

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 2333 2S HB	<b>Title:</b> Employee antiretaliation act
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## Estimated Cash Receipts

Agency Name	2013-15		2015-17		2017-19	
	GF- State	Total	GF- State	Total	GF- State	Total
Office of Attorney General	Non-zero but indeterminate cost and/or savings. Please see discussion.					
<b>Total \$</b>	0	0	0	0	0	0

## Estimated Expenditures

Agency Name	2013-15			2015-17			2017-19		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Office of Attorney General	2.1	0	514,998	4.1	0	1,029,996	4.1	0	1,029,996
Office of Administrative Hearings	.0	0	0	.0	0	0	.0	0	0
Department of Enterprise Services	.0	0	0	.0	0	0	.0	0	0
Department of Labor and Industries	.3	0	259,000	.3	0	756,000	.2	0	42,000
<b>Total</b>	<b>2.4</b>	<b>\$0</b>	<b>\$773,998</b>	<b>4.4</b>	<b>\$0</b>	<b>\$1,785,996</b>	<b>4.3</b>	<b>\$0</b>	<b>\$1,071,996</b>

## Estimated Capital Budget Impact

NONE

<b>Prepared by:</b> Trisha Newport, OFM	<b>Phone:</b> (360) 902-0417	<b>Date Published:</b> Pending Distribution
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\* See Office of the Administrator for the Courts judicial fiscal note

\*\* See local government fiscal note

FNPID: 37688

FNS029 Multi Agency rollup

# Judicial Impact Fiscal Note

<b>Bill Number:</b> 2333 2S HB	<b>Title:</b> Employee antiretaliation act	<b>Agency:</b> 055-Admin Office of the Courts
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## Part I: Estimates

☐ No Fiscal Impact

### Estimated Cash Receipts to:

Account	FY 2014	FY 2015	2013-15	2015-17	2017-19
Counties					
Cities					
<b>Total \$</b>					

### Estimated Expenditures from:

COUNTY	FY 2014	FY 2015	2013-15	2015-17	2017-19
County FTE Staff Years					
Account					
Local - Counties					
Counties Subtotal \$					
CITY	FY 2014	FY 2015	2013-15	2015-17	2017-19
City FTE Staff Years					
Account					
Local - Cities					
Cities Subtotal \$					
Local Subtotal \$					
Total Estimated Expenditures \$					

*The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.*

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.

Legislative Contact: Mary Mulholland	Phone: 360-786-7391	Date: 02/13/2014
Agency Preparation: David Elliott	Phone: 360-705-5229	Date: 02/14/2014
Agency Approval: Ramsey Radwan	Phone: 360-357-2406	Date: 02/14/2014
OFM Review: Cheri Keller	Phone: 360-902-0563	Date: 02/14/2014

Request # civil-1

## Part II: Narrative Explanation

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

There are no changes in expected impact from the previous version of the bill.

This bill would create new gross misdemeanor violations for employers who take adverse action against individuals who exercise their wage and hour rights under the Minimum Wage Act, Industrial Welfare Act, Wage Payment Act, Prevailing Wage Act, and Wage Deductions.

Aggrieved individuals may file a complaint with the director of the Department of Labor and Industries.

In addition, aggrieved individuals may file a civil action on his or her behalf or on behalf of any other individual similarly situated with the court. Statutory damages in the civil actions are set out in this bill.

### II. B - Cash Receipts Impact

### II. C - Expenditures

The bill, as drafted, is not clear as to the entities responsible for writing the criminal misdemeanor violations. If written, they would be adjudicated in the courts of limited jurisdiction (district and municipal), thus resulting in possible expenditure impacts related to judicial workload. However, as the bill is drafted, it is not possible to determine how many violations could be written. Therefore, it is assumed that there is no fiscal impact to the courts related to the criminal violations provisions of this bill.

Civil cases would likely be filed in the superior court because of the potential amount of damages. Additional case filings would have an impact on judicial workload. It is not known how many cases might be filed each year. However, it is assumed that the fiscal impact will be greater than zero but less than \$50,000 per year.

The \$50,000 expenditure level represents approximately 84 hours (0.07 FTE) of superior court judicial officer time annually cumulative for all superior courts in the state with associated support staff and operational costs. It is assumed that this bill would require less than 84 hours of judicial officer time statewide on an annual basis.

For illustrative purposes, up to 35 civil cases per year could be filed before the workload impact would exceed the \$50,000 estimate.

