

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 5059 SB	<b>Title:</b> Prejudgment interest
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## Estimated Cash Receipts

NONE

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts	No fiscal impact					
Loc School dist-SPI	Fiscal note not available					
Local Gov. Other						
Local Gov. Total						

## Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	.0	0	0	0	.0	0	0	0	.0	0	0	0
Office of Attorney General	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Enterprise Services	.0	0	0	1,500,000	.0	0	0	1,500,000	.0	0	0	1,500,000
<b>Total \$</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>1,500,000</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>1,500,000</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>1,500,000</b>

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	No fiscal impact								
Loc School dist-SPI	Fiscal note not available								
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

## Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.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
<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>

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	No fiscal impact								
Loc School dist-SPI	Fiscal note not available								
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

## Estimated Capital Budget Breakout

NONE

<b>Prepared by:</b> Gaius Horton, OFM	<b>Phone:</b> (360) 819-3112	<b>Date Published:</b> Preliminary
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# Judicial Impact Fiscal Note

<b>Bill Number:</b> 5059 SB	<b>Title:</b> Prejudgment interest	<b>Agency:</b> 055-Administrative Office of the Courts
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## Part I: Estimates

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Expenditures from:**

NONE

**Estimated Capital Budget Impact:**

NONE

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

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note for Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Legislative Contact: Ryan Giannini	Phone: 3607867285	Date: 01/19/2023
Agency Preparation: Jackie Bailey-Johnson	Phone: 360-704-5545	Date: 01/25/2023
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 01/25/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/25/2023

180,066.00

Request # 063-1

Form FN (Rev 1/00)

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Bill # 5059 SB

## Part II: Narrative Explanation

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

The bill would amend RCW 4.56.110 to mandate that certain tort judgements bear interest from date cause of action accrued rather than from date judgement entered.

### II. B - Cash Receipts Impact

None

### II. C - Expenditures

No fiscal impact expected to the Administrative Office of the Courts and the courts.

## Part III: Expenditure Detail

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

NONE

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

NONE

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

NONE

### III. D - FTE Detail

NONE

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

NONE

## Part IV: Capital Budget Impact

### IV. A - Capital Budget Expenditures

NONE

### IV. B1 - Expenditures by Object Or Purpose (State)

NONE

### IV. B2 - Expenditures by Object Or Purpose (County)

NONE

### IV. B3 - Expenditures by Object Or Purpose (City)

NONE

### IV. C - Capital Budget Breakout

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5059 SB	<b>Title:</b> Prejudgment interest	<b>Agency:</b> 100-Office of Attorney General
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## Part I: Estimates

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**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: Ryan Giannini	Phone: 3607867285	Date: 01/19/2023
Agency Preparation: Cam Comfort	Phone: (360) 664-9429	Date: 01/24/2023
Agency Approval: Merdan Bazarov	Phone: 360-586-9346	Date: 01/24/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 01/24/2023

## Part II: Narrative Explanation

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

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

The Assistant Attorney General's Office (AGO) Education (EDU) Division has reviewed the bill and determined it will not significantly increase or decrease the division's workload in representing the Office Superintendent of Public Instruction (OSPI). The enactment of this bill will not impact the provision of legal services to OSPI because the amount of legal advice related to changes to how interest is calculated under this bill should be very minimal. New legal services are nominal and costs are not included in this request.

The AGO Torts Division has reviewed this bill and determined it will not significantly increase or decrease the division's workload. The enactment of this bill will not impact the provision of legal services to Department of Enterprise Services because it is expected that interest on judgments will not be contested and simply be paid, thereby not incurring additional defense costs. New legal services are nominal and costs are not included in this request.

The AGO Transportation and Public Construction (TPC) Division has reviewed this bill and determined it will not significantly increase or decrease the division's workload. New legal services are nominal and costs are not included in this request.

