Multiple Agency Fiscal Note Summary

Bill Number: 5217 SB	**Title:** Industrial ins. wage loss

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	286,000	0	390,000	0	390,000
Total $	**0**	**286,000**	**0**	**390,000**	**0**	**390,000**

Local Gov. Courts						
Loc School dist-SPI						
Local Gov. Other						
Local Gov. Total						

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	1.1	0	286,000	1.6	0	390,000	1.6	0	390,000
Department of Labor and Industries	22.4	0	7,330,000	3.2	0	948,000	3.2	0	948,000
Total $	**23.5**	**0**	**7,616,000**	**4.8**	**0**	**1,338,000**	**4.8**	**0**	**1,338,000**

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
Department of Labor and Industries	.0	0	0	.0	0	0	.0	0	0
Total $	**0.0**	**0**	**0**	**0.0**	**0**	**0**	**0.0**	**0**	**0**

Estimated Capital Budget Breakout

NONE

Prepared by: Anna Minor, OFM	**Phone:** (360) 902-0541	**Date Published:** Final 3/ 4/2019

FNPID: 57004

FNS029 Multi Agency rollup

Individual State Agency Fiscal Note

Bill Number: 5217 SB	Title: Industrial ins. wage loss	Agency: 100-Office of Attorney General

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	91,000	195,000	286,000	390,000	390,000
Total $	91,000	195,000	286,000	390,000	390,000

Estimated Operating Expenditures from:

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	0.7	1.6	1.1	1.6	1.6
Account					
Legal Services Revolving Account-State 405-1	91,000	195,000	286,000	390,000	390,000
Total $	91,000	195,000	286,000	390,000	390,000

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:	Susan Jones	Phone: 360-786-7404	Date: 01/19/2019
Agency Preparation:	Stacia Hollar	Phone: (360) 664-0865	Date: 01/24/2019
Agency Approval:	Dianna Wilks	Phone: 360-709-6463	Date: 01/24/2019
OFM Review:	Gwen Stamey	Phone: (360) 902-9810	Date: 01/31/2019

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.

Fiscal Impact is $50,000 or greater per fiscal year in the current biennium or in subsequent biennia.

Section 1 amends RCW 51.08.178 to address the calculation of worker's wages for industrial insurance payments.

Section 2 amends RCW 51.08.030 to delete "in the legal custody and control" from modifying the term dependent child.

Section 3 amends RCW 51.32.010 to delete language regarding custody related to dependents access to compensation.

Section 4 amends RCW 51.32.025 to eliminate the requirement that payments be made directly to a child over the age of eighteen in certain circumstances.

Section 5 amends RCW 51.32.060 to make the Sections (1) & (2) applicable to injuries before September 1, 2019. A new subsection is added to address payments for permanent total disability for injuries on or after September 1, 2019.

Section 6 amends RCW 51.32.072 to address legal custody of children of injured workers.

Section 7 amends RCW 51.32.060 to address legal custody of children of injured workers.

Sections 8-14 are new sections defining board, bonus, commission, health care benefits, housing, relevant geographic area, and utilities.

Section 15 adds a new section to chapter 51.32 RCW regarding reimbursement of employer premiums for health insurance coverage of injured workers.

Section 16 adds a new section to chapter 51.32 RCW to require LNI to adopt necessary rules.

Section 17 codifies sections 8-14 in RCW 51.08.

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 the Department of Labor & Industries (L&I). The AGO will bill the client 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 agency's 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.

AGO Agency Assumptions:

1. Legal services associated with the enactment of this bill will begin on July 1, 2019.

2. This request does not include cost of living salary increases identified in the Governor's proposed 2019-21 budget.

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

1. The AGO will bill L&I for legal services based on the enactment of this bill.

2. Internal tracking data indicates the AGO currently litigates about 160 cases per year involving wage issues and forecast a 25% increase in cases (40 new cases) until the courts issue rulings interpreting the new law. This forecast is driven by the complexity of the calculations involved in multiple sections of the law as well as the recurring language directing that specific calculation methods shall be used unless they do not fairly and reasonably reflect the worker's lost earning capacity. The average industrial insurance case is benchmarked at 25 hours of Assistant Attorney General (AAG) time. LNI added 10% (or 2 hours) per case to that figure to reflect the increased work of litigating new law, resulting in 1,080 hours or 0.6 FTE of AAG time.

3. Paralegal (PL) mediation caseloads are benchmarked, in case counts, at 360 cases per year. 40 cases is 0.11 PL FTE mediation time. The remaining 0.4 (or 720 hours) per year of PL time is justified due to the increased complexity of mediations and the need for litigation support to support the AAG workload.

4. It usually takes about 5 years for industrial insurance case law to have new precedents in place, so the increases is assumed to last through FY 2025.

5. FY 2020 AAG FTE is a smaller requirement than in the later FYs because there will be a 6-month lag time for cases to reach the AGO. The AAG FTE has also been adjusted to account for 0.1 AAG time for advice concerning implementing the new law, to include reviewing policy updates; advising on response to stakeholder concerns; advising on individual cases; and reviewing any WACs or rules that need to be updated.