## Part III: Expenditure Detail

### III. A - Expenditure By Object or Purpose (State)

<i>State</i>	FY 2014	FY 2015	2013-15	2015-17	2017-19
FTE Staff Years					
Salaries and Wages					
Employee Benefits					
Professional Service Contracts					
Goods and Other Services					
Travel					
Capital Outlays					
Inter Agency/Fund Transfers					
Grants, Benefits & Client Services					
Debt Service					
Interagency Reimbursements					
Intra-Agency Reimbursements					
<b>Total \$</b>					

**III. B - Expenditure By Object or Purpose (County)**

<b><i>County</i></b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>2013-15</b>	<b>2015-17</b>	<b>2017-19</b>
FTE Staff Years					
Salaries and Benefits					
Capital					
Other					
<b>Total \$</b>					

**III. C - Expenditure By Object or Purpose (City)**

<b><i>City</i></b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>2013-15</b>	<b>2015-17</b>	<b>2017-19</b>
FTE Staff Years					
Salaries and Benefits					
Capital					
Other					
<b>Total \$</b>					

**Part IV: Capital Budget Impact**

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 2333 2S HB	<b>Title:</b> Employee antiretaliation act	<b>Agency:</b> 100-Office of Attorney General
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## Part I: Estimates

☐ No Fiscal Impact

### Estimated Cash Receipts to:

Non-zero but indeterminate cost. Please see discussion.

### Estimated Expenditures from:

	FY 2014	FY 2015	2013-15	2015-17	2017-19
FTE Staff Years	0.0	4.1	2.1	4.1	4.1
<b>Account</b>					
Legal Services Revolving Account-State 405-1	0	514,998	514,998	1,029,996	1,029,996
<b>Total \$</b>	0	514,998	514,998	1,029,996	1,029,996

### 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: Mary Mulholland	Phone: 360-786-7391	Date: 02/13/2014
Agency Preparation: Gretchen Leanderson	Phone: 253-597-4434	Date: 02/19/2014
Agency Approval: Brendan VanderVelde	Phone: 360 586-2104	Date: 02/19/2014
OFM Review: Chris Stanley	Phone: (360) 902-9810	Date: 02/19/2014

Request # 2014-161-2

## 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.*

This revision does not contain any cost or staffing changes from what were identified in the last version.

Costs identified in this fiscal note do not include costs currently assumed to be indeterminate.

Section 1 is the legislative intent section to protect employees from employer retaliation.

Section 2 adds the new definitions to RCW 49.46.010: “adverse action,” “department,” “front pay,” “interested party” and “pattern or practice”.

Section 3 adds a new section to chapter 49.46 RCW prohibiting an employer from retaliating against an individual or individuals due to complaints against the employer that the employer has engaged in conduct reasonably believed to violate the minimum wage act. The employer is presumed to have retaliated against the employee if the employer takes action within 90 days of the complaint. A violation of the section is a gross misdemeanor.

Section 4 is a new section to chapter 49.46 providing an aggrieved party or an interested party filing on behalf of an aggrieved party may file a complaint with the director of the Department of Labor and Industries (L&I). The section details the penalties that may be imposed. Any civil penalties imposed under the section are to be deposited L&I into the supplemental pension fund established under RCW 55.44.033.

Section 5 is a new section to chapter 49.46 RCW to allow an aggrieved individual file suit against the employer. The section details the damages that may be imposed if the court determines the employer retaliated.

Section 7 is a new section added to chapter 49.12 RCW to prohibit an employer, agents of the employer or persons acting on behalf of the employer from taking adverse action against an individual for updating or attempting to update his or her personal information, unless the change is directly related to the skill set or knowledge required for the job. The employer is presumed to have retaliated against the employee if the employer takes action within 90 days of this activity. An aggrieved individual may file a complaint and may also file suit against the employer. A violation of this section is a gross misdemeanor.

Section 8 amends RCW 49.48.082 RCW and adds the following new definitions: “adverse action,” “front pay,” “interested party,” “pattern or practice,” “unfair immigration related practice,” and “unfair immigration-related practice”.

Section 9 is a new section prohibiting retaliation by an employer for eight enumerated activities by the employee or former employee.

Section 10 is a new section provides that an individual aggrieved or an interested person filing on behalf of an individual aggrieved by section 9 may file a complaint with the director of L&I on behalf of himself or herself. The section details the penalties that the director may impose on the employer for violation of section 9. An appeal from the director’s determination may be taken in accordance with chapter 34.05 RCW, with the

prevailing party entitled to recover reasonable costs and attorney fees.

