

Multiple Agency Fiscal Note Summary

Bill Number: 5061 S SB	Title: Personnel records
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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	Fiscal note not available					
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	Fiscal note not available											
Department of Labor and Industries	.3	0	0	332,000	.0	0	0	0	.0	0	0	0
Department of Social and Health Services	Fiscal note not available											
Employment Security Department	.5	0	0	133,250	.5	0	0	133,250	.5	0	0	133,250
SWF Statewide Fiscal Note - OFM	Fiscal note not available											
Total \$	0.8	0	0	465,250	0.5	0	0	133,250	0.5	0	0	133,250

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Fiscal note not available								
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	Fiscal note not available								
Department of Labor and Industries	.0	0	0	.0	0	0	.0	0	0
Department of Social and Health Services	Fiscal note not available								
Employment Security Department	.0	0	0	.0	0	0	.0	0	0
SWF Statewide Fiscal Note - OFM	Fiscal note not available								
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Fiscal note not available								
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

Prepared by: Anna Minor, OFM	Phone: (360) 790-2951	Date Published: Preliminary 2/14/2023
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Individual State Agency Fiscal Note

Bill Number: 5061 S SB	Title: Personnel records	Agency: 235-Department of Labor and Industries
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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
FTE Staff Years	0.5	0.0	0.3	0.0	0.0
Account					
Accident Account-State 608-1	282,000	0	282,000	0	0
Medical Aid Account-State 609-1	50,000	0	50,000	0	0
Total \$	332,000	0	332,000	0	0

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: Julie Murray	Phone: 786-7711	Date: 02/09/2023
Agency Preparation: Rachel Reed	Phone: 360-902-4552	Date: 02/14/2023
Agency Approval: Trent Howard	Phone: 360-902-6698	Date: 02/14/2023
OFM Review: Anna Minor	Phone: (360) 790-2951	Date: 02/14/2023

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.

See attached.

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.

See attached.

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.

See attached.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
608-1	Accident Account	State	282,000	0	282,000	0	0
609-1	Medical Aid Account	State	50,000	0	50,000	0	0
Total \$			332,000	0	332,000	0	0

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.5		0.3		
A-Salaries and Wages	45,000		45,000		
B-Employee Benefits	16,000		16,000		
C-Professional Service Contracts					
E-Goods and Other Services	271,000		271,000		
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-					
Total \$	332,000	0	332,000	0	0

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 2024	FY 2025	2023-25	2025-27	2027-29
Administrative Regulations Analyst 4	85,020	0.5		0.3		
Total FTEs		0.5		0.3		0.0

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.

See attached.

Part II: Explanation

This bill relates to employer requirements for responding to employee or former employee requests for their personnel files as well responding to former employee requests for statements regarding the effective date and reason for their termination.

PSSB 5061 is different from SB 5061 in that it:

- Adds former employees to the private right of action;
- Provides \$500 statutory damages for “any other violations”;
- Updates all periods relating to employer requirement to calendar days;
- Clarifies that the personnel files the employer must furnish are files that exist at the time of the request and that an employer is not required to create personnel records;
- Removes provisions for redaction by public employers;
- Allows health care providers to redact patient information if required by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and requires a redaction log for any such redaction;
- Adds that the files must be complete and include redaction logs;
- Adds that unless a personnel file request specifies that it is made under the Public Records Act, a public employer must treat the request as made under this bill and the request is not subject to the Public Records Act; and
- Adds that the definition of employer, for the purposes of the Employment Security Department (ESD) notices, is as defined by RCW 50A.05.010.

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

Section 2(1) amends RCW 49.12.250(1) by providing a new time frame (14 calendar days) that the employer must make an unredacted copy of an employee or former employee’s personnel file(s) available to them at no cost, as the contents of the file(s) exist at the time of the request.

Section 2(4) adds a provision requiring employers to, within 14 calendar days of receiving a written request from a former employee, furnish a signed written statement to the former

employee stating the effective date of discharge, whether the employer had a reason for the discharge, and if so, the reasons.

Section 2(5) allows employees and former employees to pursue private rights of action for violations of the law and establishes statutory damages including equitable relief and attorney fees and costs. Therefore, there is no enforcement role for the Department of Labor and Industries (L&I).

Section 2(10) requires L&I to develop and furnish to each employer information which describes an employer's obligations and employee's rights under this section. L&I must provide this information to employers at least annually, which may include being provided with other annual notices. Failure to provide the information does not relieve an employer of its obligations under this section.

II. B – Cash Receipt Impact

Receivables – Operating

This bill allows an employee or former employee to enforce this section through private right of action. There is no enforcement role for L&I, and therefore no fiscal impact in terms of penalties issued to employers.

II. C – Expenditures

Appropriated – Operating Costs

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

Staffing

.5 FTE, Administrative Regulations Analyst 4, temporary July 1, 2023 – June 30, 2024. Duties include rulemaking, conducting public hearings, updating outreach publications and resources for stakeholders, and drafting administrative policies and technical guidance. The assumptions for this calculation are:

- This version of the bill adds language expanding penalties to include a \$500 penalty for “any other violations,” requiring further specificity through policy guidance.
- This version of the bill adds language that expands the protections from only employees to “employees or former employees,” increasing the number of protected workers.
- Stakeholdering, rulemaking, and policy activities are complex in nature and require .5 FTE until these tasks are complete. A temporary ARA 4 would be needed to oversee the rulemaking, policy work, and updating of outreach publications and resources required to implement this bill.