6. Total workload impact:
   FY 2020: 0.3 AAG, 0.15 Legal Assistant (LA) and 0.0 PL at a cost of $91,000.
   FY 2021 and in each FY thereafter: 0.6 AAG, 0.3 LA and 0.5 PL at a cost of $195,000.

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	91,000	195,000	286,000	390,000	390,000
		Total $	91,000	195,000	286,000	390,000	390,000

III. B - Expenditures by Object Or Purpose

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	0.7	1.6	1.1	1.6	1.6
A-Salaries and Wages	57,000	122,000	179,000	244,000	244,000
B-Employee Benefits	20,000	43,000	63,000	86,000	86,000
C-Professional Service Contracts					
E-Goods and Other Services	12,000	26,000	38,000	52,000	52,000
G-Travel	1,000	2,000	3,000	4,000	4,000
J-Capital Outlays	1,000	2,000	3,000	4,000	4,000
Total $	91,000	195,000	286,000	390,000	390,000

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	103,560	0.3	0.6	0.5	0.6	0.6
Legal Assistant 3	51,004	0.2	0.3	0.2	0.3	0.3
Management Analyst 5	77,614	0.1	0.2	0.1	0.2	0.2
Paralegal 2	65,288	0.2	0.5	0.4	0.5	0.5
Total FTEs		0.7	1.6	1.1	1.6	1.6

III. D - Expenditures By Program (optional)

Program	FY 2020	FY 2021	2019-21	2021-23	2023-25
Labor & Industries Division (LNI)	91,000	195,000	286,000	390,000	390,000
Total $	91,000	195,000	286,000	390,000	390,000

Part IV: Capital Budget Impact

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.

None.

Individual State Agency Fiscal Note

Bill Number: 5217 SB	Title: Industrial ins. wage loss	Agency: 235-Department of Labor and Industries

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	23.5	21.3	22.4	3.2	3.2
Account					
Accident Account-State 608-1	2,223,000	1,435,000	3,658,000	474,000	474,000
Medical Aid Account-State 609-1	2,229,000	1,443,000	3,672,000	474,000	474,000
Total $	4,452,000	2,878,000	7,330,000	948,000	948,000

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:	Susan Jones	Phone: 360-786-7404	Date: 01/19/2019
Agency Preparation:	Shana J Snellgrove	Phone: 360-902-6408	Date: 03/04/2019
Agency Approval:	Trent Howard	Phone: 360-902-6698	Date: 03/04/2019
OFM Review:	Anna Minor	Phone: (360) 902-0541	Date: 03/04/2019

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	2,223,000	1,435,000	3,658,000	474,000	474,000
609-1	Medical Aid Account	State	2,229,000	1,443,000	3,672,000	474,000	474,000
		Total $	4,452,000	2,878,000	7,330,000	948,000	948,000

III. B - Expenditures by Object Or Purpose

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	23.5	21.3	22.4	3.2	3.2
A-Salaries and Wages	1,592,000	1,453,000	3,045,000	314,000	314,000
B-Employee Benefits	602,000	549,000	1,151,000	140,000	140,000
C-Professional Service Contracts	1,384,000	343,000	1,727,000		
E-Goods and Other Services	648,000	528,000	1,176,000	492,000	492,000
G-Travel	6,000	5,000	11,000	2,000	2,000
J-Capital Outlays	220,000		220,000		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total $	4,452,000	2,878,000	7,330,000	948,000	948,000

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
Fiscal Analyst 5	60,636	1.5	1.3	1.4	0.2	0.2
Industrial Insurance Compensation Supervisor	70,308	1.0	1.0	1.0		
Information Technology Specialist 4	79,545	5.0	5.0	5.0		
Information Technology Specialist 5	87,785	1.0	1.0	1.0		
Management Analyst 3	62,131	1.0	1.0	1.0		
Management Analyst 4	72,030	1.0	1.0	1.0		
Program Coordinator	42,894	2.0	2.0	2.0	1.0	1.0
WMS 2 IT Project Manager	101,415	1.0	1.0	1.0		
WMS 2 Project Manager	91,835	1.0	1.0	1.0		
Workers' Compensation Adjudicator 1	50,996	2.0	2.0	2.0	2.0	2.0
Workers' Compensation Adjudicator 2	56,251	2.0	2.0	2.0		
Workers' Compensation Adjudicator 3	62,131	2.0	2.0	2.0		
Workers' Compensation Adjudicator 4	65,277	3.0	1.0	2.0		
Total FTEs		23.5	21.3	22.4	3.2	3.2

Part IV: Capital Budget Impact

NONE

See attached.

