

Multiple Agency Fiscal Note Summary

Bill Number: 5032 SB	Title: DUI lookback & sentencing
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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						
Local Gov. Other	Fiscal note not available					
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											
Caseload Forecast Council	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Licensing	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Health	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Corrections	Fiscal note not available											
Total \$	0.0	0	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									
Local Gov. Other	Fiscal note not available								
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								
Caseload Forecast Council	.0	0	0	.0	0	0	.0	0	0
Department of Licensing	.0	0	0	.0	0	0	.0	0	0
Department of Health	.0	0	0	.0	0	0	.0	0	0
Department of Corrections	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									
Local Gov. Other	Fiscal note not available								
Local Gov. Total									

Estimated Capital Budget Breakout

NONE

Prepared by: Gaius Horton, OFM	Phone: (360) 819-3112	Date Published: Preliminary 2/ 1/2024
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Individual State Agency Fiscal Note

Bill Number: 5032 SB	Title: DUI lookback & sentencing	Agency: 101-Caseload Forecast Council
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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: Sarian Scott	Phone: 360-786-7729	Date: 01/29/2024
Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 01/31/2024
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 01/31/2024
OFM Review: Danya Clevenger	Phone: (360) 688-6413	Date: 01/31/2024

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.

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.

See attached.

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.

SB 5032

EXTENDING THE FELONY DUI LOOKBACK TO 15 YEARS AND CREATING DOSA FOR DUI

101 – Caseload Forecast Council

January 30, 2024

SUMMARY

A brief description of what the measure does that has fiscal impact.

- Section 1 Adds a new section to chapter 9.94A RCW that establishes the Drug Offender Sentencing Alternative for Driving under the Influence (DOSA DUI). Eligibility is for DOSA DUI if the offender:
- Does not have a prior conviction under RCW 46.61.520 (Vehicular Homicide), 46.61.522 (Vehicular Assault), 46.61.502(6) (Felony DUI), or 46.61.504(6) (Felony Physical Control); and either
 - Is convicted of felony driving or physical control of a vehicle under the influence of intoxicating liquor, marijuana, or any drug under RCW 46.61.502(6)(a) or felony physical control of a vehicle 46.61.504(6)(a).
- Section 1 Additionally, states if the court determines that the offender is eligible and that the alternative sentence is appropriate, the court shall waive the imposition of a sentence within the standard range and:
- Impose a sentence equivalent to a prison-based DOSA under RCW 9.94A.662 and subject to the same requirements and restrictions in that section if the low end of the standard range is greater than 24 months (Prison DOSA DUI); or
 - Impose a sentence equivalent to a residential treatment-based alternative consistent with this section if the low end of the standard range is 24 months or less (Residential DOSA DUI).
- Section 1 Additionally states the court may order the Department to complete either a risk assessment report or a substance use disorder screening report, or both.
- Section 1 Additionally allows the court to order an examination of the offender by the Department, when considering imposing a sentence under Residential DOSA DUI and states what is required in the examination.
- Section 1 Additionally states that an offender who is eligible for Residential DOSA DUI may be sentenced as follows:
- Indeterminate term of confinement of no more than 30 days (if necessary) in a county facility in order to facilitate direct transfer to a residential substance use disorder treatment program;
 - Treatment in a residential substance use disorder treatment program for a period set by the court of up to 6 months;
 - 24 months of partial confinement consisting of 12 months of work release followed by 12 months of home detention with electronic monitoring; and
 - 12 months of community custody.
- Section 2 Amends RCW 9.94A.030 by adding a definition for “Drug Offender Sentencing Alternative for Driving under the Influence” (DOSA DUI).

