Individual State Agency Fiscal Note

Bill Number: 5128 S SB	Title: Injured worker compensation	Agency: 235-Department of Labor and Industries

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

	FY 2014	FY 2015	2013-15	2015-17	2017-19
Account					
Accident Account-State 608-1	116,000	105,000	221,000	335,000	210,000
Medical Aid Account-State 609 -1	116,000	105,000	221,000	335,000	210,000
Total $	232,000	210,000	442,000	670,000	420,000

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.

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Request # SSB 5128-1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

See attached

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

See attached

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

See attached

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2014	FY 2015	2013-15	2015-17	2017-19
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts	221,280	210,000	431,280	670,000	420,000
E-Goods and Other Services	10,720		10,720		
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:	$232,000	$210,000	$442,000	$670,000	$420,000

Part IV: Capital Budget Impact

NONE

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

See attached

Part II: Explanation

This bill allows injured workers of all ages to participate in voluntary settlement agreements (VSA) effective September 1, 2013, after 180 day from claim receipt and final and binding allowance. VSAs can include settlement of future medical benefits. VSAs must be submitted to the Board of Industrial Insurance Appeals (BIIA). It requires the Department of Labor and Industries (L&I) to contract with an independent researcher to study VSAs and return-to-work.

This bill differs from SB 5128 in that it:

- Repeals the existing structured settlement law passed in 2011.
- Removes the requirement for the occupational disease study.
- Changes the waiting period for settlement from 12 weeks after the date of injury to 180 days from claim arrival and a final and binding allowance order (identical to the existing standard).

The changes have no additional fiscal impact.

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

Section 1: Adds a new section establishing the right to voluntary settlement agreements (VSAs).

(1) Beginning September 1, 2013, permits parties to an allowed claim for workers' compensation benefits to enter into a VSA. The VSAs must be approved by the Board of Industrial Insurance Appeals (BIIA). The VSA may:

- bind the parties on any or all aspects of the claim;
- not subject an employer who is not a signatory to the VSA any responsibilities under any claim; and
- not be initiated until at least 180 days have passed since the claims was received by the department or self-insurer and the order allowing the claim is final and binding.

Section 2: Adds a new section requiring L&I to contract out for independent studies.

(1) VSA study: Requires an independent study of VSAs for 2016, 2021, and 2026. The study must evaluate the effectiveness of VSAs, provide information on the impact to employers, and evaluate the outcomes of workers.

(2) Return to Work (RTW) study: Requires an independent study to evaluate the quality and effectiveness of the RTW program, outcomes for workers, and whether the program is being utilized by employers. A report must be submitted to the Legislature by December 2016.

Section 6: Adds a new section allowing the department to adopt rules.

II. B – Cash Receipt Impact

For fiscal analysis purposes, we assume any incremental savings will equal the incremental revenue collected.

II. C – Expenditures

Operating Budget / Appropriated

Staffing

The small number of structured settlements pursuant to the 2011 workers' compensation reforms has influenced our prediction of staffing needs. In the fiscal note for ESHB 2123 (2011), we requested 13 FTEs for the settlement unit. If the age limit is removed, we would likely need more FTEs to handle the increased workload; however, due to the slow uptake of settlements we assume we're able to absorb the increased workload for the near future with existing staffing levels.

Medicare Set Aside costs

The department will need to consider and comply with federal Medicare set-aside account (MSA) requirements. Any settlement provision which eliminates the department (or self-insurer) from future medical cost exposure will require a determination of whether the claim meets the criteria necessary to create a Medicare set-aside account. For certain claims, once the estimated medical exposure is identified, it must be approved by the Centers for Medicare and Medicaid Services and the money deposited into an account that is accessed only for medical expenses related to the injury or condition agreed to. Before Medicare will assume payment (or relieve L&I for possible future payment) for medical expenses associated with a settled medical claim, the MSA must be depleted.

If a third party vendor is used for Medicare set-aside accounts, fees and costs vary. For purposes of the fiscal note, we assume costs of $350 per claim for 600 claims per year. *This results in an estimated cost of $210,000 annually.*

Studies

Many of the research elements required in the 2016 return-to-work program study are similar to the work done in the research study of the Vocational Rehabilitation Improvement Program (VIP). The estimated one-year cost of the VIP study was $250,000. We assume this same estimation for the return-to-work study mandated in this bill.

