

Multiple Agency Fiscal Note Summary

Bill Number: 5462 SB	Title: State data breach claims
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Estimated Cash Receipts

Agency Name	2021-23			2023-25			2025-27		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Office of State Treasurer	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Department of Enterprise Services	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Total \$	0	0	0	0	0	0	0	0	0

Estimated Operating Expenditures

Agency Name	2021-23				2023-25				2025-27			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Office of State Treasurer	.0	0	0	0	.0	0	0	0	.0	0	0	0
Office of Attorney General	30.9	8,658,000	8,658,000	8,658,000	30.9	8,658,000	8,658,000	8,658,000	30.9	8,658,000	8,658,000	8,658,000
Department of Enterprise Services	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Total \$	30.9	8,658,000	8,658,000	8,658,000	30.9	8,658,000	8,658,000	8,658,000	30.9	8,658,000	8,658,000	8,658,000

Estimated Capital Budget Expenditures

Agency Name	2021-23			2023-25			2025-27		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Office of State Treasurer	.0	0	0	.0	0	0	.0	0	0
Office of Attorney General	.0	0	0	.0	0	0	.0	0	0
Department of Enterprise Services	.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

Prepared by: Tyler Lentz, OFM	Phone: (360) 790-0055	Date Published: Final 3/ 3/2021
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Individual State Agency Fiscal Note

Bill Number: 5462 SB	Title: State data breach claims	Agency: 090-Office of State Treasurer
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

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

Estimated Operating Expenditures from:

NONE

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: Sarian Scott	Phone: 360-786-7729	Date: 02/18/2021
Agency Preparation: Dan Mason	Phone: (360) 902-8990	Date: 02/18/2021
Agency Approval: Dan Mason	Phone: (360) 902-8990	Date: 02/18/2021
OFM Review: Ramona Nabors	Phone: (360) 902-0547	Date: 02/19/2021

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.

SB 5462 creates the state digital data breach account, coupled with the general fund as the recipient of the earnings from investments under RCW 43.79A.040(4).

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.

Projected cash flows are currently unavailable; therefore, estimated earnings from investments are indeterminable.

There may be an impact on the debt service limitation calculation. Any change to the earnings credited to the general fund will change, by an equal amount, general state revenues.

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

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

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*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

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

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 5462 SB	Title: State data breach claims	Agency: 100-Office of Attorney General
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	30.9	30.9	30.9	30.9	30.9
Account					
General Fund-State 001-1	4,329,000	4,329,000	8,658,000	8,658,000	8,658,000
Total \$	4,329,000	4,329,000	8,658,000	8,658,000	8,658,000

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: Sarian Scott	Phone: 360-786-7729	Date: 02/18/2021
Agency Preparation: Cam Comfort	Phone: (360) 664-9429	Date: 02/25/2021
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 02/25/2021
OFM Review: Tyler Lentz	Phone: (360) 790-0055	Date: 03/03/2021

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 adds a new section to RCW 4.92 creating the Digital Data Breach Reimbursement Claims Program in the Office of Risk Management.

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.

These new Attorney General's Office (AGO) activities are funded with General Fund-State dollars. No cash receipt impact. There is no client agency to bill for legal services.

Any damages, restitution, or penalties received from AGO actions must be deposited into the new State Digital Data Breach Account. It should be noted that the legality of directing restitution that is recovered for Washington citizens (as opposed to restitution for the State) into the account created by the bill is questionable unless this account is simply a pass-through to then disburse the restitution to the affected Washington residents.

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.

Attorney General's Office (AGO) Agency Assumptions:

1. This bill has an emergency clause and is assumed to be effective immediately.
2. Total workload impact in this request includes standard assumption costs for good & services, travel, and capital outlays for all FTE identified.
3. Agency administration support FTE are included in the tables below, using a Management Analyst 5 as a representative classification.
4. The AGO Complex Litigation Division (COM) has reviewed this bill and determined it will not increase or decrease the division's workload. No new assignments for COM are created by this bill, and the causes of action against the State could already be asserted with existing resources. New legal services are nominal and costs are not included in this request.
5. The AGO Consumer Protection Division (CPD) has reviewed this bill and determined it will not increase or decrease the division's workload. New legal services are nominal and costs are not included in this request.
6. The AGO Torts Division (Torts) has reviewed this bill and determined it will not increase or decrease the division's workload. While Department of Enterprise Services (DES) is reporting a significant impact related to processing a new claims program and fund, Torts has no basis to determine whether it will generate new litigation for Torts. DES's obligation to appropriately administer the funds is not a sufficient basis to claim a fiscal impact in Torts. Thus, there is no assumption of new lawsuits for negligent claims processing. Also, since Torts is funded exclusively by the Self-Insured Liability Account (SILA), they will not be responsible for

litigation that came out of the claims process that was not based in tort. Costs are not included in this request.

