

Individual State Agency Fiscal Note

Revised

Bill Number: 6078 SB	Title: Enforcement action moneys	Agency: 100-Office of Attorney General
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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:

- 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.

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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 – New Section to Chapter 43.79RCW. Washington State may not spend money received through administrative or judicial enforcement actions except by legislative appropriation. The Attorney General's Office (AGO) shall request that orders and settlements of enforcement actions include language requiring such appropriations. Exclusions.

Section 2 – Amends RCW 43.10.220 to create exception to account for this Act.

Section 3 – New Section. Savings clause with regard to federal funding requirements. Rules adopted under the Act must be consistent federal funding requirements.

Section 4 – New Section. General savings clause.

Section 5 – New Section. Effective date July 1, 2024.

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.

Indeterminate Cash Receipts

Attorney General's Office (AGO) Consumer Protection (CPR), The Wing Luke Civil Rights (CRD), Environmental Protection (EPD), and Complex Litigation (COM) divisions' activities are funded almost completely with affirmative litigation settlement dollars. There is no client agency to bill for legal services.

AGO AGENCY ASSUMPTIONS:

The AGO cannot determine the amount of cash receipts for cases that are still ongoing or have not been filed yet.

The AGO assumes realized settlement funds would be deposited into a new fund that will need to be created, similar to Fund 424 – Anti-Trust Revolving Account or into GF-State.

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.

Indeterminate expenditure impact.

The Attorney General's Office (AGO) has five Affirmative Litigation Divisions: Consumer Protection (CPR), Wing Luke Civil Rights (CRD), Environmental Protection (EPD), Anti-Trust (ANT), and Complex Litigation (COM) divisions. All five divisions are funded almost exclusively by recoveries from affirmative litigation lawsuits. As the revenue comes from cases that are still ongoing or have not been filed yet, the AGO cannot determine the revenue or expected expenditures for the five divisions. Historic funding has been sufficient but costs would be adjusted to meet current and future realized revenue.

The expenditures for the five divisions and administrative support for the current biennium are projected to be \$109.8 million, of which 92 percent or \$100.8 million is funded by recoveries. Currently, the AGO receives \$9 million (or 8 percent) per biennium in GF-State to operate our Affirmative Litigation Divisions.

The AGO budget, including both appropriations and self-funding, currently supports the costs for 262 employees (122 Assistant Attorneys General (AAG) and 140 support staff) that work diligently to litigate affirmative lawsuits. From 2013 through today, the AGO has provided the General Fund and other Funds with over \$759.8 million from this work, and over \$1.18 billion has gone to Washington Consumers through consumer debt relief, grants to non-profits and tribal governments, and direct restitution. The return on investment since 2013 is over \$57.60 for every dollar spent on the AGO's Affirmative Litigation work: over \$1.943 billion in relief and benefits compared to \$33.7 million in cumulative GF-State funding. These numbers do not include the over \$500 million in Opioid Abatement funds that have and will go to Washington Local Governments.

The AGO maintains a \$5 million adverse judgment reserve because unlike private plaintiffs in consumer protection cases, Washington can be ordered to pay the prevailing party's attorneys' fees in unsuccessful cases. Costs for adverse judgments are not included in this fiscal note, but if this legislation passes and the Attorney General's Office loses a consumer protection case, the Legislature may need to cover a multi-million dollar bill.

Many settlements and court orders categorize portions of recovery dollars to be used for "any lawful purpose." This allows the Attorney General to make decisions on how those dollars will benefit Washington the most, including continuing the work of the affirmative litigation divisions. The AGO tries to reserve sufficient funds to support one year of future operations. Where recoveries outweigh our expenditure needs, the Attorney General has chosen to distribute that money to the General Fund or to impacted consumers. For example, when the AGO recovered over \$70 million, after costs and fees, in 2020 from Monsanto, the AGO sent \$60 million to the General Fund and retained \$12 million to fund future operations. In other cases, the AGO has remitted its fee awards to designated relief efforts, such as the \$46.4 million from opioid cases that has and will go to the State's Opioid Abatement Fund

AGO Agency Assumptions:

Legal services associated with the enactment of this bill will begin on July 1, 2024 (FY 2025).

Based on the bill language, the AGO assumes a new fund will need to be created, similar to Fund 424 – Anti-Trust Revolving Account or a GF-State appropriation to replace the funding currently obtained from any lawful purpose dollars. These new funds will be needed to continue the AGO's Affirmative Litigation work and to continue to provide the same levels of relief and benefits to Washington consumers.

To continue to operate efficiently, the AGO would need an appropriation of \$109.8 million per biennium to operate and another \$40 million biennially to continue to provide the same level of consumer relief and benefit that has been provided since 2013.

Annual recoveries are always difficult to predict due to the uncertain nature of litigation. Recoveries are especially hard to predict if this legislation passes because requiring legislative approval for settlements will delay, and, in some cases, prevent, settlements. Consequently, more cases will go to trial which will require more resources and lead to more volatility in outcomes.

Location of staffing is assumed to be in King County and non-King County office buildings throughout Washington State, where current FTE are located.

Total workload impact in this request includes standard assumption costs for goods & services, travel, and capital outlays for all FTE identified.

The agency cost for drafting, monitoring, and staffing appropriation legislation for individual case recovery efforts or other legislative work involved in implementing this bill is not included here.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

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

III. B - Expenditures by Object Or Purpose

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

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.