### II. B - Cash receipts Impact

*Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.*

### II. C - Expenditures

*Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished 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:** *FTEs listed by classification and corresponding annual compensation. Totals 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**

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

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

NONE

**Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5059 SB	<b>Title:</b> Prejudgment interest	<b>Agency:</b> 179-Department of Enterprise Services
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## Part I: Estimates

**No Fiscal Impact**

### Estimated Cash Receipts to:

NONE

### Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
<b>Account</b>					
Liability Account-Non-Appropriated 547-6	750,000	750,000	1,500,000	1,500,000	1,500,000
<b>Total \$</b>	750,000	750,000	1,500,000	1,500,000	1,500,000

### 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: Ryan Giannini	Phone: 3607867285	Date: 01/19/2023
Agency Preparation: Julie McVey	Phone: (360) 407-9334	Date: 01/20/2023
Agency Approval: Ashley Howard	Phone: (360) 407-8159	Date: 01/20/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 01/20/2023



## Part II: Narrative Explanation

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

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

Section 1(3) amends RCW 4.56.110 and 2019 c 371 s 1 as follows:

1(3)(a)(i) requires judgements found on the tortious conduct of a “public agency” shall accrue interest from the date the cause of action occurred.

1(3)(a)(ii) states judgements founded on tortious conduct that occurred while the plaintiff was a minor shall bear interest from the date the action occurred, or when the minor reaches the age of 18, whichever is earlier.

1(3)(b) states that judgements against entities that are not a “public agency” must also accrue interest from when the action occurred. This has no fiscal impact on DES.

1(3)(c) states that in accordance with (a) and (b) of subsection 3, any interest incurred prior to the date of judgement being entered applies only to arbitration awards and judgments after the trial. All other judgements founded on tortious conduct bear interest from date of entry.

Section 2 adds a new section repealing RCW 4.56.111 and 2010 c 149 s 2.

While the change would have little impact on the policies and operations of Department of Enterprise Services, Office of Risk Management, adding accrued interest back to the time of loss or injury on the specified claims would increase total tort claim payment costs.

Office of Risk Management policies and operations allow for prompt payment of claims after judgment is entered, meaning interest costs are currently avoided in the vast majority of claims. In Fiscal Year 21 and Fiscal Year 22 there were nine (9) verdicts or arbitration awards paid by the state which would be subject to pre-judgment interest under this bill. Changing the accrued interest date back to time of loss would add on average, 51.5 months of accrued interest to claim payments, as this is the average length from date of loss to payment (or in the juvenile plaintiff’s case, from the date they turned 18 or filed their claim).

### II. B - Cash receipts Impact

*Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.*

Claims payouts and accrued interest are paid from the Self Insurance Liability Account (SILA). The account is funded from premiums paid by state agencies, boards and commissions. The account does not have capacity to absorb these new costs and premiums would need to be increased to cover them.

### II. C - Expenditures

*Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.*

Changing the accrued interest date back to time of loss would add, on average, 4 years and 4 months of accrued interest to eligible claim payments, as this is the average length from date of loss to payment (based on an average of eligible claims made in fiscal-year 2020 and 2022).

Using fiscal-year 2020 & 2021:

- o the average length from date of loss to payment is 51.5 months (about 4 year and 4 months)
- o there are 9 verdicts or arbitrations that would be affected by this bill per biennium
- o the average claim payment is \$1,761,873

Interest rates change monthly and range from a low of 2.035% in June 2021 up to 7.297% in August 2006.

Applying the average interest rate for FY21-FY22 of 2.238% to the average verdict/award cost of \$1,761,873 for the average time period of 51.5 months or 4.4 years equals an average interest cost of \$174,359 on each case, or a total of \$1,569,231 for all nine cases, assuming future biennia are similar to the past biennium.

Assuming future biennia are similar to the past biennium, the cost of this bill would be approximately \$1.5 Million per biennium, or 750,000 per year.

### Part III: Expenditure Detail

#### III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
547-6	Liability Account	Non-Appropriated	750,000	750,000	1,500,000	1,500,000	1,500,000
<b>Total \$</b>			750,000	750,000	1,500,000	1,500,000	1,500,000

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

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts					
E-Goods and Other Services	750,000	750,000	1,500,000	1,500,000	1,500,000
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
<b>Total \$</b>	750,000	750,000	1,500,000	1,500,000	1,500,000

**III. C - Operating FTE Detail:** *FTEs listed by classification and corresponding annual compensation. Totals 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**

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

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

NONE

**Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*

# LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5059 SB

Title: Prejudgment interest

## Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

### Legislation Impacts:

- Cities: Indeterminate expenditure increase resulting from prejudgment interest awards and increased settlement costs
- Counties: Same as above, but for counties
- Special Districts:
- Specific jurisdictions only:
- Variance occurs due to:

## Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time: Amount of prejudgment interest that may be awarded; increase in settlement costs resulting from availability of prejudgment interest

### Estimated revenue impacts to:

None

### Estimated expenditure impacts to:

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

## Part III: Preparation and Approval

Fiscal Note Analyst: James Vogl	Phone: 360-480-9429	Date: 01/23/2023
Leg. Committee Contact: Ryan Giannini	Phone: 3607867285	Date: 01/19/2023
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 01/23/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/25/2023

## **Part IV: Analysis**

### **A. SUMMARY OF BILL**

*Description of the bill with an emphasis on how it impacts local government.*

The proposed legislation would amend an RCW related to pre-judgment interest.