The VSA study required in this bill is similar to the study mandated in ESHB 2123, with changes in the years the three reports are due. For this reason, we assume no increase in costs.

The *estimated total cost for the studies is $250,000 in the 2015-2017 Biennium.*

Information Technology

Currently, there are edits in the LINIIS Benefit Payment System (BPS) that restrict VSA payments based on claimant age. The new structured settlement case management system will also have edits that need to be removed to support this change. It is estimated these edits will require 40 programmer hours. Additionally, the BPS system will need an estimated 80 hours to accommodate additional data collected and various schedule options for payment, and new data fields.

The estimated cost for contracted programming is $11,280 (120 hours x $94 per hour).

Information Technology		
Activity / Modification	**Hours**	**Cost**
Modify the BPS System to accommodate added data and scheduled and new fields	80	$ 7,520
Modify BPS to remove restrictors on age limits	40	$ 3,760
Total Information Technology:	**120**	**$ 11,280**

Claim Benefits / Non-Appropriated

These cost savings are not reflected in the Fiscal Note System FN1.

2011 Assumptions for Structured Settlements:

In 2011, the department estimated the savings impact of structured settlements, which are permitted on claims for workers age 55 and above (gradually dropping the age limit over years to 50). The predicted savings were based on assumptions about which types of claims would settle, how many, and what the average savings per claim would be.

Specifically, savings were first determined for new claims by accident year based on the number of eligible claims, and assumptions about the percentage/number of those claims that would actually settle and the anticipated savings for each claim type.

The original 2011 fiscal note was based on claim counts for the accident year ending March 31, 2010. To better reflect current conditions, we have updated the claim counts for the accident year ending March 31, 2012. This more recent year reflects four percent fewer claims overall than in 2010. The total number of claims for the accident year ending March 31, 2012 was 85,450. From that total, we subtracted fatality claims. We also assumed that settlement would only occur on long-term disability claims (where the worker has been on time-loss compensation for more than four months) because we cannot settle medical benefits, and because workers who exit the system quickly are unlikely to seek or benefit from settlement. We subtracted all other claim types from our number of eligible claims. We then separated eligible claims by benefit type for the accident year ending March 31, 2012.

Benefit types are described as:

- Total permanent disability (TPD) meaning the population of very long-term disability with a high incidence or likelihood of lifetime pension. This claim type does not include injured workers actually on pension.
- “Permanent partial disability” (PPD) are claims projected to have permanent impairment.
- Time-loss claims are those not expected to have lifetime permanent or partial disability.

Claim Type	Claimants aged 55 and older	Claimants aged under 55	Total
TPD Claims	961	392	1,353
PPD Claims	584	3,069	3,653
Time-loss Claims	468	2,459	2,927
Subtotal Non-Fatal LTD*	**2,013**	**5,920**	**7,933**
*Long-term disability			

We then assumed the percentage of eligible claims (only for claimants aged 55 and older) of each type that were likely to settle as 71 percent of TPD claims, 42 percent of PPD claims, and 15 percent of time-loss claims. This is expressed in the chart on the next page as "# of Claims Voluntarily Settled" and matches the projections by claim type from the fiscal note for structured settlements in 2011.

We then determined the percentage of claim costs that might be saved in settlement. Specifically, we assumed that claims would settle for 80 percent of the unpaid lifetime claim and related administrative costs. We further assumed that TPD, PPD, and time-loss claims settle at an average age of 60 months, 30 months, and 12 months respectively. The original 2011 fiscal note was based on claim cost data available at December 31, 2010. To better reflect current costs, the underlying claim cost data has been updated through December 31, 2012. As a result, we estimate the following savings per claim by types:

- TPD: $50,000
- PPD: $149,000
- Time-loss: $37,000

Finally, we estimated the impact of settlement on older claims, those in the system with injuries that had already occurred. We estimated that the effect on old claims incurred prior to July 1, 2011 (the inception of the 2011 workers compensation reforms) would be five times the annual effect for TPD claims, two and one-half times the annual effect for PPD claims, and one-time the annual effect for time-loss claims. This is expressed in the chart on the following page as "Old Claims Years of impact" and "Old Claims Voluntarily Settled."