- Section 3 Amends RCW 9.94A.190 by requiring confinement for sentences imposed under the Drug Offender Sentencing Alternative for Driving under the Influence to be served at a state facility, regardless of the length of confinement.
- Section 4 Amends RCW 9.94A.501 by adding the sentencing alternatives established in Section 1 to sentences in which the Department must supervise, regardless of risk.
- Section 5 Amends RCW 9.94A.505(2)(a) to include the DOSA DUI alternatives.
- Section 6 Amends RCW 9.94A.525 by making a technical correction to the scoring rules for Failure to Register as a Sex Offender.
- Section 7 Amends RCW 9.94A.633 to include the DOSA DUI alternatives.
- Section 8 Amends RCW 9.94A.6332 to include the DOSA DUI alternatives.
- Section 9 Amends RCW 9.94A.660 changing eligibility for Prison DOSA by adding the DOSA DUI to the restriction that an individual may not have received a DOSA or DOSA DUI more than once in the ten years prior to the current offense.
- Section 10 Amends RCW 9.94A.701 to include references to the DOSA DUI alternatives in the requirement for community custody ordered by the court.
- Section 11 Amends RCW 46.61.502 by replacing the 10-year lookback limit for including prior offenses for the ranked Class B felony offense of Driving Under the Influence (RCW 46.61.502(6)) with a 15-year limit (ranked at Seriousness Level IV on the Adult Felony Sentencing Grid and as a Category B+ on the Juvenile Offender Sentencing Grid).
- Section 12 Amends RCW 46.61.5055 by replacing the 10-year lookback limit for including prior offenses for the ranked Class B felony offense of Driving Under the Influence (RCW 46.61.502(6)) and the ranked Class C felony offense of Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6)) with a 15-year limit (ranked at Seriousness Level IV on the Adult Felony Sentencing Grid and as a Category B+ on the Juvenile Offender Sentencing Grid).
- Section 13 Amends RCW 46.61.504 by replacing the 10-year lookback limit for including prior offenses for the ranked Class C felony offense of Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6)) with a 15-year limit (ranked at Seriousness Level IV on the Adult Felony Sentencing Grid and as a Category B+ on the Juvenile Offender Sentencing Grid).
- Section 14 States the act take effect July 1, 2023.

EXPENDITURES

Assumptions.

The bed and supervision impacts for this bill were calculated under the following assumptions.

- CFC = Caseload Forecast Council
- AOC = Administrative Office of the Courts
- DOC = Department of Corrections
- FY = Fiscal Year
- CY = Calendar Year
- DUI = felony Driving Under the Influence
- APC = felony Actual Physical Control
- Sentences that shift from jail to prison are based AOC CY22 gross misdemeanor data for the number of sentences and days actually served in jail for DUI/APC with three prior offenses in a lifetime, and assume no changes in crime rates, filings, plea agreement practices or sentencing volumes, *etc.* (*i.e.*, there will be an identical number of sentences each year).
- CFC FY23 felony DUI/APC data used for several of the calculations listed below.
- Sentences are distributed evenly by month.

- Proposed policy sentencing scores for the proposed policy sentences are calculated from an offender score distribution, which is based on CFC FY22 felony DUI/APC data, and it is calculated by the CFC.
- Proposed policy sentences are sentenced to the midpoint of standard range.
- For jail sentences, length of stay in jail is calculated using a figure for average earned release, based on a 2001 survey of local jails by the Sentencing Guidelines Commission, the Office of Community Development and the Washington State Association of Counties.
- For prison sentences, average time spent in jail prior to transfer to the DOC is based on DOC FY23 felony DUI/APC data, and it is calculated by DOC.
- For prison sentences, length of stay in prison is calculated using a figure for average percentage of sentence served in prison, which is based on DOC FY23 release data for felony DUI/APC offenders, and it is calculated by the CFC.
- Jail bed impacts are calculated with a discount factor (jail sentences versus actual offenders).
- Prison bed impacts are calculated with a discount factor (prison sentences versus actual offenders).
- Prison and jail bed impacts are calculated with a phase-in factor that it is calculated by the CFC based on the offense date and sentencing date.
- Community supervision impacts include appropriate discount factors and phase-in factors.

Impact on the Caseload Forecast Council.

