

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 1521 S HB AMS KEIS S3369.4	<b>Title:</b> Industrial insurance/duties
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## Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Department of Labor and Industries	Non-zero but indeterminate cost and/or savings. Please see discussion.								
<b>Total \$</b>	0	0	0	0	0	0	0	0	0

## 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	1.9	0	0	478,000	1.6	0	0	330,000	1.6	0	0	330,000
<b>Total \$</b>	1.9	0	0	478,000	1.6	0	0	330,000	1.6	0	0	330,000

## 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
<b>Total \$</b>	0.0	0	0	0.0	0	0	0.0	0	0

## Estimated Capital Budget Breakout

NONE

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# Individual State Agency Fiscal Note

<b>Bill Number:</b> 1521 S HB AMS KEIS S3369.4	<b>Title:</b> Industrial insurance/duties	<b>Agency:</b> 235-Department of Labor and Industries
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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:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	1.1	2.7	1.9	1.6	1.6
<b>Account</b>					
Accident Account-State 608-1	73,000	166,000	239,000	166,000	166,000
Medical Aid Account-State 609-1	72,000	167,000	239,000	164,000	164,000
<b>Total \$</b>	145,000	333,000	478,000	330,000	330,000

### 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:	Phone:	Date: 04/21/2023
Agency Preparation: Donald Jenson Jr	Phone: 360-902-6981	Date: 04/26/2023
Agency Approval: Trent Howard	Phone: 360-902-6698	Date: 04/26/2023
OFM Review: Anna Minor	Phone: (360) 790-2951	Date: 04/26/2023

## 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	73,000	166,000	239,000	166,000	166,000
609-1	Medical Aid Account	State	72,000	167,000	239,000	164,000	164,000
<b>Total \$</b>			145,000	333,000	478,000	330,000	330,000

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

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	1.1	2.7	1.9	1.6	1.6
A-Salaries and Wages	96,000	200,000	296,000	210,000	210,000
B-Employee Benefits	33,000	74,000	107,000	84,000	84,000
C-Professional Service Contracts					
E-Goods and Other Services	16,000	38,000	54,000	34,000	34,000
G-Travel		1,000	1,000	2,000	2,000
J-Capital Outlays		20,000	20,000		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
<b>Total \$</b>	145,000	333,000	478,000	330,000	330,000

### 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 2024	FY 2025	2023-25	2025-27	2027-29
Fiscal Analyst 5	71,520	0.1	0.2	0.2	0.1	0.1
Management Analyst 5	91,524	1.0	1.0	1.0		
Office Assistant 3	43,800		0.5	0.3	0.5	0.5
Workers Compensation Adjudicator 5	77,028		1.0	0.5	1.0	1.0
<b>Total FTEs</b>		1.1	2.7	1.9	1.6	1.6

**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

The bill relates to industrial insurance self-insured employer and third-party administrator penalties and duties.

The differences between SHB 1521 AMS KEIS S3369.4 and SHB 1521 include:

- SHB 1521 AMS KEIS S3369.4 adds “self-insured private sector firefighters” to “self-insured municipal employers”.
- SHB 1521 AMS KEIS S3369.4 replaces “third party administrators” with their “self-insured municipal employers or self-insured private sector firefighters” third party administrators.
- SHB 1521 AMS KEIS S3369.4 specifies that there should not be an interpretation that leads to a private cause of action outside of the original jurisdiction of the Department of Labor and Industries.
- SHB 1521 AMS KEIS S3369.4 defines “private sector firefighter employer”.
- SHB 1521 AMS KEIS S3369.4 defines “municipal” employer.
- SHB 1521 AMS KEIS S3369.4 adds a new basis for withdrawal of certification if the self-insured municipal employer has been found to violate the duty of good faith and fair dealing three times within a three-year period.
- SHB 1521 AMS KEIS S3369.4 clarifies that inadvertent or minor errors or delays are not a violation of good faith and fair dealing.
- SHB 1521 AMS KEIS S3369.4 states that the withdrawal of certification may be delayed if the employer is in an enforceable contract with the third party administrator that cannot be legally terminated, and prohibits the self-insured employer from renewing or extending the contract.
- SHB 1521 AMS KEIS S3369.4 clarifies that the penalties in RCW 51.48.080 apply to Title 51 not merely the bill enacted.

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

**Section 1(1)** amends RCW 51.48.080 changing the word “act” to “title”.

**Section 1(2)** amends RCW 51.48.080 giving the Department of Labor and Industries (L&I) the ability to increase penalties for violations of section 3 of this act up to an amount, not to exceed three times the penalty in subsection (1), also subject to adjustments pursuant to RCW 51.48.095.

**Section 2(5)** amends RCW 51.48.017 giving L&I the ability to increase penalties for violations of section 3 of this act up to an amount, not to exceed three times the penalty in subsection (1), also subject to adjustments pursuant to RCW 51.48.095.

**Section 3(1)** adds a new section to RCW 51.14 stating that self-insured municipal employers and self-insured private sector firefighter employers and their third-party administrators have a duty of good faith and fair dealing to workers relating to all aspects of this title.

**Section 3(3)** adds a new section to RCW 51.14 requiring L&I to adopt by rule additional applications of the duty of good faith and fair dealing as well as criteria for determining appropriate penalties for violations.

**Section 3(4)** adds a new section to RCW 51.14 requiring L&I to investigate each alleged violation of this section upon the filing of a written complaint or upon its own motion.

