

# Multiple Agency Fiscal Note Summary

|                                 |                                    |
|---------------------------------|------------------------------------|
| <b>Bill Number:</b> 1072 P S HB | <b>Title:</b> Prevailing wage laws |
|---------------------------------|------------------------------------|

## 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  | 48,000        | 0         | 96,000        | 0         | 96,000        |
| Department of Labor and Industries | Non-zero but indeterminate cost and/or savings. Please see discussion. |               |           |               |           |               |
| <b>Total \$</b>                    | <b>0</b>   | <b>48,000</b> | <b>0</b>  | <b>96,000</b> | <b>0</b>  | <b>96,000</b> |

## Estimated Operating Expenditures

| Agency Name                        | 2019-21    |          |                  | 2021-23    |          |                  | 2023-25    |          |                  |
|------------------------------------|------------|----------|------------------|------------|----------|------------------|------------|----------|------------------|
|                                    | FTEs       | GF-State | Total            | FTEs       | GF-State | Total            | FTEs       | GF-State | Total            |
| Office of Attorney General         | .2         | 0        | 48,000           | .4         | 0        | 96,000           | .4         | 0        | 96,000           |
| Office of Administrative Hearings  | .0         | 0        | 0                | .0         | 0        | 0                | .0         | 0        | 0                |
| Department of Labor and Industries | 7.6        | 0        | 2,166,000        | 8.0        | 0        | 1,706,000        | 8.0        | 0        | 1,706,000        |
| <b>Total \$</b>                    | <b>7.8</b> | <b>0</b> | <b>2,214,000</b> | <b>8.4</b> | <b>0</b> | <b>1,802,000</b> | <b>8.4</b> | <b>0</b> | <b>1,802,000</b> |

## Estimated Capital Budget Expenditures

| Agency Name                        | 2019-21    |          |          | 2021-23    |          |          | 2023-25    |          |          |
|------------------------------------|------------|----------|----------|------------|----------|----------|------------|----------|----------|
|                                    | FTEs       | Bonds    | Total    | FTEs       | Bonds    | Total    | FTEs       | Bonds    | Total    |
| Office of Attorney General         | .0         | 0        | 0        | .0         | 0        | 0        | .0         | 0        | 0        |
| Office of Administrative Hearings  | .0         | 0        | 0        | .0         | 0        | 0        | .0         | 0        | 0        |
| Department of Labor and Industries | .0         | 0        | 0        | .0         | 0        | 0        | .0         | 0        | 0        |
| <b>Total \$</b>                    | <b>0.0</b> | <b>0</b> | <b>0</b> | <b>0.0</b> | <b>0</b> | <b>0</b> | <b>0.0</b> | <b>0</b> | <b>0</b> |

## Estimated Capital Budget Breakout

NONE

|                                     |                                 |   |
|-------------------------------------|---------------------------------|---|
| <b>Prepared by:</b> Anna Minor, OFM | <b>Phone:</b><br>(360) 902-0541 | <b>Date Published:</b><br>Final 3/26/2019 |
|-------------------------------------|---------------------------------|---|

# Individual State Agency Fiscal Note

Revised

|                                 |                                    |   |
|---------------------------------|------------------------------------|---|
| <b>Bill Number:</b> 1072 P S HB | <b>Title:</b> Prevailing wage laws | <b>Agency:</b> 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<br>405-1 |         | 48,000  | 48,000  | 96,000  | 96,000  |
| <b>Total \$</b>                                 |         | 48,000  | 48,000  | 96,000  | 96,000  |

### Estimated Operating Expenditures from:

|   | FY 2020 | FY 2021 | 2019-21 | 2021-23 | 2023-25 |
|---|---------|---------|---------|---------|---------|
| FTE Staff Years                                 | 0.0     | 0.4     | 0.2     | 0.4     | 0.4     |
| <b>Account</b>                                  |         |         |         |         |         |
| Legal Services Revolving<br>Account-State 405-1 | 0       | 48,000  | 48,000  | 96,000  | 96,000  |
| <b>Total \$</b>                                 | 0       | 48,000  | 48,000  | 96,000  | 96,000  |

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: Joan Elgee | Phone: 360-786-7106   | Date: 02/22/2019 |
| Agency Preparation: Cam Comfort | Phone: (360) 664-9429 | Date: 03/25/2019 |
| Agency Approval: Dianna Wilks   | Phone: 360-709-6463   | Date: 03/25/2019 |
| OFM Review: Gwen Stamey         | Phone: (360) 902-9810 | Date: 03/26/2019 |

## 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.*

Section 1 states findings and intent.