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 proposed bill changes the way wages are calculated for workers' compensation benefits in the following ways:

- Eliminates the existing method of calculating wages for workers' compensation where the worker's wages are not fixed by the month. Currently, these wages are calculated by multiplying the worker's daily wage with a factor based upon how many days the worker normally worked per month. This bill proposes that these wages be calculated based on when the worker is paid (weekly, bi-weekly, semi-monthly, monthly) unless that method is not "fair and reasonable."
- Eliminates the current range for determining time-loss and pension benefits, which is 60 to 75 percent of the worker's wages based on marital and dependent status. It replaces the various percentages with a fixed flat rate of 70 percent for injuries on or after September 1, 2019.
- Eliminates the provision for exclusively seasonal, part-time, or intermittent work which requires that the wage is calculated by dividing by twelve all wages earned (including overtime) from all employment in any twelve successive calendar months preceding the injury.
- Adds overtime pay (currently only added if seasonal, part-time, or intermittent) to wages and clarifies that shift differentials, paid leave, utilities, and all bonuses within the twelve months immediately preceding the injury are included in the definition of "wage" (currently, only bonuses that are part of the contract for hire are included). It also clarifies that it is the "monetary" value of board, housing, utilities, and fuel that is added. It removes "other consideration of like nature received from the employer" to the definition of "wage."
- Removes the requirement that payments of benefits to any child or children are paid to the custodial parent (if different from the worker) or to the child directly at age 18. Time-loss and pension benefits on account of any child or children are paid to the worker directly.
- Stipulates that an employer may be reimbursed for paying the worker's portion of health insurance premiums in addition to the employer's portion while the worker

is entitled to time-loss or total permanent disability benefits. The bill also specifies that the reimbursement comes out of the Accident Fund.

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

Section 1 amends RCW 51.08.178 by changing the way wages are calculated for workers' compensation benefit purposes:

- Subsection (1)(a) provides that the calculation of a worker's wages are to be fair and reasonable, reflecting the worker's lost earning capacity at the time of injury. Subsection (1)(b) calls for using the worker's fixed monthly salary at the time of injury unless that salary does not fairly represent the worker's lost earning capacity, in which case subsection (5) will be used.
- Subsections (1)(c)(i) through (1)(c)(iii) address how to calculate the wages of a worker who is paid an hourly wage. For such workers, the wage calculation formula depends on how often they are paid. Workers who receive a paycheck every month, or twice a month, have their wages calculated based on the gross wages paid for the most recent three months, divided by three. Workers who receive a paycheck every week have their wages calculated based on the wages paid for the last thirteen weeks, divided by three. Workers who receive paychecks every two weeks have their wages calculated based on the wages paid for the most recent fourteen weeks, divided by fourteen, multiplied by four and a half.
- Subsection (1)(c)(iv) addresses how to calculate the wages of a worker who is not salaried and who worked for the employer for less than three months before the injury. As with subsections (1)(c)(i) through (iii), the precise method used under subsection (1)(c)(iv) depends on how often the employer issued paychecks to the worker. For workers who are paid monthly, the worker's wages are calculated based on the wages paid for all "complete months the worker worked" divided by the number of "complete months." For workers who are paid twice a month, the legislation says that the worker's wages are calculated based on "the total number of complete pay periods that the worker worked, divided by the number of pay periods, multiplied by two." For workers who are paid weekly or twice a week, the legislation directs that the worker's wages are calculated based on the gross wages earned for the three months preceding the injury,

divided by the number of complete weeks with the employer during those three months, and multiplied by four and a half.

- Subsection (1)(d)(i) through (1)(d)(iv) provide that workers paid on a weekly or semi-weekly basis who receive a substantial increase or decrease to their compensation in three months preceding their injuries shall have their wages calculated based only on the wages in effect after the change. Any change in rate of pay is considered substantial, while a change in hours must be of at least 5 percent. A "change" only includes "an actual change in the worker's work pattern, hours, or pay", but does not include changes in compensation due to unpaid leave, temporary time off, or similar issues. This subsection also provides that subsection (5) is applicable under certain circumstances.
- Subsection (2) provides for including commissions, piecework, and similar earnings from the last three months to calculate a worker's wages if the worker is compensated in that fashion.
- Subsection (3) provides that if a worker's wages cannot be reasonably or fairly calculated under subsection (1) or subsection (2), then the worker's wages are calculated under either subsection (4) or subsection (5), using whichever of those two methods best reflects the worker's lost earning capacity.
- Subsection (4) addresses situations where the worker has had a day or days without wages that equal or exceed 10 percent of the worker's scheduled hours.
- Subsection (5) applies when the other methods of calculating the worker's wages do not fairly reflect the worker's lost earning capacity at the time of the injury. It provides that the department will first consider whether the employer of injury has any other workers with a work pattern and job title consistent with that of the worker and, if so, the worker's wages are calculated using the wages paid to those workers. If the employer of injury has no other such workers, the wages are to be based on the wages paid to workers doing like or similar work, within the worker's geographic region, in the same or similar occupations.
- Subsection (6) provides that a self-employed person's wages are calculated based on subsections (1) through (4), unless none of those would lead to a fair and reasonable calculation, in which case the self-employed person's wages would be calculated under subsection (5).