**Section 3(5)** adds a new section to RCW 51.14 requiring L&I to issue an order determining whether a violation of this section has occurred in conformance with RCW 51.52.050. An order finding that a violation has occurred must also order the municipal employer or private sector firefighter employer to pay a penalty of one to 52 times the average weekly wage at the time of the order, depending upon the severity of the violation, which accrues for the benefit of the worker.

**Section 4** amends RCW 51.14.080 adding to the list of decertification actions if a self-insured municipal employer has been found to have violated the self-insurer's duty of good faith and fair dealing three times within a three-year period, and provides additional guidelines.

**Section 7** states that this act takes effect July 1, 2024.

## **II. B – Cash Receipt Impact**

Cash receipts are indeterminate. The bill allows L&I to assess penalties, but L&I has no way to estimate the frequency nor amounts of those penalties.

## **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**

1.0 FTE, Workers Compensation Adjudicator 5 (WCA5), permanent, beginning July 1, 2024. Duties include issuing legal determination for final disposition of claimants' and self-insurance staff requests for penalties on industrial insurance claims based on the merits and facts found within the claim file. Duties include assigning, tracking, and reviewing recommendations from level 3, 4 and 5 adjudicators, including the medical compliance consultant, to determine appropriateness of assessment or denial of penalties against self-insured employers per statutes and rules. Duties also include reviewing penalty recommendations, and calculating dollar amount of penalties. Duties also include referring appeals to the Board of Industrial Insurance Appeals (BIIA), giving depositions related to decisions made on specific claims, testifying on facts related to department action for all penalty appeals at the BIIA. To resolve appeals, makes recommendations of approval/denial of settlements to the Self-Insurance Program Manager. Duties also include tracking violations to determine whether three violations of section 3 have occurred in a three-year period. Duties also include answering phone calls, assisting workers, employers and third party administrators with questions and concerns. This is based on the following assumptions:

- 625 penalty requests were received by the Self-Insurance WCA5 Penalty Adjudicators in 2022, handled by 2 WCA5 Penalty Adjudicators which equates to approximately 312 penalty requests per WCA5.
- 625 additional penalty requests per year are expected. With the large monetary incentive associated with this bill (section 3(5) providing up to 52 times the average weekly wage), the number of penalty request is expected to double.
- 2 FTEs are needed (625 additional penalties / 312 per WCA5 = 2 FTEs)
- 1 additional WCA5 has already been hired to assist with penalty workload.
- Therefore, 1 additional FTE is needed.

0.5 FTE, Office Assistant 3 (OA3), permanent, beginning July 1, 2024. Duties include providing administrative, non-adjudicative support to penalty adjudicators, reviewing and analyzing incoming document types, creates work items for penalty adjudicators and/or routes the imaged document to the appropriate party. Duties include reviewing BIIA documents, identifying ones that need further adjudicative action and creating a work item for the claim adjudicator. Duties also include identifying new protests to determinative orders and disputes to penalty adjudicator, and sending out acknowledgment letters to the parties. Duties also include handling incoming phone calls and returns voicemails in a timely manner as it pertains to basic claim processing questions, protests, and appeals. This is based on the following assumptions:

- Reviewing incoming mail, creating work items - 9 hours per month, or 108 hours per year.
- Processing and tracking certified mail – 17 hours per month, or 204 hours per year.
- Tracking proof of payment, sending follow up letters as necessary – 13 hours per month, or 156 hours per year.
- Answering/returning phone calls – 12 hours per month, or 144 hours per year.
- Coordinating language translations – 20 hours per month, or 240 hours per year.
- Other administrative duties – 10 hours per month, or 120 hours per year.
- Tasks equal 972 hours per year. (108 + 204 + 156 + 144 + 240 + 120 = 972)
- Therefore, 0.5 FTE is needed. (972 hours / 2,088 FTE hours = 0.47 FTE)



1.0 FTE, Management Analyst 5, temporary, from July 1, 2023 through June 30, 2025. Duties include managing the implementation, rulemaking activities, assisting the creation of new processes, changes in current processes, updates to written materials (internal training, external training, brochures and other), updating of information on the web, to include a worker centric web presence to communicate worker’s rights. Duties also include communications to self-insured employers, third party administrators and other parties, setting up for anticipated data needs. Once the bill is implemented, the position will monitor Self-insurance’s compliance to the time frames for issuing orders, writing communications, keeping web information up-to-date, and acting as a penalty subject matter expert. Duties also include developing and monitoring data and reporting needs regarding penalties and ad hoc reports as requested.

**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 = \$5,000)

**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	8,000	5,000	5,000	5,000	5,000
609	Medical Aid	3,000	8,000	5,000	5,000	5,000	5,000
	Total:	\$6,000	\$16,000	\$10,000	\$10,000	\$10,000	\$10,000

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 59, Step G).

**Part IV: Capital Budget Impact**

None.

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

This legislation would result in rule changes to:

- WAC 296-15-266, Penalties.
- WAC 296-15-320, Reporting of injuries.
- WAC 296-15-330, Authorization of medical care.
- WAC 296-15-350, Handling of claims.
- WAC 296-15-400, Self-insured workers' rights and obligation.
- WAC 296-15-420, Requesting allowance or denial, or interlocutory order from the department.
- WAC 296-15-425, Communicating to injured workers during the course of the claim.
- WAC 296-15-550, Self-Insured third-party administrator duties and performance requirements.
- WAC 296-15-560, Self-insured third-party administrator penalties.