The AGO Transportation & Public Construction Division (TPC) has reviewed this bill and determined it will not increase or decrease the division's workload in representing the DES. Any client advice requests associated with DES implementing the new digital data breach reimbursement claims program will be minimal and provided with existing resources. Costs are not included in this request.

Assumptions for the AGO Legal Services:

1. These AGO activities are funded with General Fund-State dollars. There is no appropriate client agency to bill for legal services. The new State Digital Data Breach Account does not allow for payment of legal services. SILA funding is not appropriate for these legal services (SILA use isn't authorized as the bill is currently written). There is no money or capacity to handle the volume of claims that DES assumes will be sent to the AGO for review.
2. The AGO will identify which legal services division will provide legal work associated with this new law once it is enacted. DES assumes 15% of the claims will go to the AGO, but there is not a current legal services division appropriate to undertake this new work.
3. Based on DES lead agency assumptions, the AGO assumes legal services for 12,000 claims requiring AGO review. This is roughly 26 times the volume Torts gets now. The current Torts model provides a reasonable basis for an estimated fiscal impact of this law.
4. Torts currently has 21 Investigators (INV). While these data breach claims will be significantly easier to manage than typical tort claims, the sheer volume of new claims will necessitate 30 INV per FY. 1.0 INV will be required to address 400 claims annually at a rate of eight claims a week out of a 50 week year.
5. The AGO assumes 0.5 Assistant Attorney General to respond to questions posed by INV or DES about claims processing, and to provide appropriate legal services.
6. Total workload impact beginning FY 2022: 0.5 AAG, 0.25 Legal Assistant and 30.0 INV at a cost of \$4,329,000 per FY.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
001-1	General Fund	State	4,329,000	4,329,000	8,658,000	8,658,000	8,658,000
Total \$			4,329,000	4,329,000	8,658,000	8,658,000	8,658,000

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	30.9	30.9	30.9	30.9	30.9
A-Salaries and Wages	2,805,000	2,805,000	5,610,000	5,610,000	5,610,000
B-Employee Benefits	877,000	877,000	1,754,000	1,754,000	1,754,000
E-Goods and Other Services	558,000	593,000	1,151,000	1,186,000	1,186,000
G-Travel	43,000	43,000	86,000	86,000	86,000
J-Capital Outlays	46,000	11,000	57,000	22,000	22,000
Total \$	4,329,000	4,329,000	8,658,000	8,658,000	8,658,000

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 2022	FY 2023	2021-23	2023-25	2025-27
Assistant Attorney General	108,600	0.5	0.5	0.5	0.5	0.5
Legal Assistant 3	54,108	0.3	0.3	0.3	0.3	0.3
Management Analyst 5	88,644	0.1	0.1	0.1	0.1	0.1
Senior Investigator	90,888	30.0	30.0	30.0	30.0	30.0
Total FTEs		30.9	30.9	30.9	30.9	30.9

III. D - Expenditures By Program (optional)

Program	FY 2022	FY 2023	2021-23	2023-25	2025-27
Headquarters Administration (GFS) (ADM)	4,329,000	4,329,000	8,658,000	8,658,000	8,658,000
Total \$	4,329,000	4,329,000	8,658,000	8,658,000	8,658,000

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

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

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 5462 SB	Title: State data breach claims	Agency: 179-Department of Enterprise Services
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

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

Estimated Operating Expenditures from:

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

Estimated Capital Budget Impact:

NONE

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

Check applicable boxes and follow corresponding instructions:

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

Legislative Contact: Sarian Scott	Phone: 360-786-7729	Date: 02/18/2021
Agency Preparation: Keith Thunstedt	Phone: (360) 407-8165	Date: 02/23/2021
Agency Approval: Ashley Howard	Phone: (360) 407-8159	Date: 02/23/2021
OFM Review: Tyler Lentz	Phone: (360) 790-0055	Date: 02/24/2021

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 (1) creates a new data breach claim reimbursement program and the Office of Risk Management (ORM) in the Department of Enterprise Services (DES). The new program would process claims for eligible individuals for reimbursements related to identity restoration, losses, a new driver's license, and credit monitoring. Section 1 (2) requires ORM to develop a new claim form to be used by affected individuals who file a data breach claim, and determine which submitted data breach claims are eligible for payment. This has an indeterminate fiscal impact to the Department of Enterprise Services.

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.

