are received about six months after the first decisions are written, so no penalties would be collected in FY08. In the out-years, it is assumed the new penalty would have a deterrent effect on repeat fraud offenses, estimated to reduce total fraud overpayment amounts by 10 percent and, therefore, reduce the total penalties collected by the same percentage ($280,000 X 0.90 = $252,000).

Trust Fund Impact: About 1,400 fraud decisions were issued in 2005 to individuals who had also committed fraud in the prior year. The penalty for the first fraud would not be changed, so it is expected this number would stay relatively consistent. Because the deterrent effect of the increased penalties for second and subsequent offenses is unknown, the effect on the Trust Fund is also unknown.

Sections 8, 9, 10, 11, 12 – PEOs, Professional Employer Organizations: The department remains uncertain about the fiscal impact PEOs and their clients have on the UI Trust Fund. Despite exhaustive efforts to determine whether they pay the accurate amount in taxes, the data are not available to answer these questions or to assess whether they contribute to socialized costs. Without a change in statute, the department cannot make this determination.

Sections 13 and 14 – Corporate Officer Liability for Unpaid Taxes: This bill could increase the UI Trust Fund by any additional debt collected. However, estimates for potential impacts could not be extrapolated from available data.

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.

Costs are one-time implementation costs – primarily related to changes that would be needed for information technology systems, such as reprogramming and testing. The next-largest cost would be for training (staff, employers, and claimants), and updates to paper and on-line manuals and handbooks. Other expenditures would include rulemaking, mailing costs, and the agency's indirect rate charge. Please see attachment for expenditure detail.

This fiscal note displays the estimated cost to implement the bill, however, it is assumed spending would occur from the Unemployment Compensation Administrative Account (119-2) and would be accommodated by eliminating or delaying other current activities. Since the value of the UI administration grant is set by formula based on history, the grant would not increase to pay additional costs; therefore, current activities would have to be displaced to accommodate the implementation costs. Examples of current activities that would change include:

* Computer programming needs – the other needs that would be eliminated or delayed would be, primarily, change-order requests to make improvements in the systems. There are continuously more demands than time to fill and this is managed through prioritization. If the bill is enacted, it is assumed the automation changes associated with it would be a high priority to comply with new law.

* Training – if this bill were enacted, the associated staff training would occur in place of, or prior to, ongoing training provided to new and existing staff. For example, training on the law changes would likely be incorporated into the annual

"Tax Conference" where managers communicate updates to tax specialists and partners in the field.

* Other categories: The largest portion of the remainder would be for answering questions from employers. These activities are widely dispersed among tax specialists and it is not possible to identify which specific activities would be offset. Some of the communication related to this bill is estimated to require about one hour per employee per month and it is assumed that time would be spent answering questions about new law rather than other questions.

Description of Expenditure Impact by Section:

Sections 1 and 2 – Benefit Charges for Inaccurate Reports: Both of these sections would require a change in automation, and revisions of the procedures manuals and employer handbook.

Section 3 – Employer Reporting Penalties: No additional costs for this section are included in the fiscal note estimate. Staff expenditures would be negligible and would probably occur in FY07. Existing staff and equipment perform this work now under existing law and rules. A small amount of reprogramming would be needed to the UI Tax Information System (TAXIS) to switch on the minimum penalty rates that have been programmed but not implemented.

Sections 4, 5, 6 – Corporate Officer Coverage: Additional costs would include automation changes to the tax and benefit computer systems and applications; one-time mailings to corporations currently active with the Corporations Division of the Secretary of State; training; rulemaking; updates to web and paper employer handbook and voluntary election form; and updates to UI Tax Status, Audit, Compliance, and Employer Accounts web and paper manuals.

Section 7 – Claimant Fraud Penalties: Additional costs would include automation changes to the benefits computer system (GUIDE) and the Special Investigations computer system (BARTS) to accommodate the new number of weeks of disqualification and monetary penalties; staff training; rulemaking; revisions to the claims kit and form letters. At this time, it is not known the extent to which additional appeals hearings would occur or the extent to which the deterrent effect of the bill would offset such increases.

Sections 8, 9, 10, 11, 12 – Professional Employer Organizations (PEOs): Implementation costs would include computer system changes; training; rulemaking. Any additional Unemployment Insurance Division and Labor Market & Economic Analysis Unit costs for merging and tracking the PEO/client relationships is assumed to be offset by savings of staff time currently used to locate PEOs and/or their clients when benefit claims cannot be established or data must be revisited.