2011 Fiscal Note Assumptions, with Updated Claim Count and Per Claim Savings Estimates								
Savings on Claims aged 55+								
Claim TYPE:	# of Claims	% of Claims that Settle	# of Claims Voluntarily Settled	Per Claim Savings Accident Fund	**Sub-Total Annual Savings on new claims**	Old Claims Years of impact	Old Claims Voluntarily Settled	**Reserve Impact on old claims**
TPD	961	71%	686	$ 50,000	**$ 34.3 M**	5	3,430	**$ 171.5 M**
PPD	584	42%	243	$ 149,000	**$ 36.2 M**	2.5	608	**$ 90.5 M**
Timeloss	468	15%	70	$ 37,000	**$ 2.6 M**	1	70	**$ 2.6 M**
Sub-total non-fatal LTD	2,013		999	$ 73,170	**$ 73.1 M**		4,108	**$ 264.6 M**

SSB 5128 2013 Assumptions – Removing Age Limits for Voluntary Settlement Agreements

This bill expands settlement eligibility to all injured workers, regardless of age. It is difficult to determine with certainty what the impact of this expansion will be, in part because our data on actual settlement is underdeveloped due to the program being in place just over a year and the initial slow uptake in participation.

Fiscal Impact on the Accident Fund

To estimate the impact to the Accident Fund, we've provided three scenarios, using as a base the 2011 assumptions. For all scenarios, we have retained our 2011 assumption that only long-term disability claims will settle.

Scenario 1:

This scenario adjusts the assumed percentages of eligible claims likely to settle and the average savings per PPD claim settlement for younger claimants. Younger claimants may be less likely to successfully settle TPD and large PPD and time-loss claims primarily because settlements of larger claims may not be in their best interest.

For purposes of this scenario, we assumed claims for younger claimants will settle at 15 percent of TPD claims, 15 percent of PPD claims, and 10 percent of time-loss claims. In addition the average savings per PPD claim settlement was assumed to be only $75,000, roughly half of the savings per claim assumed for workers age 55 and over. The result is an increase in annual savings over the updated 2011 analysis of $46.6 million or 64 percent (=46.6M/73.1M), and an increase in unpaid claim liabilities for old claims of $110.1 million or 42 percent (=110.1M/ 264.6M). The chart below applies the new assumptions to claims for workers under age 55.

Scenario 1

Based on Accident Year ending March 31, 2012

Savings on Claims under 55									
Claim TYPE:	# of Claims	% of Claims that Settle	# of Claims Voluntarily Settled	Accident Fund Savings Per Claim	**Sub-Total Annual Savings on new claims**	Old Claims Years of impact	Old Claims Voluntarily Settled	**Reserve Impact on old claims**
TPD	392	15%	59	$ 50,000	**$ 3.0 M**	5	295	**$ 14.8 M**
PPD	3,069	15%	460	$ 75,000	**$ 34.5 M**	2.5	1,150	**$ 86.3 M**
Timeloss	2,459	10%	246	$ 37,000	**$ 9.1 M**	1	246	**$ 9.1 M**
Sub-total non-fatal LTD	5,920		765	$ 60,852	**$ 46.6 M**		1,691	**$ 110.1 M**

In 2015, settlements with claimants 53 and older will be allowed under the current statute, so the additional annual savings from this bill will decrease to $43.8M. In 2016, settlements with claimants 50 and older will be allowed under the current statute, so the additional annual savings from this bill will decrease to $38.5M.

Scenario 2:

This scenario was based on the assumption that overall (including older workers) 60 percent of all TPD claims, 30 percent of all long-term disability PPD claims, and 10 percent of all long-term disability time-loss claims would reach a voluntary settlement. These percentages were used in the 2011 fiscal note assumptions for ESB 5566, which also proposed settlements with no age restrictions.

Taking out the proportion of settlements assumed for claimants age 55 and older, we're left with approximately 30 percent of TPD claims, 30 percent of long-term disability PPD claims, and 10 percent of long-term disability time-loss claims for younger workers, as the table on the next page illustrates.

The result is an increase in annual savings over the updated 2011 fiscal analysis of $152.2 million or 208 percent (=152.2M/73.1M), and an increase in unpaid claim liabilities for old claims of $381.7 million or 144 percent (=381.7M/264.6M). The chart below applies these assumptions to claims under 55.