- Subsection (7) provides that overtime pay, shift differentials, and paid leave are included as wages in a wage calculation. The subsection also provides that wages include employer payments for board, housing utilities, and fuel, and the employer's payment or portion for health care benefits, unless the employer continues paying for these benefits at the same level provided at the time of injury. Consistent with current law, tips are included only if they are reported to the employer for federal tax purposes.
- Subsection (8) provides that if a worker received a bonus in the twelve months preceding the injury, the average monthly value of the bonus is included in the worker's monthly wage calculation.
- Subsection (9) provides that if, in the twelve months preceding the injury, the worker worked one or more jobs that are performed only during specific times of the year, in addition to the worker's primary job, then the average monthly value of the wages from the other jobs is included in the worker's wage calculation. This is true even if the worker was not performing one of those jobs at the time of the injury.

Sections 2 and 3 amend RCWs 51.08.030 and 51.32.010 to eliminate the requirement that the Department of Labor and Industries (L&I) pay a portion of time-loss or pension payments to the legal custodian of a child, when the worker does not have legal custody. Instead, all time-loss or pension benefits are paid directly to the worker.

Section 4 amends RCW 51.32.025 so that a portion of time-loss or pension payments are no longer paid directly to a child who is between the ages of 18 and 23 and enrolled full-time at an accredited school. The portion paid directly to a child only applies to injuries before July 1, 2018.

Section 5 amends RCW 51.32.060 by eliminating the various percentages applied to the worker's wages to determine pension benefits. These percentages (60 to 75) are based on marital and dependent status. These are replaced with a fixed rate of 70 percent, for injuries on or after September 1, 2019.

Section 6 amends RCW 51.32.072 by eliminating references to the children of a worker who are not in the legal custody or control of the worker.

Section 7 amends RCW 51.32.090 to include the change in benefit calculations to a fixed 70 percent of wages, as described in Section 5 for time-loss benefits. It also eliminates language requiring that a portion of time-loss benefits be paid to a custodial parent, and renumbers the remaining subsections.

Section 8 adds a new section to Chapter 51.08 RCW defining "board" as meals regularly provided by the employer to the worker. It further provides that the fair market value of the meals is used to calculate the benefit, rather than the actual amounts paid.

Section 9 adds a new section to Chapter 51.08 RCW defining "bonus" as a sum of money given in addition to regular pay, in appreciation, recognition, or reward for work done, performance, or similar reasons.

Section 10 adds a new section to Chapter 51.08 RCW defining "commission" as a payment made entirely or in significant part based on sales or work completed.

Section 11 adds a new section to Chapter 51.08 RCW defining "health care benefits" as coverage for health insurance costs, whether through an insurance company or self-insurance, and includes medical, dental, and vision coverage. The section provides that where a union provides health care benefits, the benefit is calculated based on the amount paid by the employer to the union on the worker's behalf. Where the coverage is provided through self-insurance, the benefit is calculated based on the amount the employer reports to COBRA for coverage for individuals similar to what was provided to the worker, less the amount the worker was required to pay for the coverage on the date of injury.

Section 12 defines "housing" as shelter or lodging provided by the employer to the worker. The value of the housing shall be based on the fair market value of the housing.

Section 13 defines “relevant geographic region” as an area of “substantially equivalent distance” from the worker’s residence to the job at the time of injury, or that a reasonable person would travel in order to work.

Section 14 defines “utilities” as costs related to housing provided by the employer.

Section 15 provides a new incentive to employers, to encourage them to pay the worker’s portion of health care benefits following a workplace injury. Employers who are covered by the state fund and who pay the worker’s health care premium while the worker is entitled to time-loss or pension benefits may apply for reimbursement. Reimbursement requests must be submitted within one year and are paid from the Accident Fund.

Section 16 adds a new section to Chapter 51.32 RCW directing L&I to adopt rules necessary to implement this bill.

II. B – Cash Receipt Impact

Non-Appropriated – State Fund Premiums

As an insurance entity, (L&I) premium rates are intended to match premiums to claims cost projections. Therefore, for this fiscal analysis it is assumed that any incremental costs or savings will equal the incremental revenue collected.

Premium Impact to Rates

Individual changes to the Accident and Medical Aid Funds do not change rate assumptions by themselves. Cost increases are only one of many components in determining rates. The high-level strategy that is used to determine if a rate change is necessary is as follows:

- Review of liabilities, or costs of the workers’ compensation system.
- Investment earnings.
- Adequate revenue (premiums + investments) based on projected costs (actuarial estimates) will determine need for a premium change.

Non-Appropriated – Self-Insured Employers

If an employer chooses to be self-insured, they are responsible to pay for overall claim costs and a portion of administration costs of L&I's self-insurance program and other costs of related support functions. The administrative assessment is an amount per dollar of claim benefit costs. If benefit costs are increased due to the change in wage and benefit calculations, self-insured employers would be assessed by L&I for their appropriate portion of administrative costs based on the increase. Incremental costs or savings will equal the incremental revenue collected from assessments.

II. C – Expenditures

Non-Appropriated – State Fund Benefits Costs

There is non-appropriated impact only to the Accident Account, fund 608, and Medical Aid Account, fund 609. (Non-appropriated costs are not included in the Fiscal Note Summary.)

Section 1 – Wage Loss Calculation Impact

The total non-appropriated impact is **indeterminate**.