The provisions of this bill will require modifications to the Caseload Forecast Council’s adult felony sentencing database. This will require work from a contractor of an estimated 10 hours at a rate of \$125 per hour for a total cost to the Caseload Forecast Council of \$1,250.

Impact on prison and jail beds and community corrections population:

This bill creates two new sentencing alternatives for courts to consider when sentencing individuals convicted of felony driving or physical control of a vehicle under the influence of intoxicating liquor, marijuana, or any drug, and extends the time period that can be considered for the counting of prior offenses when determining the felony-level offenses of Driving Under the Influence and Physical Control of a Vehicle While Under the Influence from 10 years to 15 years.

The Caseload Forecast Council cannot reliably predict bed impacts resulting from the bill as it is unknown how often the court will waive imposition of a standard range sentence and impose either the established Prison DOSA DUI or Residential DOSA DUI in the bill, nor how many will receive a Mental Health Sentencing Alternative or Parenting Sentencing Alternative. Nor is it known how much supervision compliance credits would be awarded towards supervision terms.

However, below is information provided as to give a sense of the impacts.

Lookback Period

Counting “prior offenses” (as defined in RCW 46.61.5055(14)) for determining the classification (gross misdemeanor or felony) of driving under the influence/actual physical control offenses will now be increased to 15 years, rather than 10 years, resulting in more felony level offenses.

Prison and Jail Bed Impacts – Lookback Period:

Data below is based on Calendar Year 2022 data from the Administrative Office of the Courts.

It is estimated that extending the lookback period will result in a maximum jail bed impact of 21 beds. Additionally, the bill will result in a maximum Prison bed impact of 146 beds (approximately 16.3% female and 83.7% male), first reached at 84 months after implementation.

However, the estimates below are most likely overstated as they do not include any savings that would be achieved if any of the sentences for this additional population would serve a reduced prison sentence under Prison DOSA DUI or be diverted from prison through the Residential DOSA DUI and other alternatives.

Average Monthly Population Jail and Prison Impacts
SB 5032 DUI Lookback Period and DUI DOSA
Caseload Forecast Council
January 30, 2024

	Fiscal Year									
	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34
Jail AMP	7	19	21	21	21	21	21	21	21	21
Prison AMP (DOSA)	0	0	0	0	0	0	0	0	0	0
Prison AMP (Non-DOSA)	22	88	125	142	146	146	146	147	147	147
Prison AMP (Total)	22	88	125	142	146	146	146	147	147	147

Supervision – Lookback Period:

Individuals convicted of Felony DUI/APC offenses have 12 months of community supervision after release, regardless of their level of risk to reoffend.

The use of the Residential DOSA DUI alternative would not impact the estimates below as the community custody term is the same under the alternatives as it is following a standard range sentence (12 months).

The use of Prison DOSA DUI alternative may increase the need for community supervision because an individual is supervised for ½ the midpoint of the standard range. As the eligibility for Prison DOSA DUI is limited to those with a low end of the standard range that exceeds 24 months, ½ the midpoint of the standard range would result in a term of supervision exceeding 12 months.

In addition, in 2020, SHB 2393 passed, allowing for supervision compliance credits (RCW 9.94A.717). As eligible individuals may reduce a portion of the supervision term based on programming, the CFC is unable to calculate an estimated length of stay for community custody. The provisions of the bill do not exclude individuals convicted of felony DUI or felony Physical Control or an alternative sentence for such an offense. Therefore, the increased ADP estimate may be overstated as they do not include calculations for supervision compliance credits allowed.

Average Monthly Population Supervision Impacts
SB 5032 DUI Lookback Period and DUI DOSA
Caseload Forecast Council
January 30, 2024

	Fiscal Year									
	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34
Supervision AMP	1	33	84	106	118	122	122	122	123	123

New Alternatives – Existing Population

Under the alternatives established in the bill, the court may either impose a sentence under prison DOSA requirements (½ the midpoint of the standard range in confinement and ½ the midpoint in community custody) if the low end of the standard range exceeds 24 months; or, if the low end of the range is 24 months or less, to a residential treatment option which includes up to 6 months of treatment, 12 months of work release, 12 months of electronic home monitoring, followed by 12 months of community custody.