Sections 13 and 14 – Corporate Officer Liability for Unpaid Taxes: Costs would include tax computer systems and applications changes; staff and employer training; rulemaking; and responding to telephone inquiries. Additional appeals would increase administrative hearings' costs but it is not currently possible to estimate the potential increase.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2008	FY 2009	2007-09	2009-11	2011-13
FTE Staff Years	11.6		5.8		
A-Salaries and Wages	678.450		678,450		
B-Employee Benefits	205.652		205,652		
C-Personal Service Contracts	35.300		35,300		
E-Goods and Services	55.714		55,714		
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
Total:	$975,116	$0	$975,116	$0	$0

III. B - 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 2008	FY 2009	2007-09	2009-11	2011-13
(Position WMS Band 2	60,000	0.9		0.4		
ES Program Coordinator 2	48,036	0.2		0.1		
ES Program Coordinator 3	53,052	0.5		0.3		
IT Specialist 3	54,372	2.0		1.0		
IT Specialist 4	60,036	3.6		1.8		
IT Specialist 5	66,264	0.7		0.3		
IT Specialist 6	73,140	1.8		0.9		
Tax Specialist 3	45,756	1.1		0.5		
Tax Specialist 4	48,036	0.2		0.1		
UI Specialist 4	45,756	0.6		0.3		
Total FTE's		11.6		5.8		0.0

Part IV: Capital Budget Impact

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.

Sections 1 and 2 – Inaccurate hours/wages reported: WAC 192-310-035 Employer reports – failure to report hours would need to be modified to include charging 100 percent of the benefits paid to the employer who reported incorrectly.

Section 3 – Employer Reporting Penalties: The late report penalty of $25 is currently in WAC 192-310-030(1). The warning letter is in WAC 192-310-030(3). The standardized schedule of penalties in WAC 192-310-030(a)(b) would need revision.

Sections 4, 5, 6 – Corporate Officer Coverage: Would require repeal of sections 2 and 3 of WAC 192-300-170, as those sections apply to exempt corporate officers applying for voluntary coverage. This bill would make the coverage mandatory for officers. Would require new WAC in chapter 192-300 defining who is a corporate officer and the timing for reporting officer changes. Officers are currently defined in RCW 23b.08.400 as whomever the board of directors appoints.

Section 7 – Claimant Fraud Penalties: Would require modification of existing overpayment rules to spell out the additional denial periods, penalties, and priority of payments.

Sections 8, 9, 10, 11, 12 – PEOs: Section 8 would require the registration of third-party payers (including PEOs), so a new section would need to be added to Chapter 192-300 WAC. Section 12 would provide that third-party payers (including PEOs) and common paymasters or common pay agents may not establish joint accounts, which would require a revision to WAC 192-300-180.

Sections 13 and 14 – Corporate Officer Tax Liability: New rules would need to further define exemptions from personal liability for delinquent taxes due to illness, death, or financial insolvency, and to address the individual’s appeal rights in these circumstances.

Fiscal Note • SB 5373

Revising provisions regarding reporting, penalty, and corporate officer provisions of the unemployment insurance system.

REVENUE:

Fund 120-1	FY08	FY09	FY10	FY11	FY12	FY13
Administrative Contingency Acct	$0	$280,000	$252,000	$252,000	$252,000	$252,000

Section with impact: Section 7 – Claimant Fraud Penalties

Assume $2,000,000 per year identified as claimant penalties

Historical recovery rate of 14 percent per year ($2 M X 0.14 = $280,000)

Payments received beginning six months after first decisions written; receipts begin FY09

Out-years - bill is assumed to have deterrent effect, reduce overpayments and, therefore, penalties by 10 percent

EXPENDITURES:

Sections with impact:

Sections 1 and 2 – Benefit Charges for Inaccurate Reports

Design, construction, and testing of automation (for GUIDE, the benefits computer system)

280 hours IT Specialist 3
640 hours IT Specialist 4
640 hours IT Specialist 6

Response to increased employer inquiries

280 hours Tax Specialist 3 (additional hours spread among current staff)

Development of staff training and attendance at training sessions

350 hours Tax Specialist 3
75 hours Tax Specialist 4 (20 hours development; 55 hours attendance)

Rulemaking

250 hours WMS Band 2

Sections 4, 5, 6 – Corporate Officer Coverage

Analyze, plan, program, and test automation changes (tax computer system and applications) for existing and new employer accounts