The fiscal impact of the changes to wages cannot be adequately estimated because existing claim files do not contain the documentation needed to apply alternative wage calculation models. The new law would require the use of new formulas to calculate wages. These new formulas rely on specific data points that we currently do not require as part of a claim. Specific examples of data we would need to collect include wage records for a fixed length of time from the injured worker and employer to establish the frequency of an injured worker's pay. The length of time needed would vary by the type of case described in law. Additionally, it is unclear how or if the standard of fair and reasonable reflecting the workers' lost earning capacity will impact wage determinations (these terms are currently referenced in case law, but not the statute).

Sections 5 and 7 – Flat Rate Impact

The department is unable to project future change in compensation benefits for this change. While the department is able to estimate the percent of increase to the effective compensation rate, it is not able to predict behavior and other external circumstances, that would affect the multiplier used to determine the impact on time-loss duration and total permanent disability (TPD) pension frequency. Accordingly, and to provide the legislature a sense of magnitude, L&I has developed a potential range of impacts:

- 20% additional increase in time-loss duration and TPD pension frequency: Over $650 million impact
- 35% additional increase in time-loss duration and TPD pension frequency: Over $700 million impact
- 50% additional increase in time-loss duration and TPD pension frequency: Over $800 million impact
- 75% additional increase in time-loss duration and TPD pension frequency: Over $950 million impact
- 100% additional increase in time-loss duration and TPD pension frequency: Over $1,000 million impact

The following assumptions were used to develop the estimated impact for the flat rate:

A three-year recent historical period was used to estimate the impact of these sections. The flat 70% rate was applied to claims that are over 350 days of time-loss duration. These longer duration claims make up close to 92% of expected time-loss benefits for a year of claims, so this smaller sample of claims serves as a proxy for this purpose. The analysis also took into account an increase in time-loss duration and TPD pension frequency that occurred when the employer's contribution to health care benefits was added to the wage calculation in response to the Supreme Court's 2001 *Cockle* decision.

When other changes in the compensation rate has occurred in the past, we also saw an increase in time-loss duration and pension frequency. However, it is important to note that we cannot account for all possible contributors on time-loss duration and pension frequency. Therefore, while it is unlikely that the impact will fall below a 20% additional increase in time-loss duration and TPD pension frequency, L&I is unable to accurately determine the actual impact.

The scenario assumptions are:

- 20% additional increase in time-loss duration and TPD pension frequency (10.2% effective rate time-loss + TPD, 8.5% vocational option 2)
- 35% additional increase in time-loss duration and TPD pension frequency (11.5% effective rate time-loss + TPD, 8.5% vocational option 2)
- 50% additional increase in time-loss duration and TPD pension frequency (12.8% effective rate time-loss + TPD, 8.5% vocational option 2)
- 75% additional increase in time-loss duration and TPD pension frequency (14.9% effective rate time-loss + TPD, 8.5% vocational option 2)
- 100% additional increase in time-loss duration and TPD pension frequency (17.1% effective rate time-loss + TPD, 8.5% vocational option 2)

Analysis of long-term claims from fiscal accident years 2015 to 2017:

(1)	Current effective compensation rate	63.3%	
(2)	New flat compensation rate	70.0%	
(3)	New effective compensation rate	68.8%	Average compensation rate after considering compensation maximums per claim
(4) = (3) - (1)	Increase in effective rate	5.4%	
(5) = (4) / (1)	% increase in effective compensation rate	8.5%	
(6) = 50% * (5)	Increase in time-loss duration	4.3%	Assumed duration increase that is half the increase to average compensation rate increases
(7) = 50% * (5)	Increase in TPD pension frequency	4.3%	Assumed increase due to subsequently increased time-loss duration

Expected wage replacement benefits before proposed bill for fiscal accident years 2019 to 2025:

Fiscal Accident Year	Time-Loss	TPD Pensions	Vocational Option 2	Combined Benefits
FY 2019	$ 446,200	$ 351,500	$ 12,820	**$ 810,520**
FY 2020	$ 466,240	$ 367,290	$ 13,400	**$ 846,930**
FY 2021	$ 485,610	$ 382,550	$ 13,960	**$ 882,120**
FY 2022	$ 505,000	$ 397,820	$ 14,520	**$ 917,340**

FY 2023	$ 524,350	$ 413,060	$ 15,080	**$ 952,490**
FY 2024	$ 543,590	$ 428,220	$ 15,630	**$ 987,440**
FY 2025	$ 562,660	$ 443,240	$ 16,180	**$ 1,022,080**
TOTAL	$ 3,533,650	$ 2,783,680	$ 101,590	**$ 6,418,920**

Note: exhibit is in $1,000s.