Section 2 amends RCW 39.12.020 to revise the definition of “usual benefits” and add definitions for “inadvertent filing or reporting error” and “unpaid prevailing wages.”

Section 3 amends RCW 39.12.050 to require the Department of Labor and Industries (L&I) to consider whether the contractor or employer has attended required training and to provide that the contractor or employer charged with an error bears the burden of proving inadvertence. If a notice of violation is not timely appealed, it becomes final and binding.

Section 4 amends RCW 39.12.065 to extend deadlines and to provide that the filing of a complaint does not prohibit L&I from investigating the matter in pursuit of the recovery of unpaid wages. A contractor or subcontractor is authorized to pay unpaid wages, interest, and penalties to resolve a matter without further penalty. L&I can collect unpaid wages and appeal rights. States how long L&I can investigate a complaint that was not timely. Clarifies what the director can do with respect to penalties and interest.

Section 5 adds a new section to RCW 39.12 to require each contractor to keep accurate payroll records for three years from the acceptance of the public works project by the contract-awarding agency. Each contractor is also required to file at least once per month a copy of its certified payroll records using L&I’s online system or directly with the awarding agency in an L&I approved format. A contractor’s noncompliance with this section is a violation of RCW 39.12.050.

Section 6 provides this act takes effect January 1, 2020.

### 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 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. This bill is assumed effective January 1, 2020.
2. This request does not include cost-of-living salary increases identified in the Governor's proposed 2019-21 budget.

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

1. The AGO will bill L&I for legal services based on the enactment of this bill.
2. L&I assumes 321 complaints will lead to investigations based on the enactment of this bill. This is based on the total number of open investigations in fiscal years 2016, 2017, and 2018, plus the number of investigations in that three-year period that L&I rejected as untimely under the 30-day rule, but will investigate under the bill's 60-day rule.
3. Any increased complexity of the investigations and corresponding Notices of Violation (NOVs) can increase the time needed for legal work on appeal.
4. L&I anticipates that the requirement in Section 5 that contractors file certified payroll records at least bi-weekly will yield one additional NOV per year. However, NOVs for this kind of violation rarely lead to a significant number of appeals, and any appeals that do result will have a negligible impact on AGO workload because these are not typically time-intensive cases to litigate.
5. Section 4 may modestly increase the number of NOVs per year. The requirement that contractors pay a penalty during investigations reduces the incentive for contractors to agree to settle a complaint prior to L&I issuing a NOV. However, it is difficult to estimate the increase in NOVs. Contractors still have incentive to pay during the investigation because the penalty is lower than the amount if an NOV is issued. The incentive to pay during the investigation is still strong for prevailing wages due below \$10,000, which comprised about two thirds of the prevailing wage recoveries made in FY 2016-2018.
6. There will be additional appeals to the L&I Director resulting from the increase in NOV appeals referred to the AGO.
7. AGO legal services are necessary to institute collection efforts for lien actions associated with any increase in appeals. L&I anticipates a modest increase in Superior Court actions to perfect liens. These do not require a significant amount of work if we are successful in obtaining a stay of the case pending the outcome of an appeal. Much of this work will be done by AGO Paralegals (PL).
8. AGO resources are necessary to respond to potential appeals to the appellate courts. An appellate case generally requires significant Assistant Attorney General (AAG) time to write and respond to briefs and to prepare for oral argument.
9. Based on AGO AAG timekeeping figures for prevailing wage litigation in 2017, there were 18 appeals that yielded 1.0 AGO FTE for the year.
10. The AGO assumes a 20% increase in appeals based on past experience, meaning an additional 4 appeals per

year and an additional 0.2 AAG FTE in FY 2020 and subsequent years.

11. The AGO does not require an increase in PL FTEs. New PL legal services will be provided within existing resources.

12. The full fiscal impact will be felt approximately 9-12 months after the law is implemented on January 1, 2020. The AGO will not experience an increase in appeals to NOV's for several months after the bill is implemented.

13. Direct costs to the AGO include travel expenses in the form of airfare and per diem. Because we have AAGs located in Regions 2 and 3, travel will only be required for appeals heard in Regions 1, 4, 5, and 6.

