

Multiple Agency Fiscal Note Summary

Bill Number: 1068 S HB	Title: Injured worker medical exams
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Estimated Cash Receipts

NONE

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
Board of Industrial Insurance Appeals	Fiscal note not available											
Department of Labor and Industries	.0	0	0	10,000	.0	0	0	0	.0	0	0	0
Total \$	0.0	0	0	10,000	0.0	0	0	0	0.0	0	0	0

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Board of Industrial Insurance Appeals	Fiscal note not available								
Department of Labor and Industries	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Estimated Capital Budget Breakout

NONE

Prepared by: Anna Minor, OFM	Phone: (360) 790-2951	Date Published: Preliminary 3/14/2023
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Individual State Agency Fiscal Note

Bill Number: 1068 S HB	Title: Injured worker medical exams	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
Account					
Accident Account-State 608-1	5,000	0	5,000	0	0
Medical Aid Account-State 609-1	5,000	0	5,000	0	0
Total \$	10,000	0	10,000	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: Susan Jones	Phone: 360-786-7404	Date: 03/09/2023
Agency Preparation: Shana J Snellgrove	Phone: 360-902-6408	Date: 03/14/2023
Agency Approval: Trent Howard	Phone: 360-902-6698	Date: 03/14/2023
OFM Review: Anna Minor	Phone: (360) 790-2951	Date: 03/14/2023

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	5,000	0	5,000	0	0
609-1	Medical Aid Account	State	5,000	0	5,000	0	0
Total \$			10,000	0	10,000	0	0

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	10,000		10,000		
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 \$	10,000	0	10,000	0	0

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.

See attached.

Part II: Explanation

This bill gives workers the right to record medical examinations, expands the definition of companion/observer who may attend the exam, and removes reference to the Board of Industrial Insurance Appeals (BIIA) from RCW 51.36.070 (3).

SHB 1068 is different from HB 1068 in that it:

- Removed the term “compelled” in all sections except the bill title.
- Restricts the worker from holding the recording device during exam.
- Excludes recording neuropsychologist exams.
- Adds language further limiting who can be an observer at an exam.

The differences do not change the fiscal impact to L&I.

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

Section 1 amends RCW 51.36.070 by adding a new subsection 4. This subsection:

- Gives the worker the right to record the audio, video, or both, of all examinations ordered under this section, RCW 51.32.110, or by the BIIA. However, examinations conducted by a neuropsychologist may not be audio or video recorded.
- States the worker is responsible for paying the costs of recording.
- States that upon request, the worker must provide one copy of the recording to the department or self-insured employer within 14 days of receiving the request, but in no case prior to the issuance of a written report of the examination.
- States that the worker must take reasonable steps to ensure the recording equipment does not interfere with the examination. The worker may not hold the recording equipment while the examination is occurring.
- States any material alteration of the recording by the worker or done on the worker’s behalf that results in the receipt of benefits may be subject to repayment of those benefits pursuant to RCW 51.32.240.

- States that recordings made under this subsection are deemed confidential pursuant to RCW 51.28.070.
- States the worker has the right to have one person, who is at least the age of majority and who is of the worker's choosing, to be present to observe all examinations ordered under this section, RCW 51.32.110, or by the BIIA. The observer must be unobtrusive and not interfere with the exam. The observer may not be the worker's legal representative, an employee of the legal representative, the worker's attending provider, or an employee of the worker's attending provider.

II. B – Cash Receipt Impact

Non-Appropriated State Fund Premiums

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

Non-Appropriated Premium Impact to Employers

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

- Review of liabilities, or costs of the Workers' Comp System.
- Investment earnings.
- Adequate revenue (premiums + investments) based on projected costs (actuarial estimates) will determine need for a premium change.

Non-Appropriated Self-Insured Employers

If an employer chooses to be self-insured, they are responsible to pay for overall claim costs and a portion of administration costs of L&I's Self-Insurance Program and other costs of related support functions. The administrative assessment is an amount per dollar of claim benefit costs. If benefit costs are increased due to the change in independent medical examinations, self-insured employers would be assessed by L&I for their appropriate portion of administrative costs

based on the increase. Incremental costs or savings will equal the incremental revenue collected from assessments.

II. C – Expenditures

Non-Appropriated – State Fund Benefits Costs

There is non-appropriated impact only to the Accident Account, fund 608, and Medical Aid Account, fund 609. (Non-appropriated costs are not included in the Fiscal Note Summary.) Currently, the Workers' Compensation System experiences challenges with providers willing to accept L&I patients. L&I expects this bill would further reduce the pool of providers willing to conduct medical exams. This is anticipated to cause scheduling delays if a provider does not consent to an audio and/or video recording. Any delays in services for injured worker will increase future disability and claim costs. It is expected that this will be more problematic amongst mental health providers. The impact of these changes on workers' compensation claim benefit costs is difficult to estimate and, therefore, indeterminate.

Below are some high level information to outline the potential impact to Workers' Compensation costs.

Current assumptions:

- The department currently conducts about 3,750 per quarter, or 15,000 annually.
- Of those about 3,000 per quarter, or 12,000 new claims annually, are compensable.

Impacts of implementation of this bill:

- A portion of the 12,000 of the compensable claims would need to be rescheduled due to providers not consenting to an audio/video recording. The department does not have information to understand what level of consent will be agreed upon.
- It is expected that a larger portion of the delays would be with mental health providers, due to their current capacity challenges.
- The reschedule depending on location and provider capacity would take from 24 days to potentially 60 days to reschedule.

- Any delays in receiving Workers’ Comp Services will increase the duration injured workers are receiving time-loss, and will drive an increase in long-term disability.

The table provides potential annual impacts to the Workers’ Compensation System:

Time-Loss Delay Cost	108.99	per day	
Compensable IME's	12,000		
Days Delayed	25	45	65
Percent of Compensable IME Delayed:			
10%	3,270,000	5,885,000	8,501,000
20%	6,539,000	11,771,000	17,002,000
30%	9,809,000	17,656,000	25,504,000
40%	13,079,000	23,542,000	34,005,000
50%	16,349,000	29,427,000	42,506,000

Appropriated – Operating Costs

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

Information Technology (IT)

L&I estimates minimal requests for recordings to be provided to the department; therefore, there is limited IT impact. However, if requests for recordings increase, the department may require funding to address this.

Printing & Mailing

\$4,602 is needed in fiscal year 2024 to update and print the “Your Independent Medical Exam” for state fund and self-insured injured workers (English and Spanish).

Rule making

\$5,000 is needed for two rule making hearings to occur during fiscal year 2024. The average cost of one rule making hearing is \$2,500. (2 hearings x \$2,500 each = \$5,000)

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

This legislation would result in rule changes to:

- WAC 296-23-362, May a worker bring someone with them to an independent medical examination (IME)?
- WAC 296-23-367, May the worker videotape or audiotape the independent medical examination?