Section 11 is a new section in chapter 49.48 RCW that provides an individual aggrieved by a violation of Section 9 may bring suit on behalf of himself or on behalf of any other individual similarly situated. This section details the damages that the court can award, including not less than \$1,000 per individual nor more than \$10,000 per individual unless the employer engaged in a pattern or practice of violations, which would subject the employer to not less than \$10,000 per individual and not more than \$25,000 per individual. Additional damages as well as attorney fee awards are detailed in this section. A three year statute of limitations applies.

Section 12 adds Sections 9 through 11 to chapter 49.48 RCW.

Section 13 adds the following definitions to RCW 39.12.010: “adverse action,” “department,” “front pay,” “interested party,” “pattern or practice,” “unfair immigration related practice”, and “unfair immigration-related practice”.

Section 14 is a new section in chapter 39.12 RCW prohibiting retaliation by an employer, its agents or any other person acting on behalf of the employer against an individual or individuals for any of a list of actions or activities by the employee or former employee. A violation of this section is a gross misdemeanor.

Section 15 is a new section in chapter 39.12 RCW that provides that an individual aggrieved or an interested person filing on behalf of an individual aggrieved by Section 14 may file a complaint with the director of L&I on behalf of himself or herself. The section details the penalties that the director may impose on the employer for violation of section 14. An appeal from the director’s determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorney fees.

Section 16 is a new section and provides that an individual aggrieved by a violation of Section 14 may bring suit on behalf of himself or on behalf of any other individual similarly situated. This section details the damages that the court can award, including not less than \$1,000 per individual nor more than \$10,000 per individual unless the employer engaged in a pattern or practice of violations, which would subject the employer to not less than \$10,000 per individual and not more than \$25,000 per individual. Additional damages as well as attorney fee awards are detailed in this section. A three year statute of limitations applies.

Section 17 provides that Sections 14 through 17 are to be new sections to chapter 39.12 RCW.

Section 18 is a new definition section to chapter 49.52 RCW including: “adverse action,” “department,” “front pay,” “interested party,” “pattern or practice,” “unfair immigration related practice,” and “unfair immigration-related practice”.

Section 19 is a new section to chapter 49.52 RCW prohibiting retaliation by an employer, its agents or any person acting on behalf of the employer against an individual or individuals for any of a detailed list of actions or activities by the employee or former employee. A violation of this section is a gross misdemeanor.

Section 20 is a new section to chapter 49.52 RCW and provides that an individual aggrieved or an interested person filing on behalf of an individual aggrieved by Section 19 may file a complaint with the director of L&I on behalf of himself or herself. This section details the penalties that the director may impose on the employer for violation of Section 19. An appeal from the director’s determination may be taken in accordance with chapter

34.05 RCW, with the prevailing party entitled to receive reasonable costs and attorney fees.

Section 21 is a new section and provides that an individual aggrieved by a violation of Section 14 may bring suit on behalf of himself or on behalf of any other individual similarly situated. The section details the damages that the court can award, including not less than \$1,000 per individual nor more than \$10,000 per individual unless the employer engaged in a pattern or practice of violations, which would subject the employer to not less than \$10,000 per individual and not more than \$25,000 per individual. Additional damages as well as attorney fee awards are detailed in this section. A three year statute of limitations applies.

Section 22 provides that sections 18 through 21 of this act are added to chapter 49.52 RCW.

Section 23 is the severability clause.

This bill is assumed effective 90 days after the end of the 2014 legislative session.

## **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.*

### **INDETERMINATE CASH RECEIPTS**

Tort Assumptions:

1. Tort defense costs are billed through the LSRA to the Department of Enterprise Services (DES) Risk Management Division through an Interagency Agreement (IAA).
2. The Torts client agency is assumed to be DES. These costs are over and above the current 2013-15 IAA amount.

LPD client agencies are indeterminate.