Additional funding to support the operational expenses associated with this new work would be needed. ORM is currently funded through an allocation in the Central Service Model (CSM). Funds are collected into the Risk Management Operations Account (Fund 546) and used for the non-claim expenses associated with the program.

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.

The cost to administer a new data breach claim reimbursement program within the Office of Risk Management (ORM) at DES is indeterminate. Based on the assumptions below, we estimate the impact to range between \$69 and \$437 million.

It is unknown how many claims could be filed against the state in the event of a data breach. For purposes of this analysis, we are using the recent data breach against the Washington State Auditor's Office (SAO), which reportedly exposed data of up to 1.6 million individuals, as a baseline to determine potential future impact and workload assumptions. For comparison, breaches in years past include an HCA breach affecting 91,000 individuals in 2016, a Fish and Wildlife breach affecting 2 million individuals in 2016, and a WSU hard drive stolen in 2017 with a reported 1 million individuals' information.

Claims:

- 1,600,000 individuals affected
- A range of 10% to 75% may file a 'simple' claim for credit monitoring and/or a driver's license renewal = between 160,000 and 1,200,000 of these claims per year
- A range of 1% to 5% may file a claims for identity restoration and losses = between 16,000 and 80,000 claims per year processed by ORM. We assume 15% of these claims would be referred to the ATG.

Claim Costs:

- Replacement drivers license: The cost of a replacement licenses is either \$54 or \$75 (for an enhanced

license), with the average price being \$65.

- Credit monitoring: DES has a master contract for credit monitoring services, which has a cost of \$180 per year per claimant.
- Identity restoration: The Bureau of Justice Statistics estimates the average financial loss of \$1,343 per victim of identity fraud and 7 hours of lost time. The average hourly wage in WA as of 2018 was \$38.70, per ESD, adding \$271 for lost time compensation, and bringing the average total cost for losses to \$1,614. Identity restoration costs are assumed to be incorporated into these averages.

Using the assumptions above, claim costs would range between \$64M and \$423M per year.

- \$10.4M - \$78M per year for driver's license replacements
- \$28M - \$216M per year for credit monitoring
- \$25.8M - \$129M per year for financial losses/identity restoration

Some insurance options may help defray some of these costs, as most agencies purchase cyber insurance as an add-on to their property coverage. For example, SAO has coverage up to \$5 million (similar to most other agencies) for credit monitoring, a call center, notification services and indemnity and legal defense costs. SAO's annual premium is approximately \$1,000 per year, and the deductible is \$100,000.

Operational Costs:

Staffing: Additional staff would be needed to manage and processes data breach claim reimbursement claims.

The ORM processes approximately 3,000 claims per year with 14.25 FTEs.

- 5 Tort and Sundry Claims Specialists
- 2 Tort Claims Investigators
- 2 Support Staff (Customer Support Specialist)
- 3 Case Managers (WMS 2)
- 1 RMIS Administrator/Tort Claims Manager (WMS 2)
- 1 Management Analyst 5
- 0.25 Fiscal Analyst 2

Extrapolating the workload to process an additional 16,000 to 80,000 claims, and considering some economies of scale, ORM would need an additional 54-163 FTEs*:

- 25 to 85 Tort and Sundry Claims Specialists
- 10 to 30 Tort Claims Investigators
- 6 to 20 Support Staff (Customer Support Specialists)
- 8 to 16 Case Managers (WMS 2)
- 2 to 4 RMIS Administrator/Tort Claims Manager (WMS 2)
- 2 to 5 Management Analyst 5
- 1 to 3 Fiscal Analysts 2

* Any large-volume of 'simple' credit monitoring or license renewal only claims may require additional FTEs to

process, but given the uncertainty of expected volume, and the potential that a semi-automated process for these 'simple' claims could be established, overall staffing increases would still likely fall within the ranges assumed above.

Systems storage, user licenses, and configurations: Storage space for the additional claim documents and information, and user licenses for the additional ORM staff would need to be added to the Risk Management Information System (Origami).

- The data storage increase is estimated at \$205,000 per year.
- Origami licenses are \$1,000 per year and \$2,170 per year for RMIS Administrators and RMIS Claims Adjusting Users, respectively.
- One-time upfront costs for configurations, workflows, testing, requirements and project management to support the additional workload in the ORM system would be required. Those costs are estimated at \$36,000, assuming 120 hours of both a Contracted Business Analyst and a Contracted Project Manager at a rate of \$150 per hour.

Using the staffing and workload assumptions discussed above, total operating costs in the Risk Management Administration Account for the data breach claim reimbursement program would range between \$4.5 million and \$14 million per year.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.
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III. B - Expenditures by Object Or Purpose

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

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

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

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required