14. Total workload impact for FY 2021 and in each FY thereafter: 0.2 AAG and 0.1 Legal Assistant (LA) at a cost of \$48,000 (this includes direct litigation costs of \$1,914).

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<br>Revolving Account | State | 0       | 48,000  | 48,000  | 96,000  | 96,000  |
| <b>Total \$</b> |                                     |       | 0       | 48,000  | 48,000  | 96,000  | 96,000  |

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

|                                  | FY 2020 | FY 2021 | 2019-21 | 2021-23 | 2023-25 |
|----------------------------------|---------|---------|---------|---------|---------|
| FTE Staff Years                  |         | 0.4     | 0.2     | 0.4     | 0.4     |
| A-Salaries and Wages             |         | 30,000  | 30,000  | 60,000  | 60,000  |
| B-Employee Benefits              |         | 10,000  | 10,000  | 20,000  | 20,000  |
| C-Professional Service Contracts |         |         |         |         |         |
| E-Goods and Other Services       |         | 6,000   | 6,000   | 12,000  | 12,000  |
| G-Travel                         |         | 2,000   | 2,000   | 4,000   | 4,000   |
| J-Capital Outlays                |         |         |         |         |         |
| <b>Total \$</b>                  | 0       | 48,000  | 48,000  | 96,000  | 96,000  |

#### 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 |         | 0.2     | 0.1     | 0.2     | 0.2     |
| Legal Assistant 3          | 51,004  |         | 0.1     | 0.1     | 0.1     | 0.1     |
| Management Analyst 5       | 77,614  |         | 0.1     | 0.0     | 0.1     | 0.1     |
| <b>Total FTEs</b>          |         |         | 0.4     | 0.2     | 0.4     | 0.4     |

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

| Program                           | FY 2020 | FY 2021 | 2019-21 | 2021-23 | 2023-25 |
|-----------------------------------|---------|---------|---------|---------|---------|
| Labor & Industries Division (LNI) |         | 48,000  | 48,000  | 96,000  | 96,000  |
| <b>Total \$</b>                   |         | 48,000  | 48,000  | 96,000  | 96,000  |

### 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> 1072 P S HB | <b>Title:</b> Prevailing wage laws | <b>Agency:</b> 110-Office of Administrative Hearings |
|---------------------------------|------------------------------------|--|

## 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.
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- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

|                                       |                       |                  |
|---------------------------------------|-----------------------|------------------|
| Legislative Contact: Joan Elgee       | Phone: 360-786-7106   | Date: 02/22/2019 |
| Agency Preparation: Deborah Feinstein | Phone: 360-407-2717   | Date: 02/28/2019 |
| Agency Approval: Deborah Feinstein    | Phone: 360-407-2717   | Date: 02/28/2019 |
| OFM Review: Bryan Way                 | Phone: (360) 902-0650 | 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.*

No fiscal impact. The change in number of appeals is within normal fluctuations and any fiscal impact would be nominal.

### 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.*

None.

### 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.*

No fiscal impact. The change in number of appeals is within normal fluctuations and any fiscal impact would be nominal.

## Part III: Expenditure Detail

## 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

|                                 |                                    |   |
|---------------------------------|------------------------------------|---|
| <b>Bill Number:</b> 1072 P S HB | <b>Title:</b> Prevailing wage laws | <b>Agency:</b> 235-Department of Labor and Industries |
|---------------------------------|------------------------------------|---|

## Part I: Estimates

☐ No Fiscal Impact

### Estimated Cash Receipts to:

Non-zero but indeterminate cost. Please see discussion.

### Estimated Operating Expenditures from:

|                             | FY 2020   | FY 2021 | 2019-21   | 2021-23   | 2023-25   |
|-----------------------------|-----------|---------|-----------|-----------|-----------|
| FTE Staff Years             | 7.1       | 8.0     | 7.6       | 8.0       | 8.0       |
| <b>Account</b>              |           |         |           |           |           |
| Public Works Administration | 1,313,000 | 853,000 | 2,166,000 | 1,706,000 | 1,706,000 |
| Account-State 234-1         |           |         |           |           |           |
| <b>Total \$</b>             | 1,313,000 | 853,000 | 2,166,000 | 1,706,000 | 1,706,000 |