## **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.*

### **INDETERMINATE EXPENDITURES**

Assumptions for the AGO Torts Legal Services for DES:

1. Torts assumes Sections 5, 11, 16 and 21 of the bill create a private cause of action for employees who believe they have been retaliated against for engaging in any number of activities protected by the bill. Each of these sections is largely identical to the others, and each is a new section added to the Minimum Wage Act, the Industrial Welfare Act, the Wage Payment Act, the Prevailing Wage Act, and the Wage Deduction Act, respectively. While the protection of many of these protected activities may have a fiscal impact, the activities that would introduce the most material fiscal impact would be “[a]n employee has refused to participate in an activity that would result in a violation of state or federal law” and “[a]n employee or former employee has



sought information about his or her rights under this chapter or informed others about their rights under this chapter.”

2. We assume that if an employee experiences an “adverse action,” which is defined in the bill and includes employment actions ranging from discharge to “discriminating against an employee” “or other material change in the terms and condition of employment,” within 90 days of engaging in conduct protected by this bill, the employer is presumed to have unlawfully retaliated against the employee unless the employer can prove the lack of retaliation by clear and convincing evidence.

3. We assume that if an employee prevails in a cause of action under these sections, he or she is entitled to the greater of actual damages or triple wage loss damages, injunctive relief including reinstatement if appropriate, and attorneys’ fees and costs.

4. The AGO estimates an increase in tort payouts, including settlements and judgments, from the Self-Insurance Liability Account of \$800,000 in FY 2014 and each FY thereafter. This increase is a result from the increased liability the act creates for the State.

5. Torts assumes a workload impact of 1.1 AAG, 0.5 Legal Assistants, 0.5 PL, and 0.5 INV at a cost of \$315,029 in FY2015 and in each FY thereafter following the enactment of the proposed legislation.

#### Assumptions for the AGO Labor & Personnel Division’s Legal Services:

1. We assume potential for a constitutional challenge related to “unfair immigration-related practices”. Costs are indeterminate as it is too speculative to attempt to estimate costs on the defense of such a challenge.

2. LPD assumes that defense of appeals brought by state employees under RCW 34.05, as set out in Section 4, will be centralized in the division because of the nature of the underlying facts and the division’s specialization in state employer defense of wage cases.

3. We assume potential for up to 50 separate cases per FY at a cost of \$199,969 for a workload impact of 1.0 AAG. We are unable to associate this cost to a particular client as we represent nearly every state agency, board, commission and institution of higher education in the state.

Self-Insurance Liability Account payout is for informational use only. These costs should be identified by DES: We assume an increase in tort payouts by DES including settlements and judgments, from the Self-Insurance Liability Account of \$800,000 per FY. This estimate is based on the following assumptions:

A) We assume that, due to the broad language of the act, the ease through which an employee could engage in a protected activity, the prevalence of conflicting and competing state and federal laws that govern the actions of state government, and the mandatory and difficult to rebut presumption of retaliation, the State will face numerous new tort claims and lawsuits.

B) We assume that the number of tort claims and lawsuits, and the associated payouts, will be equal to one quarter the annual average values for those items between FY2008 and FY2013 for whistleblower, retaliation, and First Amendment claims, which are similar claims. During that time period, 58.2 tort claims and 43.8 lawsuits were filed each FY, and payouts averaged \$3,261,636 each FY. This estimate is very conservative, as

the volume of protected activities, as broadly defined in this bill, is likely significantly larger than the volume of whistleblower complaints, discrimination complaints, and First Amendment activity.

C) We assume that each new claim and lawsuit will require investigation, research, discovery and potential litigation and/or appeal.

### Part III: Expenditure Detail

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

	FY 2014	FY 2015	2013-15	2015-17	2017-19
FTE Staff Years		4.1	2.1	4.1	4.1
A-Salaries and Wages		291,712	291,712	583,424	583,424
B-Employee Benefits		87,190	87,190	174,380	174,380
C-Professional Service Contracts					
E-Goods and Other Services		123,496	123,496	246,992	246,992
G-Travel		4,400	4,400	8,800	8,800
J-Capital Outlays		8,200	8,200	16,400	16,400
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
<b>Total:</b>	\$0	\$514,998	\$514,998	\$1,029,996	\$1,029,996

#### 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 2014	FY 2015	2013-15	2015-17	2017-19
Assistant Attorney General	88,056		2.1	1.1	2.1	2.1
Investigator 4	69,756		0.5	0.3	0.5	0.5
Legal Assistant II	42,588		1.0	0.5	1.0	1.0
Paralegal II	58,656		0.5	0.3	0.5	0.5
<b>Total FTE's</b>	259,056		4.1	2.1	4.1	4.1

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

Program	FY 2014	FY 2015	2013-15	2015-17	2017-19
Labor and Personnel Division (LPD)		199,969	199,969	399,938	399,938
Torts Division (TOR)		315,029	315,029	630,058	630,058
<b>Total \$</b>		514,998	514,998	1,029,996	1,029,996

### 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.*

None.