Marketing and Outreach

\$207,447 will be necessary for outreach during fiscal year 2024 to effectively implement this bill, which directs L&I to develop and furnish information for each employer describing the employer’s obligations and an employee’s rights. The outreach will be in the form of direct mail to approximately 260,000 employers. Annual notifications will be done as part of our normal annual notifications.

Printing and Translation

\$50,000 is needed during fiscal year 2024 for printing and translation costs relating to updating multiple worker-rights printed posters, printed pamphlets, and online publications, including *Your Rights as a Worker*, *Employee Rights to Equal Pay and Opportunities*, *Isolated Worker Employee Concerns*, *New Employee Packet*, *Pocket Guide to Worker Rights*, and others.

Rule making

\$7,500 is needed for 3 rule making hearings to occur during fiscal year 2024. The average cost of one rule making hearing is \$2,500. (3 hearings x \$2,500 each = \$7,500)

Indirect Costs

The amount included in this fiscal note for indirect is:

Fund Name		FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
608	Accident	3,000					
609	Medical Aid	0					
	Total:	\$3,000	\$0	\$0	\$0	\$0	\$0

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 59, Step G).

L&I as an Employer

For the agency as an employer, all personnel files are currently maintained electronically and could be provided within the requested timeframe. L&I anticipates that the requirements of this bill could be incorporated into normal business operations at little to no cost, including the 14 calendar day turnaround time for providing employee and former employee personnel files and discharge statements.

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

This legislation would result in rule changes to:

- WAC 296-126-050, Employment records.

Individual State Agency Fiscal Note

Bill Number: 5061 S SB	Title: Personnel records	Agency: 540-Employment Security Department
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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
FTE Staff Years	0.5	0.5	0.5	0.5	0.5
Account					
Employment Service Administrative Account-State 134-1	66,625	66,625	133,250	133,250	133,250
Total \$	66,625	66,625	133,250	133,250	133,250

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: Julie Murray	Phone: 786-7711	Date: 02/09/2023
Agency Preparation: Sundara Chan	Phone: 360-890-3669	Date: 02/14/2023
Agency Approval: Lisa Henderson	Phone: 360-902-9291	Date: 02/14/2023
OFM Review: Anna Minor	Phone: (360) 790-2951	Date: 02/14/2023

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 bill adds a maximum 14-day turnaround for employers to provide personnel files when requested by an employee, former employee, their attorney, agent, or fiduciary. The bill gives employees a right to enforce this measure through a lawsuit, where they can collect penalties and attorney fees. The bill also requires Department of Labor and Industries (LNI) and Employment Security Department (ESD) to notify employers of their obligations and employee's rights to access their personnel file.

SSB 5061 is different from SB 5061 in that:

Section 2 (5) provides a method for an employee to enforce this section through private cause of action in superior court. This adds penalties of \$250 if a file is not provided within 14 days, \$500 if not provided in 28 days, and \$1,000 if provided later than 28 days, and statutory damages for any other violations of \$500. The employee may also collect reasonable attorney fees and costs.

Section 2 (9) allows redaction by public employers if the request is made under RCW 42.56. The employer must provide the reason for any redaction and cite supporting laws. If not made under RCW 42.56 then the records would be provided without redaction as required in this bill.

Section 2 (10) (a) and (c) requires Labor and Industries to develop and provide each employer information describing employer's obligations and employee's rights under this section. Labor and Industries AND Employment Security must provide this information to employers at least annually, either alone or as part of other annual notices. Employers are defined in RCW 50A.05.010 which are PFML employers and already receive an annual notice from ESD this can be included with.

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.

None

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.

Section 2 (4) imposes a 14-calender day deadline on providing personnel files to current and former employees. Human Resources (HR) is asking for a permanent 0.5 FTE as a Human Resource Consultant 2 (HRC 2) to be able to obtain all documentation timely. Current requests often do not meet the 14-calendar day deadline due to time needed to gather documents from various sources. This bill's definition of what has to be provided in a personnel file is broader than what ESD keeps in personnel files. There is time needed to obtain documents from various sources and ensure accuracy of contents before providing to the requestor.

Section 2 (10) would require ESD to send a notice to all employers under Paid Family Medical Leave (PFML) RCW 50A.05.010 ESD already mails a notice to these employers both via physical mail and email depending on what contact information ESD has for the business. LNI is creating a notice which ESD will then send out. ESD has the addresses for 193,000 employers and ESD printing estimates the cost of adding a page to be \$0.05 for a full page. This would add \$9,650 annually to the cost of mailing the notices.

Both the sections above cause ongoing impact to HR and Administrative Services Division (ASD) to adopt and comply with the new standards and policies. To accomplish this work ESD will need the following ongoing cost to ensure our compliance:

0.5 FTE Human Resource Consultant 2

To be able to obtain all documentation timely from various sources.