Scenario 2

Based on Accident Year ending March 31, 2012

Savings on Claims Under 55								
Claim TYPE:	# of Claims	% of Claims that Settle	# of Claims Voluntarily Settled	Accident Fund Savings Per Claim	**sub-Total Annual Savings on new claims**	Old Claims Years of impact	Old Claims Voluntarily Settled	**Reserve Impact on old claims**
TPD	392	30%	118	$ 50,000	**$ 5.9 M**	5	590	**$ 29.5 M**
PPD	3,069	30%	921	$ 149,000	**$ 137.2 M**	2.5	2,303	**$ 343.1 M**
Timeloss	2,459	10%	246	$ 37,000	**$ 9.1 M**	1	246	**$ 9.1 M**
subtotal non-fatal LTD	5,920		1,285	$ 118,468	**$ 152.2 M**		3,139	**$ 381.7 M**

In 2015, settlements with claimants 53 and older will be allowed under the current statute, so the additional annual savings from this bill will decrease to $143.8M. In 2016, settlements with claimants 50 and older will be allowed under the current statute, so the additional annual savings from this bill will decrease to $126.7M.

Scenario 3:

This scenario simply applies the same assumptions used in 2011 about what percentage of claims will settle to all age groups, as demonstrated in the following chart. We believe this scenario is highly unlikely because meeting the "best interest" standard for settlement approval may be more difficult for younger workers. The result is an increase in annual savings for new claims over the updated 2011 analysis of $217.9 million or 298 percent (=217.9M/73.1M), and an increase in unpaid claim liabilities for old claims of $559.3 million or 211 percent (=559.3M/264.6M). The chart applies the 2011 assumptions to claims for workers under age 55.

Scenario 3

Based on Accident Year ending March 31, 2012

Savings on Claims Under 55								
Claim TYPE:	# of Claims	% of Claims that Settle	# of Claims Voluntarily Settled	Per Claim Savings Accident Fund	**Sub-Total Annual Savings on new claims**	Old Claims Years of impact	Old Claims Voluntarily Settled	**Reserve Impact on old claims**
TPD	392	71%	280	$ 50,000	**$ 14.0 M**	5	1,400	**$ 70.0 M**
PPD	3,069	42%	1,277	$ 149,000	**$ 190.3 M**	2.5	3,193	**$ 475.7 M**
Timeloss	2,459	15%	369	$ 37,000	**$ 13.7 M**	1	369	**$ 13.7 M**
Sub-total non-fatal LTD	5,920		1,926	$ 113,150	**$ 217.9 M**		4,962	**$ 559.3 M**

In 2015, settlements with claimants 53 and older will be allowed under the current statute, so the additional annual savings from this bill will decrease to $204.8M. In 2016, settlements with claimants 50 and older will be allowed under the current statute, so the additional annual savings from this bill will decrease to $179.4M.

In summary, the three scenarios provide variations or a range of additional savings to the Workers' Compensation Accident Fund from a low of $46.6 million to a high of $217.9 million for new accident year claims starting in Fiscal Year 2014. Because current law allows structured settlements for workers age 53 effective January 1, 2015, and age 55 effective January 1, 2016, this drops to a range of $43.8M to $204.8M in 2015 and $38.5M to $179.4M effective Calendar Year 2016. The range for the one-time impact on unpaid Accident Fund claim liabilities for old claims is $110.1 million to $559 million.

Fiscal Impact on the Medical Aid Fund:

It also is difficult to determine with certainty what the impact of medical settlements will be; there is a range of possibilities.

On the one hand medical settlements may be found to be in the best interest of very few claimants. Also, Section 1(8) of the bill allows medical settlements to be reopened if the related medical condition worsens. If medical settlements are rare and those that occur frequently reopen, there may be no significant savings in medical costs from settlements.

On the other hand, in the 2011 fiscal note assumptions for ESB 5566, which also proposed medical settlements, we assumed that annual medical costs would be reduced by 7.5 percent, and the reduction in the Medical Aid Fund liability for old claims would be three times the annual savings. We expect to incur $752.4 million in Medical Aid Fund losses for injuries and illnesses occurring in Fiscal Year 2014, excluding costs related to the Stay at Work program. So these same assumptions would imply annual Medical Aid Fund savings of $56.4 million (=752.4 million x 7.5%) and a one-time reduction in the Medical Aid Fund liabilities for old claims of $169.2 million (=3 x 56.4 million).

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

This bill will require rulemaking to amend the periodic payment schedule, and new rules guiding evaluation of medical needs and the scheduled payments of medical settlements. This will require at least four hearings statewide at an estimated cost of $10,000.