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 2333 2S HB	<b>Title:</b> Employee antiretaliation act	<b>Agency:</b> 110-Office of Administrative Hearings
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## Part I: Estimates

☒ No Fiscal Impact

*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: Mary Mulholland	Phone: 360-786-7391	Date: 02/13/2014
Agency Preparation: Jane Habegger	Phone: 360-407-2756	Date: 02/14/2014
Agency Approval: Larry Dzieza	Phone: 360-407-2717	Date: 02/14/2014
OFM Review: Chris Stanley	Phone: (360) 902-9810	Date: 02/14/2014

## 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.*

2SHB 2333 provides that an employer, its agents, or any person acting on behalf of the employer may not take adverse action against any employee or former employee who made a complaint or when the employer believes the employee has informed any other person or made a complaint, including to the employer, the Department of Labor and Industries (L & I), the Attorney General or any other person, alleging that the employer has violated:

- \* the Washington Minimum Wage statutes in chapter 49.46 RCW,
- \* the Wage Payment Act in chapter 49.48 RCW,
- \* the Prevailing Wage on Public Works statutes in chapter 39.12 RW or
- \* the Wages, Deductions, Contributions, Rebates statutes in chapter 49.52 RCW.

Any employee or former employee who believes that adverse action has been taken against them because they have alleged that their employer or former employer violated this law, has the right to file a complaint with the Director of L & I. Following an investigation, if the director determines that the employer violated this law, he may order the employer to:

- (a) Pay a civil penalty of not less than one thousand dollars and not more than ten thousand dollars per individual aggrieved.
- (b)(i) Subject to (b)(ii) of this subsection, pay any aggrieved individual not less than one thousand dollars and not more than ten thousand dollars.
- (ii) If an employee or former employee is the aggrieved individual, pay the individual the greater of:
  - (A) The amount of any civil penalty imposed under (a) of this subsection; or
  - (B) Three times the amount of any wages, salary, or employment benefits unlawfully denied or withheld, except benefits under Title 50 or 51 RCW.
- (c) If the aggrieved individual is a former employee of the violating employer, reinstate the aggrieved individual as an employee at not less than the most recent rate of pay received by the employee.

The director may award "front pay" in lieu of reinstatement.

An appeal of the director's determination may be taken under chapter 34.05 RCW, the Administrative Procedures Act, with the prevailing party entitled to recover reasonable costs and attorney fees. If these appeals were to be referred to the Office of Administrative Hearings by the Department of Labor and Industries, an Administrative Law Judge (ALJ) would conduct these hearings.

The Department of Labor and Industries has indicated that they do not anticipate referring these hearings to the Office of Administrative Hearings. We therefore conclude that there will be no fiscal impact to our agency.

### 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.*

## **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.*

## **Part III: Expenditure Detail**

## **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.*

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 2333 2S HB	<b>Title:</b> Employee antiretaliation act	<b>Agency:</b> 179-Department of Enterprise Services
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## Part I: Estimates

☒ No Fiscal Impact

*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: Mary Mulholland	Phone: 360-786-7391	Date: 02/13/2014
Agency Preparation: Sherrie Bowman	Phone: (360) 407-9249	Date: 02/20/2014
Agency Approval: Valerie Guthrie	Phone: (360) 407-9246	Date: 02/20/2014
OFM Review: Chris Stanley	Phone: (360) 902-9810	Date: 02/20/2014

Request # 2S HB 2333-1

## 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.*

HB 2333 amends the Employment Retaliation Act and provides that an employer, its agents, or any person acting on behalf of the employer may not retaliate against any employee or former employee who makes a complaint or when the employer believes the employee has informed any other person or made a complaint, including to the employer, the Department of Labor and Industries (L & I), the Attorney General or any other person, alleging that the employer has violated the Washington Minimum Wage Act, the Wage Payment Act, the Prevailing Wage provisions and/or the Wage Deductions, Contributions, and Rebate provisions.

In addition, this bill allows any employee or former employee who believes adverse action has been taken against them to file a complaint with the Director of the Department of Labor and Industries. Aggrieved individuals may also file a civil action on his or her behalf or on behalf of any other individual similarly situated with the court. Civil action statutory damages are define in this bill.