Total cost is \$56,975 per year.

Additional cost is needed to add a letter to existing notice to all PFML employers reporting to ESD.

193,000 (PFML employers) * \$0.05 (cost per letter) = \$9,650

Total cost for Fiscal Year (FY) 2024 and ongoing is \$56,975 (0.5 FTE) + \$9,650 (Additional cost) = \$66,625

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
134-1	Employment Service Administrative Account	State	66,625	66,625	133,250	133,250	133,250
Total \$			66,625	66,625	133,250	133,250	133,250

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.5	0.5	0.5	0.5	0.5
A-Salaries and Wages	29,566	29,566	59,132	59,132	59,132
B-Employee Benefits	11,826	11,826	23,652	23,652	23,652
C-Professional Service Contracts					
E-Goods and Other Services	17,225	17,225	34,450	34,450	34,450
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	8,008	8,008	16,016	16,016	16,016
9-					
Total \$	66,625	66,625	133,250	133,250	133,250

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 2024	FY 2025	2023-25	2025-27	2027-29
HUMAN RESOURCE CONSULTANT 2	56,975	0.5	0.5	0.5	0.5	0.5
Total FTEs		0.5	0.5	0.5	0.5	0.5

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

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: 5061 S SB

Title: Personnel records

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

Legislation Impacts:

- Cities: All cities
- Counties: All counties
- Special Districts: All 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: The number of current or former employees will request personnel files; the amount of staff time required to furnish personnel records for each jurisdiction.

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: Chelsea Mickel	Phone: 518-727-3478	Date: 02/14/2023
Leg. Committee Contact: Julie Murray	Phone: 786-7711	Date: 02/09/2023
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 02/14/2023
OFM Review: Anna Minor	Phone: (360) 790-2951	Date: 02/14/2023

Part IV: Analysis

A. SUMMARY OF BILL

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

CHANGES BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:

- States that the content of the personnel files that must be furnished are the contents that exist at the time of the request.
- Makes all time periods calendar days.
- Add a former employee to the private right of action. For the statutory penalties, the files must be complete, it includes redaction logs, and provides \$500 statutory damages for any other violations.
- States that an employer is not required to create personnel records; rather the employer must furnish the records that the employer has already created.
- Removes provisions for redaction by public employers. Allows health care providers to redact patient information if required by HIPAA and provide a redaction log.
- Provides that unless a personnel file request specifies that it is made under the Public Records Act, a public employer must treat the request as made under this bill and the request is not subject to the Public Records Act.
- Provides a specific definition of employer for the requirement for ESD to provide information to employers in annually.

SUMMARY OF CURRENT BILL:

- Requires an employer to furnish an employee with a complete, un-redacted copy of their personnel file at no cost within 14 calendar days of a request.
- Mandates an employer to furnish a former employee with a signed written statement with the effective date of discharge, whether the employer had a reason for the discharge, and if so, the reasons, within 14 calendar days of the written request.
- Allows an employee or former employee to bring a private action for violations of certain rights regarding personnel files, discharge information, and redaction logs, and entitles the employee to equitable relief, graduated statutory damages up to \$1,000, and reasonable attorneys' fees and costs of each violation.

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.

CHANGES IN EXPENDITURE IMPACTS BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:

The substitute version of this bill may decrease local government expenditures compared to the original version of the bill. The current language removes provisions for redaction by public employers, and clarifies that employers are not required to create personnel records, employers must only furnish the records that employers have already created. Both of these revisions would save costs in terms of staff time required to furnish personnel files.

EXPENDITURE IMPACTS OF CURRENT BILL:

This bill would have indeterminate impacts on local governments.

According to the Washington State Association of Counties, this bill would have a small impact on local governments, which already keep personnel files and are subject to reporting under the Public Records Act. According to RCW 49.12.240, local government employees have the right to inspect their own personnel files at least once each year. Since state and local government agencies already maintain personnel records, the Public Employment Relations Commission does not expect local governments to incur significant costs providing current employees with their personnel files. Local governments may be more likely to incur costs in terms of staff time in order to meet the 14 day deadline, depending on administrative capacity and records retention policies of the jurisdiction. If an employer is unable to meet the 14 day deadline, they would incur costs in the form of statutory damages starting at \$250, and up to \$1,000. Since it is unknown the number of current or former employees that will request personnel files, or the amount of staff time required to furnish personnel records for each jurisdiction, expenditure costs for local governments are indeterminate.

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.

CHANGES IN REVENUE IMPACTS BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:

This bill version would not change revenue impacts in comparison to the original version of the bill.

REVENUE IMPACTS OF CURRENT BILL:

This bill would not have revenue impacts on local governments.

SOURCES:

Association of Washington Cities

Bill Hearing, SB 5061, Labor & Commerce Committee, (January 12, 2023)

Municipal Research Services Center

Public Employment Relations Commission

Senate Substitute Bill Report, SSB 5061, Labor & Commerce Committee, (2023)

Senate Bill Report, SB 5061, Labor & Commerce Committee, (2023)

Washington State Association of Counties