Fiscal Accident Year	Effect of this Bill 20% Additional increase in time-loss duration and TPD pension frequency	Effect of this Bill 35% Additional increase in time-loss duration and TPD pension frequency	Effect of this Bill 50% Additional increase in time-loss duration and TPD pension frequency	Effect of this Bill 75% Additional increase in time-loss duration and TPD pension frequency	Effect of this Bill 100% Additional increase in time-loss duration and TPD pension frequency
FY 2019	**$82,800**	**$93,000**	**$103,300**	**$120,300**	**$137,300**
FY 2020	**$86,500**	**$97,200**	**$107,900**	**$125,700**	**$143,500**
FY 2021	**$90,100**	**$101,300**	**$112,400**	**$130,900**	**$149,400**
FY 2022	**$93,700**	**$105,300**	**$116,900**	**$136,100**	**$155,400**
FY 2023	**$97,300**	**$109,300**	**$121,300**	**$141,400**	**$161,400**
FY 2024	**$100,900**	**$113,400**	**$125,800**	**$146,500**	**$167,300**
FY 2025	**$104,400**	**$117,300**	**$130,200**	**$151,700**	**$173,200**
TOTAL	**$655,700**	**$736,800**	**$817,800**	**$952,600**	**$1,087,500**

Note: exhibit is in $1,000s.

The total impact is estimated as:

- 20% additional increase in time-loss duration and TPD pension frequency: Over $650 million impact
- 35% additional increase in time-loss duration and TPD pension frequency: Over $700 million impact
- 50% additional increase in time-loss duration and TPD pension frequency: Over $800 million impact
- 75% additional increase in time-loss duration and TPD pension frequency: Over $950 million impact
- 100% additional increase in time-loss duration and TPD pension frequency: Over $1,000 million impact

Section 15 – Health Care Reimbursement Impact

The department is unable to project future impact of potential benefit savings for this change to reimburse employers when they pay the employee share of healthcare premium; however, to provide the legislature a sense of magnitude, L&I has developed a high, medium, and low estimate to provide potential impacts.

The total impact is estimated in a range:

- **High:** a net savings of ($11.5 million) over the next seven fiscal accident years.
- **Medium:** a net savings of ($7.0 million) over the next seven fiscal accident years.
- **Low:** a net savings of ($2.6 million) over the next seven fiscal accident years.

The following assumptions were used to develop the estimated impact for the reimbursement to employers for paying the worker portion of health care benefit premiums:

- Using data from the Kaiser Family Foundation 2018 survey (https://www.kff.org/report-section/2018-employer-health-benefits-survey-summary-of-findings/), it is estimated that the worker contribution of insurance premiums is **22.5%** of the employer contribution.
- It is assumed that the percentage of claims during the study period of Fiscal Accident Years 2015 to 2017 with wage benefits based on employer contribution of health care insurance will continue until 2025.
- It is assumed that 5% of the potential amount of employee portion of insurance benefits have been reimbursed historically.
- Given the incentives provided by this bill, L&I has calculated three scenarios (high, medium, and low) for the additional percentage of health care insurance including worker portion that will be reimbursed.
    - High: an additional 30% (35% of the health care benefit count, or close to 2,800 claims).
    - Medium: an additional 20% (25% of the health care benefit count, or close to 2,000 claims).
    - Low: an additional 10% (15% of the health care benefit count, or close to 1,200 claims).

- To maintain the reimbursement employers will have to fill out, on average, eight forms per claim.
- These incentives will reduce the health care benefit (HCB) portion of wages and resulting time-loss benefits by the same percentage as the additional health care insurance provided.

A study of 7/1/2014 to 6/30/2017 time-loss claims with wages based on employer contribution of health insurance benefits showed that:

- 21,923 or **31%** of the 71,333 ultimate lost-time claims included the cost of health care in the calculation of wages based on the employer contribution of health insurance benefits at the time of injury. Also, of the claims with 350 days or more of time-loss, this percentage is higher at 40%.
- Looking at the longer-term claims in this sample, **14.8%** of calculated wages was this employer contribution portion.
- For all of these claims, the employer's contribution of health insurance continued, on average, for 110 days resulting in reduced wages for the first 110 days.
- The average compensation rate was 63.3%.
- L&I doesn't have any data regarding whether these employers also contribute money towards the employee portion of health care insurance.

A	B	C	D	E	F	G
Fiscal Accident Year	**Lost-Time Claim Count**	**31% of Lost-Time Claims or HCB Count**	**Average Daily Time-Loss Rate**	**HCB Portion of Daily Rate**	**Current HCB Portion of Time-Loss Benefits (for 110 days)**	**Worker Portion of HCB Premium**
		(B * 0.31)		**(D * 0.148)**	**(110 * C * E)**	**((F * 0.225 / (1 - 0.225)) / 0.633)**
2019	24,600	7,600	$ 84.20	$ 12.46	$ 10,400,000	$ 4,800,000
2020	25,000	7,700	$ 86.53	$ 12.80	$ 10,800,000	$ 4,900,000
2021	25,400	7,800	$ 88.80	$ 13.14	$ 11,300,000	$ 5,200,000
2022	25,800	7,900	$ 90.97	$ 13.46	$ 11,700,000	$ 5,400,000
2023	26,200	8,100	$ 93.07	$ 13.77	$ 12,300,000	$ 5,600,000
2024	26,600	8,200	$ 95.08	$ 14.07	$ 12,700,000	$ 5,800,000
2025	27,000	8,300	$ 96.95	$ 14.35	$ 13,100,000	$ 6,000,000
					$ 82,300,000	**$ 37,700,000**

Note: in this exhibit, the HCB claims are those where wages include the employer contribution to health care insurance.