While the impacts of the establishing the new alternatives are unknown, it is assumed under the Prison DOSA DUI alternative, there would be reduced confinement and added community custody, resulting in prison bed reductions and increases to the Department’s community custody population. For sentences under Residential DOSA DUI there may be reductions to confinement, added electronic monitoring, and no impact to community custody as the bill requires 12 months of community custody, which is the same as currently required.

The following tables shows the number of sentences that have been imposed in FY 2019 through FY 2023 for Felony DUI and Felony Physical Control. This is provided to show the population that could be considered for the alternatives. In addition, extending the lookback period from 10 years to 15 years will result in additional sentences that could be considered for the alternatives.

Felony DUI Sentences:

Fiscal Year	Prison Sentences		Non-prison Sentences*		Total
	# of Sentences	% Prison	# of Sentences	%Non- Prison	
FY23	80	65%	43	35%	123
FY22	72	56%	57	44%	129
FY21	77	67%	38	33%	115
FY20	101	75%	33	25%	134
FY19	119	74%	42	26%	161

Felony Physical Control Sentences:

Fiscal Year	Prison Sentences		Non-prison Sentences*		Total
	# of Sentences	% Prison	# of Sentences	%Non- Prison	
FY23	4	67%	2	33%	6
FY22	2	33%	4	67%	6
FY21	1	50%	1	50%	2
FY20	5	83%	1	17%	6
FY19	4	100%	0	0%	4

*Non-prison sentences may be a result of an alternative sentence, a mitigated exceptional sentence, or other factor.

Juvenile Impact.

There is no juvenile impact, as there has not been a case of felony DUI/APC.

Individual State Agency Fiscal Note

Bill Number: 5032 SB	Title: DUI lookback & sentencing	Agency: 240-Department of Licensing
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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: Sarian Scott	Phone: 360-786-7729	Date: 01/29/2024
Agency Preparation: Don Arlow	Phone: (360) 902-3736	Date: 01/29/2024
Agency Approval: Collin Ashley	Phone: (564) 669-9190	Date: 01/29/2024
OFM Review: Kyle Siefering	Phone: (360) 995-3825	Date: 01/31/2024

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.

This bill amends current impaired driving statutes to change the look back period to 15 years for certain class B and class C felonies for three or more prior impaired driving offenses. The bill also creates a new Drug Offender Sentencing Alternative (DOSA) for eligible individuals convicted of felony impaired driving offenses.

This bill is not expected to have an impact on operational or information systems expenditures for the Department of Licensing. The bill may increase penalties for some persons, but it is not expected to increase the volume of impaired driving arrests that could lead to a department hearing. Call center impact is expected to be minimal and could be managed within existing resources.

There are no cash receipts associated with implementation of this bill. Any increased monetary penalties for persons subject to the provisions of this bill will be collected by the courts.

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

Bill Number: 5032 SB	Title: DUI lookback & sentencing	Agency: 303-Department of Health
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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.
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- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Sarian Scott	Phone: 360-786-7729	Date: 01/29/2024
Agency Preparation: Donna Compton	Phone: 360-236-4538	Date: 01/31/2024
Agency Approval: Kristin Bettridge	Phone: 3607911657	Date: 01/31/2024
OFM Review: Breann Boggs	Phone: (360) 485-5716	Date: 01/31/2024

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.

This bill adds a new section to chapter 9.94A RCW (Sentencing Reform Act of 1981) creating a drug offender sentencing alternative for driving under the influence and outlines an offender's eligibility requirements. Additionally, this bill directs the Department of Health (department) to establish rules, considering criteria established by the American Society of Addiction Medicine, for treatment provided in a residential substance use disorder treatment facility. The department currently has rules established that would be used to implement this bill, therefore no fiscal impact.

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.