Section 1 would amend RCW 4.56.110, specifying that judgments founded on the tortious conduct of a public agency shall bear interest from the date the cause of action accrued. Currently, such judgments bear interest from the date the judgments are entered.

This section would also specify that judgments founded on tortious conduct that occurred while the plaintiff was a minor shall bear interest from the date the action commenced, or the date the minor turns 18, whichever is earlier.

Finally, this section would specify that any interest accrued prior to the date the above judgments are entered applies only to arbitration awards and judgments entered after trial. All other judgments founded on tortious conduct would bear interest from the date of entry.

### **B. SUMMARY OF EXPENDITURE IMPACTS**

*Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.*

This legislation would have an indeterminate impact on local government expenditures.

The legislation would start interest running on a judgment entered following trial of the matter and arbitration awards for tortious conduct of public agencies, from the date on which the cause of action accrues as opposed to its date of entry. According to both the Washington Counties Risk Pool (WCRP) and the Washington Cities Insurance Authority (WCIA), over 98% and 95% of cases are settled, respectively, between parties, not by a court, so no judgment is entered. The frequency of lawsuits is indeterminate and can vary by year.

The following offers two examples of how a local jurisdiction could accrue additional costs due to the legislation amending the time at which interest begins to accrue:

1. If the judgment is \$1,000,000 and the interest rate is assumed at 6.5%, interest would equal \$178 per day ( $(\$1 \text{ million} \times 6.5\%) / 365 \text{ days in a year}$ ). A trial may occur two years, or 730 days, after the date of the injury (date the claim accrued), which, according to WCRP is not uncommon. The interest would equal an additional \$129,940, under the new legislation ( $\$178 \times 730$ ).

2. In a case where the verdict was approximately \$1,500,000, and the verdict was entered 3.5 years after the date of injury, assuming an interest rate of 6.5%, there would be an additional \$340,959 in interest on the verdict. ( $\$1.5\text{M} \times 6.5\% / 365 \text{ days in a year} = \$267/\text{day of interest}$ ;  $\$267/\text{day of interest} \times 1277 \text{ days between the incident and the verdict} = \$340,959 \text{ in additional interest.}$ )

Since the time between the accrual of a cause of action and a judgment, and the value of arbitration awards in any future suits brought for the tortious conduct of public agencies cannot be predicted, however, the magnitude of the local government expenditure impact from prejudgment interest awards is indeterminate. WCRP indicates that especially large arbitration awards could magnify this impact, although such awards are not frequent. It indicates that in one recent example of a \$19.8 million verdict, interest for an injury that occurred four years before the judgment could total over \$5 million.

According to WCIA, settlement costs may also rise because prejudgment interest could create additional financial incentives on the part of the plaintiffs. Interest amounts form a part of claims brought by plaintiffs, so the possibility of being awarded prejudgment interest following a trial could drive up the amount a plaintiff is willing to settle for. The

possibility of being awarded prejudgment interest following a trial could also lead plaintiffs to prolong the process of arriving at a settlement in the hopes of gaining a larger interest award if they successfully take a claim to trial. Increases in settlement costs may result in an increase in insurance premiums that local governments would pay.

While the magnitude of any impact that the availability of prejudgment interest awards following a trial may have on settlement costs for local governments cannot be predicted, and is accordingly indeterminate, WCIA estimates the impact on cities from prejudgment interest awards and increased settlement costs could total millions of dollars statewide. Annually, WCIA pays approximately \$35 million in settlements.

### **C. SUMMARY OF REVENUE IMPACTS**

*Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.*

The proposed legislation would have no impact on local government revenues.

#### **SOURCES:**

Local government fiscal note for 2SSB 5155, 2021

Washington Cities Insurance Authority

Washington Counties Risk Pool