The estimated worker portion of health care insurance is (110 days of the HCB portion of time-loss * 22.5% / (1 - 22.5%) / 63.3%.

H	I	J	K	L	M
High Scenario		**Medium Scenario**		**Low Scenario**	
Additional 35% of the HC Amount will be Reimbursed	Additional 30% Time-Loss Reduction due to Increased Employer Contributions	Additional 25% of the HC Amount will be Reimbursed	Additional 20% Time-Loss Reduction due to Increased Employer Contributions	Additional 15% of the HC Amount will be Reimbursed	Additional 10% Time-Loss Reduction due to Increased Employer Contributions
(G * 0.35)	**(-F * 0.30)**	**(G * 0.25)**	**(-F * 0.20)**	**(G * 0.15)**	**(-F * 0.10)**
$ 1,680,000	$ (3,120,000)	$ 1,200,000	$ (2,080,000)	$ 720,000	$ (1,040,000)
$ 1,715,000	$ (3,240,000)	$ 1,225,000	$ (2,160,000)	$ 735,000	$ (1,080,000)
$ 1,820,000	$ (3,390,000)	$ 1,300,000	$ (2,260,000)	$ 780,000	$ (1,130,000)
$ 1,890,000	$ (3,510,000)	$ 1,350,000	$ (2,340,000)	$ 810,000	$ (1,170,000)
$ 1,960,000	$ (3,690,000)	$ 1,400,000	$ (2,460,000)	$ 840,000	$ (1,230,000)
$ 2,030,000	$ (3,810,000)	$ 1,450,000	$ (2,540,000)	$ 870,000	$ (1,270,000)
$ 2,100,000	$ (3,930,000)	$ 1,500,000	$ (2,620,000)	$ 900,000	$ (1,310,000)
$ 13,195,000	**$ (24,690,000)**	**$ 9,425,000**	**$ (16,460,000)**	**$ 5,655,000**	**$ (8,230,000)**

The net impact over the next seven fiscal accident years is:

- High: a net savings of ($11.5 million) (column H + column I).
- Medium: a net savings of ($7.0 million) (column J + column K).
- Low: a net savings of ($2.6 million) (column L + column M).

<u>Appropriated – Operating Costs</u>

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

Staffing

With the multiple changes in the agency's wage and payment processes, L&I will need the following staff for implementation:

- **One WMS Business Project Manager** who will coordinate the gathering of business requirements for programming our technology systems. This project position will begin July 1, 2019 and end June 30, 2021.
- **Two Business Analysts**, subject matter experts in claims and wage calculation, who will assist with developing, designing, and testing the technology changes. They will coordinate changes with both the state fund and the self-insurance program to ensure consistency, develop communication plans, and establish and facilitate work groups. These project positions would begin July 1, 2019 and end June 30, 2021.
- **One Management Analyst 4** who will manage the changes needed in the self-insurance program. This will include project planning, overseeing development of policies, procedures, tools, and tasks, working with subject-matter experts, communicating with internal and external customers, and implementing the legislative directive. This project position would begin July 1, 2019 and end June 30, 2021.
- **Two Workers' Compensation Adjudicator (WCA) 3s and two WCA 2s** who will complete the manual calculation and entry of wages into the claims system until automated modifications are completed. This is necessary due to the effective date of the changes in the bill. L&I currently issues approximately 72 wage orders per day. It is assumed each WCA will be able to complete eight wage orders in one day based upon the time it would take to gather the pay period information, determine if there was a substantial change, and calculate the wage (72 wage orders per day / 8 completed wage orders per day per WCA = 9 WCA s). However, because all of the wage orders will be completed by this unit until automated modifications to the claims system are completed, this task will be removed from L&I's existing WCAs. Therefore, L&I assumes it can staff half of this unit with existing resources, decreasing the FTE request from nine WCAs to four WCAs. These project positions would begin July 1, 2019 and end June 30, 2021.

- **One Program Coordinator (Claim Processor)** who will assist the unit of WCAs in gathering wage information, obtaining records from Employment Security Department, loading protests, reviewing records for completeness, returning phone calls, and other supportive duties as required. This project position would begin July 1, 2019 and end June 30, 2021.
- **One Industrial Insurance Compensation Supervisor** who will supervise the unit of WCAs and the Claim Processor, and oversee the manual process of wage calculation for the state fund until the technology solution is completed and recording of data. This project position would begin July 1, 2019 and end June 30, 2021.
- **Three WCA 4s** who will oversee the training of L&I staff and self-insured employers.
    - The one WCA 4 for the self-insurance program will develop training courses for internal and external customers, update training plans, handouts, and work-check materials, meet with the curriculum advisory committee for credits, provide customer service for external customers on the training and questions with the online wage database, and facilitate twelve mandatory external training sessions over a two-year period. This project position would begin July 1, 2019 and end June 30, 2021.
    - The two WCA 4s for the state fund will develop training courses for internal customers, update training plans and handouts, updated coaching and work-check materials, provide customer service for internal customers, and facilitate internal training sessions. These project positions would begin July 1, 2019 and end June 30, 2020.
- **Two WCA 1s** who will adjudicate health care premium reimbursement requests. It is estimated there could be as many as 2,800 claims per year (per the High range in the Non-Appropriated – State Fund Benefits Costs section) where the employer would pay for the worker's portion of health care premiums. It is estimated L&I will receive, on average, eight reimbursement requests per claim, which equals about 22,400 potential requests per year (2,800 claims * 8 reimbursement requests per claim = 22,400). This equates to about 85 reimbursement requests per day (22,400 request per year / 12 months = 1,866 requests per month; 1,866 requests per month / 22 working days per month = 85