50 hours IT Specialist 3
40 hours IT Specialist 4
90 hours IT Specialist 5
90 hours IT Specialist 6

Change UI web and paper manuals, Employer handbook, and other forms

35 hours ES Program Coordinator 2

Development & delivery of staff training and attendance at training sessions

250 hours Tax Specialist 3
40 hours Tax Specialist 4
40 hours WMS Band 2

Rulemaking

200 hours WMS Band 2

One-time mailing to ~150,000 corporations currently active with the Corporations division of Secretary of State

$22,000 ($18,600 printing and processing letters; $3,400 envelopes)

Section 5 – Corporate Officer Coverage; stipulating that an officer of a corporation is "not unemployed" while the corporation is active, unless the individual permanently leaves the corporation.

Design, construct, and test automation (benefits computer systems and applications) for new issue codes, identification of claimants as corporate officers, benefit charging changes, and potential interface changes:

720 hours ES Program Coordinator 3 (testing)

1880 hours	IT Specialist 3 (testing)
2280 hours	IT Specialist 4 (requirements, design, construction, testing, documentation)
1260 hours	IT Specialist 6 (database changes, requirements, design, construction, oversight)

Update current denial letter and resource manual; issue instructions to TeleCenter staff

16 hours	ES Program Coordinator 2

Development & delivery of staff training and attendance at training sessions

114 hours	ES Program Coordinator 2
370 hours	UI Specialist 4

Section 7 – Claimant Fraud Penalties

Design, construct, and test automation (benefits computer system - GUIDE and Special Investigations computer system - BARTS) for new weeks disqualification and monetary penalty

760 hours	IT Specialist 3 (design, construction, testing)
2120 hours	IT Specialist 4 (design, construction, testing)
860 hours	IT Specialist 6 (design, construction, testing)
$14,400 (contracting for BARTS programming)	

Development & delivery of staff training and attendance at training sessions

205 hours	ES Program Coordinator 2
616 hours	UI Specialist 4
20 hours	WMS Band 2

Rulemaking

250 hours	WMS Band 2

Sections 8, 9, 10, 11, 12 – Professional Employer Organizations (PEOs)

Computer system changes (to gather information and track accounts that use third-party payers): analyze, plan, program, and test new computer screens; manage tax rate calculation changs; produce reports. Current databases must be increased for added fields and to store new PEO data and four-year experience histories. Programming would begin in 2007 for year 2008.

250 hours	IT Specialist 3
580 hours	IT Specialist 4 (programming)
710 hours	IT Specialist 5 (programming and liaison)
$20,900 (Contractor for programming)	

Rulemaking, oversight, reporting, training

70 hours	WMS Band 2

Development of policies and procedures, assist rule revisions, draft content, develop training materials

100 hours	Tax Specialist 4
110 hours	ES Program Coordinator 3

Sections 13 and 14 – Corporate Officer Liability for Unpaid Taxes

Tax computer systems and applications changes to set up billing process for specific individuals by new account nos.

80 hours	IT Specialist 4 (testing, maintenance, system enhancement, reports)
260 hours	IT Specialist 5 (designing, testing, programming)

Rulemaking, development of policies and procedures, developing and delivering training to staff; educating employers, responding to telephone inquiries, account maintenance.

540 hours	WMS Band 2
875 hours	Tax Specialist 3
150 hours	Tax Specialist 4

Total Cost

	Title	Annual Salary	Hours	FTEs	Cost
Information Technology:	ESPC 3	53,052	720	0.4	$21,751
	IT Specialist 3	54,372	3,220	1.8	98,413
	IT Specialist 4	60,036	5,740	3.2	193,916
	IT Specialist 5	66,264	1,060	0.6	39,758
	IT Specialist 6	73,140	2,850	1.6	117,755
Training, rulemaking employer education, procedures	ESPC 2	48,036	370	0.2	10,088
	ESPC 3	53,052	110	0.1	3,183
	Tax Spec. 3	45,756	1,755	1.0	45,298
	Tax Spec. 4	48,036	365	0.2	10,088
	UI Spec. 4	45,756	986	0.6	25,623
	WMS Band 2	60,000	1,370	0.8	46,200
	SubTotal (salaries)				**612,075**
Additional costs:	Benefits associated with above salaries				182,815
	Indirect costs*			1.1	122,926
	Goods, services, contracts				57,300
	Total			**11.6**	**$975,116**

**In addition to FTE costs detailed above, an indirect rate of approximately 20 percent is applied to the ESD salary base for funding of internal operations and support.*