Department of Enterprise Services (DES) has no role in the adjudication process described in the bill amendment and would not be directly impacted by this legislation unless the agency was found to be in violation.

### 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.*

### 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.*

## Part III: Expenditure Detail

## 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.*

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 2333 2S HB	<b>Title:</b> Employee antiretaliation act	<b>Agency:</b> 235-Department of Labor and Industries
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## Part I: Estimates

☐ No Fiscal Impact

### Estimated Cash Receipts to:

NONE

### Estimated Expenditures from:

	FY 2014	FY 2015	2013-15	2015-17	2017-19
FTE Staff Years	0.0	0.5	0.3	0.3	0.2
<b>Account</b>					
Accident Account-State 608-1	0	129,000	129,000	376,000	20,000
Medical Aid Account-State 609-1	0	130,000	130,000	380,000	22,000
<b>Total \$</b>	0	259,000	259,000	756,000	42,000

### 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: Mary Mulholland	Phone: 360-786-7391	Date: 02/13/2014
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## 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 - Expenditures by Object Or Purpose

	FY 2014	FY 2015	2013-15	2015-17	2017-19
FTE Staff Years		0.5	0.3	0.3	0.2
A-Salaries and Wages		26,000	26,000	30,000	24,000
B-Employee Benefits		10,000	10,000	13,000	8,000
C-Professional Service Contracts		185,000	185,000	700,000	
E-Goods and Other Services		20,000	20,000	13,000	10,000
G-Travel					
J-Capital Outlays		18,000	18,000		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
<b>Total:</b>	\$0	\$259,000	\$259,000	\$756,000	\$42,000

### 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 2014	FY 2015	2013-15	2015-17	2017-19
FA2	41,508		0.1	0.1	0.1	
ITS3	64,740		0.2	0.1	0.1	
Revenue Agent 2	53,148		0.2	0.1	0.2	0.2
<b>Total FTE's</b>	159,396		0.5	0.3	0.3	0.2

## Part IV: Capital Budget Impact

NONE

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**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 amends the employment retaliation act as follows:

- Prohibits an employer from taking adverse action against any individual because an employee exercised wage and hour rights under wage laws.
- Allows an aggrieved individual or an interested party to file a complaint with the Department of Labor and Industries (L&I), and indicates the director of L&I has discretion whether to conduct investigations and issue citations and assessment of penalties for violations found.
- Allows an aggrieved individual to bring suit in court. Sets up damage structure in court actions.

**This bill differs from HB 2333 by adding language to relevant sections that directs deposit of penalties to the supplemental pension fund, rather than the general fund.**

This bill takes effect 90 days from Sine Die.

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

**Section 4** – Adds a new section to 49.46:

- (1) Allows that an individual or interested party may file a complaint for a violation of this chapter.
- (2) Provides discretionary authority to L&I to investigate if it obtains information from an interested party or aggrieved individual regarding adverse action. Sets forth a discretionary penalty structure and includes not only wages but also employment benefits.
- (3) The director's determination may be appealed.
- (4) Sets up the three year statute of limitations from the date of filing.

## **II. B – Cash Receipt Impact**

The department may investigate complaints filed by an aggrieved individual or an interested party. The department has discretion to assess a civil penalty. Revenue collected from penalties and awards would go to the employees who filed the complaints. Penalties can be reduced or waived. Any penalty amounts collected and retained by the department would be negligible. Therefore no revenue is expected from this legislation.

## **II. C – Expenditures**

The following resources are needed to carry out the functions of this legislation that impact L&I:

### **Collections**

0.2 permanent Revenue Agent 2 (RA2) FTE and 0.2 project Information Technology Specialist 3 (ITS3) FTE are necessary to perform the following tasks:

- The RA2 will assist with implementation of the program, process complaints, issue legal documents and take collection actions, and handle calls with employers and workers. It is assumed the average time of 200 hours for an RA2 to help add new receivables to the Accounts Receivable Collection system (ARC) program and set up collections processes and test, and then 200 hours to collect the first year, increasing to 400 hours per year as more public awareness results increased complaints filed. (400/2088=0.2 FTE)
- The ITS3 will coordinate with ARC programmers and the business area regarding the business requirements, testing, producing new legal documents and validation. The new documents would need to be able to assess penalties to include the category, “Adverse action”, “Front pay”, “Interested party” or “Unfair immigration-related practice,” and also awards for treble damages and front pay. It is assumed the average time of 400 hours it has been taking to provide the Collections business analysis/ requirements and add new receivables to the ARC program and set up collections processes for it and test/validate, in addition to revenue agent assistance. The start date is July 1, 2014 and end date is December 31, 2015.(400/2088=0.2 FTE)

### **Employment Standards**

Investigation and enforcement are discretionary. Therefore, there is no fiscal impact to Employment Standards.