requests per day). It is estimated that one WCA 1 can adjudicate approximately 40 reimbursement requests per day (85 requests received per day / 40 reimbursement requests per WCA = 2 WCA 1s). These permanent positions would begin July 1, 2019.

- **One Program Coordinator (Claim Processor)** who will input health care premium reimbursement request data into the system and pre-screen the reimbursement requests to expedite work for the two WCA 1s. It is estimated there could be as many as 2,800 claims per year (per the High range in the Non-Appropriated – State Fund Benefits Costs section) where the employer would pay for the worker's portion of health care premiums. It is estimated L&I will receive, on average, eight reimbursement requests per claim, which equals about 22,400 potential requests per year (2,800 claims * 8 reimbursement requests per claim = 22,400). This equates to about 85 reimbursement requests per day (22,400 request per year / 12 months = 1,866 requests per month; 1,866 requests per month / 22 working days per month = 85 requests per day). It is estimated that one Program Coordinator can input data for approximately 80 reimbursement requests per day (85 requests received per day / 80 reimbursement requests per Program Coordinator = 1 Program Coordinator). This permanent position would begin July 1, 2019.
- **One Management Analyst 3** who will manage the business requirements for the new health care benefit reimbursement system, provide system testing in conjunction with information technology staff, and obtain stakeholder buyoff. This project position would begin July 1, 2019 and end June 30, 2021.

<u>Information Technology</u>

This bill changes the formulas for how time-loss compensation is calculated. This will require development of new services and implementation of changes in over 20 systems and processes that support claims and time-loss wage calculation. This includes existing critical systems that are complicated, older, and in some cases, fragile. The following resources are needed to execute this bill:

- **One WMS Information Technology Project Manager** who will provide oversight of the technology project and contracted staff. This project position will begin July 1, 2019 and end June 30, 2021.

- **One Information Technology Specialist 5** who will serve as the project coordinator for designing, enhancing, testing, and implementing enhancements to 20+ computer applications and processes. This project position will begin July 1, 2019 and end June 30, 2021.
- **Three Information Technology Specialist 4s** who will define business requirements for the enhancements necessary to 20+ computer applications and processes. These project positions will begin July 1, 2019 and end June 30, 2021.

$1,615,223 is needed for 12,742 contractor hours to incorporate changes to the 20+ systems and processes from July 1, 2019, through June 30, 2021.

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.

Web Services

$111,666 is needed for 798 contractor hours during fiscal year 2020. The web services changes include research and usability analysis for changes to the Report of Accident form, as well as design, development, and testing for the external loss-of-earning power calculator and L&I's website.

Form and Publications

$79,365 is needed in fiscal year 2020 to update and print the following forms and publications:

- State Fund Report of Accident (English and Spanish)
- Self-Insured Accident Report
- Workers' Compensation Benefits: A Guide for Workers (English and Spanish)
- A Guide for Workers' Compensation Benefits for Employees of Self-Insured Businesses (English and Spanish)
- Pension and Survivor Benefits in Washington State's Workers' Compensation Program

Attorney General – Legal Services

The Attorney General's Office will need an additional 0.3 Assistant Attorney General (AAG) FTE and 0.15 Legal Assistant at a cost of $91,000 in fiscal year 2020. For fiscal year 2021 and in each fiscal year thereafter, 0.6 AAG FTE, 0.3 Legal Assistant FTE, and 0.5 Paralegal FTE at a cost of $195,000 per year is needed. It is anticipated that these significant changes in Title 51 RCW will cause an increase in appeals, at least initially. In addition, these resources are necessary to provide legal advice on rule changes.

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	73,000	66,500	10,000	10,000	10,000	10,000
609	Medical Aid	73,000	66,500	10,000	10,000	10,000	10,000
	Total:	$146,000	$133,000	$20,000	$20,000	$20,000	$20,000

L&I assesses an indirect rate to cover agency-wide administrative costs. L&I's 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 56, Step G).

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

This legislation would result in some new rules and changes to:

- WAC 296-14-522: "What does the term 'wages' mean?"
- WAC 296-14-524: "How do I determine whether an employer provided benefit qualifies as 'consideration of like nature' to board, housing and fuel?"
- WAC 296-14-526: "Is the value of 'consideration of like nature' always included in determining the worker's compensation?"

- WAC 296-14-528: “How do I determine the value of a benefit that qualifies as ‘consideration of like nature’?”
- WAC 296-14-530: “Is overtime considered in calculating the worker's monthly wage?”