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:

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- ☐ 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: Joan Elgee      | Phone: 360-786-7106   | Date: 02/22/2019 |
| Agency Preparation: Donald Jenson Jr | Phone: 360-902-6981   | Date: 03/22/2019 |
| Agency Approval: Trent Howard        | Phone: 360-902-6698   | Date: 03/22/2019 |
| OFM Review: Anna Minor               | Phone: (360) 902-0541 | Date: 03/26/2019 |

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   |
|----------|-------------------------------------|-------|-----------|---------|-----------|-----------|-----------|
| 234-1    | Public Works Administration Account | State | 1,313,000 | 853,000 | 2,166,000 | 1,706,000 | 1,706,000 |
| Total \$ |                                     |       | 1,313,000 | 853,000 | 2,166,000 | 1,706,000 | 1,706,000 |

III. B - Expenditures by Object Or Purpose

|                                      | FY 2020   | FY 2021 | 2019-21   | 2021-23   | 2023-25   |
|--------------------------------------|-----------|---------|-----------|-----------|-----------|
| FTE Staff Years                      | 7.1       | 8.0     | 7.6       | 8.0       | 8.0       |
| A-Salaries and Wages                 | 427,000   | 473,000 | 900,000   | 946,000   | 946,000   |
| B-Employee Benefits                  | 172,000   | 191,000 | 363,000   | 382,000   | 382,000   |
| C-Professional Service Contracts     | 464,000   |         | 464,000   |           |           |
| E-Goods and Other Services           | 159,000   | 177,000 | 336,000   | 354,000   | 354,000   |
| G-Travel                             | 11,000    | 12,000  | 23,000    | 24,000    | 24,000    |
| J-Capital Outlays                    | 80,000    |         | 80,000    |           |           |
| M-Inter Agency/Fund Transfers        |           |         |           |           |           |
| N-Grants, Benefits & Client Services |           |         |           |           |           |
| P-Debt Service                       |           |         |           |           |           |
| S-Interagency Reimbursements         |           |         |           |           |           |
| T-Intra-Agency Reimbursements        |           |         |           |           |           |
| 9-                                   |           |         |           |           |           |
| Total \$                             | 1,313,000 | 853,000 | 2,166,000 | 1,706,000 | 1,706,000 |

**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 |
|-------------------------------|--------|---------|---------|---------|---------|---------|
| Customer Service Specialist 2 | 40,896 | 0.8     | 1.0     | 0.9     | 1.0     | 1.0     |
| Fiscal Analyst 5              | 60,633 | 0.4     | 0.5     | 0.5     | 0.5     | 0.5     |
| Industrial Relations Agent 2  | 60,633 | 4.6     | 5.0     | 4.8     | 5.0     | 5.0     |
| Industrial Relations Agent 3  | 63,679 | 0.7     | 0.8     | 0.7     | 0.8     | 0.8     |
| Industrial Relations Agent 4  | 68,572 | 0.7     | 0.8     | 0.7     | 0.8     | 0.8     |
| <b>Total FTEs</b>             |        | 7.1     | 8.0     | 7.6     | 8.0     | 8.0     |

**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.*

See attached.

## Part II: Explanation

This bill relates to enhancing the prevailing wage laws, amending RCW 39.12.010, 39.12.050, and 39.12.065; adding a new section to chapter 39.12 RCW; prescribing penalties; and providing an effective date.

The differences in fiscal impact of PSHB 1072 compared to HB 1072 include:

- Removes the prohibition of using the doctrine of substantial compliance;
- Reduces the timeframe that a complaint can be filed from 120 days to 60 days;
- Removes the requirement that the Department of Labor and Industries (L&I) consider whether the contractor attended the public works and prevailing wage responsible bidder training in applying sanctions and enhancing the training curriculum;
- Changes the interest rate on unpaid wages to one percent per month;
- Allows L&I to waive or reduce a penalty or additional sanction, including when it's determined the contractor paid all wages and interest or there was an inadvertent filing or reporting error.

This bill will take effect January 1, 2020.

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

**Section 1** establishes the framework and intent of the bill, which is to strengthen enforcement of RCW 39.12.

**Section 2(5)** amends RCW 39.12.010, adding a definition of “inadvertent filing of reporting error”, which is a mistake that occurs only once and is made notwithstanding the use of due care by the contractor or employer.