## Prevailing Wage

Investigation and enforcement are discretionary. The director has discretion whether to conduct investigations and issue citations. Therefore, there is no fiscal impact to Prevailing Wage.

## Information Technology

The following information technology resources will be needed to carry out the requirements of this legislation:

- 0.16 FTEs of an existing business area Information Technology Specialist 4 (ITS4) to work with the programmers regarding business requirements and testing.
- One existing WMS Project Manager to plan and manage the implementation of the required technology changes.
- 6,606 contracted computer-programming hours at a total cost of \$836,028.

Information Services Contractors (Purchased & Personal Services)										
			Implementation <u>Hours</u>			Ongoing <u>Hours</u>				
			Year 1	Year 2	TOTAL (FY15/16)	Year 3	Year 4	Year 5	Year 6	Year 7
			FY15	FY16		FY17	FY18	FY19	FY20	FY21
Skill Category/Role	Hourly Rate	# of Hours	Hours by Fiscal Year							
Category 15 Developer – ARC	94	2200	500	1700						
Category 15 Developer – ESCH	94	230	115	115						
Category 3 – External IT QA	178	2088		2088						
Category 2 – Business Analyst	113	2088	696	1392						
Totals		6606	1311	5295						
	Total Dollars (all years)									
System/Develop Contractor(s)	228,420		57,810	170,610						
Quality Assurance Contractor	371,664			371,664						
Other Contractors (if applicable)	235,944		78,648	157,296						
Total Dollars <u>ALL</u> Contractors	\$836,208		136,458	699,570						

The following assumptions were used to estimate the information technology impacts:

- New complaint/violation type will need to be added to multiple systems for Anti-Retaliation.
- Penalties will be assessed. New penalty types will need to be added to multiple systems.

- Receipt and distribution of payments from source systems will be determined by current business rules between the Accounts Receivable and Collections (ARC) system and the Online Pay Accounts Receivable and Collections (PARC) system and source system receipt posting processes.
- There will be no work related to the new fund created in this bill. Current expectation is to use funds 608 and 609.
- The work will be completed in conjunction, and as coordinated, with other systems interfacing with ARC system and/or the PARC system.
- The ARC system will be modified to create two new receivables within the Employment Standards: One for the penalty and one for the judgment order amount; the ARC system will be modified to handle all legal process lifecycles as well.
- The PARC system will need to be modified to allow payments to be made all receivables created in the ARC system as a result of this bill; the ARC system will be modified to handle all legal process lifecycles as well.
- One Business Analyst to coordinate with business area to develop detailed business requirements and process impacts.

## E-government

To implement new program online function, the following resources are needed:

- 200 contractor hours for User Interface Development. Total cost is \$18,800 (200X94).
- \$30,000 for usability testing: one round of usability testing across one audience.

Conceptual design for mobile and desktop versions. Testing with each customer group on each device type.

E-Government Contractors (Personal Services)							
	Year 1	Year 2	TOTAL (FY15/16)	Ongoing			
	FY15	FY16		Year 3	Year 4	Year 5	Year 6
Skill Category/Role	Dollars			FY17	FY18	FY19	FY20
UCD Consultant	\$30,000		\$30,000				
UI Developer	\$18,800		\$18,800				
Total Dollars	\$48,800		\$48,800				

## Indirect Costs

The amount included in this fiscal note for indirect is:

<b>Fund</b>	<b>Name</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
608	Accident Account	0	2,000	2,000	0	0	0
609	Medical Aid Account	0	1,000	1,000	0	0	0
<b>Total</b>		<b>0</b>	<b>\$3,000</b>	<b>\$3,000</b>	<b>0</b>	<b>0</b>	<b>0</b>

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 2 (Range 44, Step G).

## Part IV: Capital Budget Impact

None.

## Part V: New Rule Making Required

Rulemaking is discretionary, but definitions in WAC 296-126 and WAC 296-128 would be reviewed for consistency and changed if necessary. Additionally, WACs regarding the complaint process may need to be revised.