**Section 2(6)** amends RCW 39.12.010, adding definitions of “unpaid prevailing wages” or “unpaid wages”, which means the employer fails to pay all compensation owed for any workweek by the regularly established pay day for the period in which the workweek ends. Every employer must pay all wages, other than fringe benefits, owing to its employees not less than once a month.

**Section 2(7)** amends RCW 39.12.010, adding a definition of “rate of contribution”, which means the effective annual rate of usual benefit contributions for all hours, public and private, worked during the year by an employee, commonly referred to as annualization of benefits.

**Section 3(1)** amends RCW 39.12.050, adding posting of any statement or record to the failures that are violations of RCW 39.12.050. This section also adds that the burden of proving that an error is inadvertent rests with the contractor or subcontractor charged with the error.

**Section 4(1)** amends RCW 39.12.065, providing for interest on unpaid wages paid to the claimant of one percent per month. This section also extends the timely filing of a complaint from 30 days to 60 days from the acceptance date of the public works project and allows investigation of complaints that are beyond the time limit. It prohibits charging a contractor or subcontractor with a violation when responding to a complaint filed after that 60-day time limit.

**Section 4(3)** amends RCW 39.12.065, increasing the civil penalty for failure to pay prevailing wages from the greater of \$1,000 or 20% of the unpaid wages to the greater of \$5,000 or 50% of the unpaid wages.

**Section 4(4)** adds a new section to RCW 39.12.065, providing that L&I may waive or reduce a penalty or additional sanction when it’s determined the contractor or subcontractor paid all wages and interest or there was an inadvertent filing or reporting error.

**Section 4(5)** adds a new section to RCW 39.12.065, providing that if, L&I initiates an investigation and before a notice of violation of unpaid wages, an employer that chooses to pay the unpaid wages and a penalty of the greater of \$1,000 or 20% of the unpaid wages can do so without further penalty under subsection 3 of this section.

**Section 4(6)** adds a new section to RCW 39.12.065, providing that if a contractor or subcontractor utilizes the process outlined in subsection 5 of this section for a second time within a five-year period, the contractor or subcontractor is subject to the sanctions prescribed in subsection 3 of this section and as an additional sanction, may not be allowed to bid on any public works contract for two years.

**Section 5** adds a new section to RCW 39.12, stipulating that each contractor, subcontractor, or employer shall keep accurate payroll records for three years from the date of acceptance of the

public works project. Each contractor, subcontractor, or employer shall, at least once per month, file a copy of its certified payroll records using the L&I online system and/or directly with the awarding agency in a format approved by the department. Noncompliance with this section constitutes a violation of RCW 39.12.050.

**Section 6** provides the effective date of January 1, 2020.

## **II. B – Cash Receipt Impact**

The cash receipt impact of the bill is **indeterminate**. Section 4(3) provides for a civil penalty for failure to pay prevailing wages of the greater of \$5,000 or 50% of the unpaid wages.

Section 4(5) provides that after a complaint, an employer that chooses to pay the unpaid wages and a penalty of the greater of \$1,000 or 20% of the unpaid wages can do so without further penalty under subsection 3 of this section. The department cannot reasonably determine how many of each penalty type will be issued under this bill, or what impact the authority to waive penalties will have.

## **II. C – Expenditures**

This bill increases expenditures to the Public Works Administration Fund, fund 234. The following assumptions were used to estimate the resources required to implement this bill.

### **Staffing**

The expenditure calculations in this fiscal note includes the compensation and benefit changes approved in the 17-19 Biennial Budget.

- 5.0 FTE Industrial Relations Agent 2 (IRA2), permanent, beginning August 1, 2019. Duties include performing prevailing wage compliance investigations in accordance with RCW 39.12. Additional months of training new agents is necessary to train on investigation processes consistent with implementing this bill as the bill substantially changes the way L&I conducts and finalizes fined investigations, as well as being trained on current procedures. The following assumptions were used to develop this estimate:

- L&I currently has ten IRA2s performing prevailing wage compliance investigations.
- This bill expands the scope of an investigation by requiring additional steps. These include:
  - Section 2(7) adds the element of annualization of benefits.
  - Section 3(1) adds posting of any statement or record to the failures that are violations of RCW 39.12.050.
  - Section 4(1) provides for interest on unpaid wages paid to the claimant at one percent per month.
- Section 4(1) extends the timely filing of a complaint from 30 days to 60 days. Extending the time to file a complaint will result in additional investigations.
- For fiscal note purposes, the IRA2 workload is expected to increase by 50 percent, due to more thorough, complex, longer investigations, and additional investigations.
- Therefore, five additional IRA2s are necessary. ( $10 \text{ current IRA2s} \times .50 = 5 \text{ additional IRA2s}$ )
- 0.75 FTE Industrial Relations Agent 3 (IRA3), permanent, beginning August 1, 2019. Duties include providing technical support to IRA2s with investigations and issuing NOVs. Additional months of training new agents is necessary to train on investigation processes consistent with implementing this bill as the bill substantially changes the way L&I conducts and finalizes fined investigations, as well as being trained on current procedures. Duties also include providing technical support to customers, and preparing documents for the Industrial Statistician, Industrial Relations Agent 4, and Attorney General staff. The following assumptions were used to develop this estimate:
  - Currently there are 1.5 IRA3s supporting the IRA2 staff.
  - For fiscal note purposes, the IRA3 workload is expected to increase by 50 percent, due to more thorough, complex, longer investigations, and additional investigations. Additional NOVs will result in additional appeals to the NOVs.
  - Therefore, 0.75 additional IRA3 is necessary. ( $1.5 \text{ current IRA3s} \times .50 = 0.75 \text{ additional IRA3}$ )



- 0.75 FTE Industrial Relations Agent 4 (IRA4), permanent, beginning August 1, 2019. Duties include providing technical support to IRA2s and IRA3s with investigations and issuing NOV's. Additional months of training new agents is necessary to train on investigation processes consistent with implementing this bill as the bill substantially changes the way L&I conducts and finalizes fined investigations, as well as being trained on current procedures. Duties also include providing technical support to customers, and preparing documents for the Industrial Statistician, and Attorney General staff. The following assumptions were used to develop this estimate:
  - Currently there are 1.5 IRA4s supporting the IRA2 & IRA3 staff.
  - For fiscal note purposes, the IRA4 workload is expected to increase by 50 percent, due to more thorough, complex, longer investigations, and additional investigations. Additional NOV's will result in additional appeals to the NOV's.
  - Therefore, 0.75 additional IRA4 is necessary.  $(1.5 \text{ current IRA3s} \times .50 = 0.75 \text{ additional IRA4})$
- 1.0 FTE Customer Service Specialist 2 (CSS2), permanent, beginning October 1, 2019. Duties include receiving and processing requests for certified payroll records. The requirements in section 5(2) of the bill are expected to increase the volume of certified payroll records from 297 to 600 first requests per year.

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

\$453,620 is needed for 3,420 contractor hours to incorporate changes to multiple existing L&I computer applications, to occur during fiscal year 2020. This includes changes to the Complaint Activity Tracking System, Public Works Suite, Accounts Receivable Collections (ARC), and Pay ARC systems.

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**

\$10,480 is needed for 80 contractor hours to incorporate changes to the L&I website, to occur during fiscal year 2020.

### **Rule making**

\$5,000 is needed for two rule making hearings to occur during fiscal year 2020. The average cost of one rule making hearing is \$2,500. (2 hearings x \$2,500 each = \$5,000)

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

Providing legal advice on appeals to NOV's will require an additional 0.2 FTE Assistant Attorney General (AAG), 0.1 FTE Legal Assistant 3 (LA), and 0.1 FTE Management Analyst 5, at a cost of \$50,000 per year, beginning in fiscal year 2021.

### **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  |
|-----------|---------------------|----------|----------|----------|----------|----------|----------|
| 234       | Public Works Admin. | \$46,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 |
|           | Total:              | \$46,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 |

The department assesses an indirect rate to cover agency-wide administrative costs. Labor and Industries indirect rate is applied on salaries, benefits, and standard costs. For fiscal note purposes the total indirect amount is converted into salary and benefits for partial or full indirect FTEs. Salary and benefits costs are based on a Fiscal Analyst 5 (Range 56, Step G).

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

None.

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

This legislation would result in rule changes to:

- WAC 296-127-130, Filing a complaint
- WAC 296-127-140, Investigation of a complaint
- WAC 296-127-150, Notice of Violation
- WAC 296-127-160, Appeal of Notice of Violation