**OLR Bill Analysis**

**HB 5584**

***AN ACT ESTABLISHING A TAX CREDIT FOR EMPLOYERS THAT PROVIDE PAID FAMILY AND MEDICAL LEAVE BENEFITS AND CONCERNING FAMILY AND MEDICAL LEAVE ACCOUNTS.***

## SUMMARY


This bill establishes the Connecticut Family and Medical Benefit Trust as a way to help state residents save for periods of approved job leave under the federal and state Family and Medical Leave Act (FMLA). It requires the state treasurer to administer the trust and the individual FMLA accounts that comprise it. It exempts money in the trust and interest earnings on it from state and local taxation while in the trust, and thus defers state income taxes on the interest earnings until the funds are withdrawn for qualified expenses. It also requires FMLA account funds to be disregarded in determining eligibility for certain state- or federally-funded assistance programs.

Under the bill, the treasurer is responsible for prudently investing the trust's funds and establishing, among other things, the terms for participating in the FMLA account program and penalties for withdrawals used for non-qualified family and medical leave expenses.

The bill also establishes a tax credit for small employers with 50 or fewer employees that provide paid family and medical leave benefits to their employees. The credit is equal to 50% of the gross wages or compensation the employer paid to employees for approved leave during the income or tax year, as applicable. The bill caps at $2.5 million the aggregate amount of credits that may be approved each fiscal year.

EFFECTIVE DATE: October 1, 2018, except the tax credit provisions are effective January 1, 2019, and applicable to income or tax years beginning on or after that date.

## § 2 — CONNECTICUT FAMILY AND MEDICAL BENEFIT TRUST

### *Designated Beneficiaries and Qualified Expenses*

The bill requires the treasurer to establish an FMLA account program that allows individuals to make deposits into individual FMLA accounts to pay for "qualified family and medical leave expenses" for "designated beneficiaries."

Under the bill, a designated beneficiary is an individual state resident named in the account's "participation agreement" as the account's owner. A "participation agreement" is the agreement between the trust and a depositor that allows him or her to participate in an FMLA account. "Qualified family and medical leave expenses" are any expenses the designated beneficiary incurs while on approved leave under federal or state FMLA laws.

### *Trust Assets*

The trust is an instrumentality of the state performing essential governmental functions, but is not a state agency, institution, or department. It receives and holds all deposits, gifts, bequests, endowments, government grants, and other sources of funds, and the earnings on those funds, until disbursed for qualified family and medical leave expenses. Funds in the trust are not state property, they cannot be combined with state funds, and the state has no claim on them, unless the trust is terminated, in which case any unclaimed assets return to the state under the unclaimed property law.

Deposits must be made in cash by individuals who have entered into a participation agreement with the trust. Depositors and beneficiaries generally cannot direct the investment of their contributions or amounts in the trust, but may, up to twice a year, choose specific fund options that the treasurer may establish within the trust. The trust's interest may not be used as security for a loan.

Obligations of the trust, including contracts it enters into, are not a debt or obligation of the state, nor does the state have any obligation to anyone on account of the trust. The act limits all amounts obligated to be paid from the trust to amounts on deposit available in the trust for such an obligation. The trust must continue to exist as long as it has deposits or obligations until terminated by law.

### *Treasurer's Authority*

Under the bill, the treasurer, on behalf of the trust and to carry out its purposes, must establish consistent terms for participation agreements, which are agreements between the trust and those making deposits into an FMLA account to benefit a designated beneficiary. These terms include the (1) deposit methods, such as payroll deduction or bank transfer; (2) termination, withdrawal, or transfer of payments; (3) disbursement methods and penalties for the improper use of funds; and (4) amount of any administration charges or fees. The treasurer must also establish one or more funds within the trust and maintain separate FMLA accounts for each designated beneficiary.

The treasurer may also:

1. receive and invest the trust's money;
2. contract for services and pay for them with the trust's earnings;
3. procure insurance;
4. apply for and receive public and private gifts, grants, and donations;
5. sue and be sued; and
6. take other necessary actions to carry out the bill's FMLA account provisions.

### *Investments*

The bill requires the treasurer to (1) invest the trust's funds in a reasonable way to achieve the trust's objectives; (2) exercise a prudent person's care and discretion; and (3) consider such things as rate of return, risk, maturity, portfolio diversification, liquidity, projected disbursements and expenditures, and expected deposits and other gifts. The bill prohibits the treasurer from requiring the trust to invest directly in (1) obligations of the state or any of its political subdivisions or (2) investments or other funds she administers.

Under the bill, the treasurer must continuously invest and reinvest the trust's assets until they are (1) disbursed for qualified family and medical leave expenses, (2) spent on operating the trust, or (3) refunded to the depositor or the designated beneficiary in accordance with the participation agreement.

### *Offering and Solicitation*

Under the bill, material intended for distribution to prospective investors does not have to be filed with the banking commissioner and investments do not have to be registered with him. But the bill requires the treasurer to get written advice from counsel or the Securities Exchange Commission that the trust and participation in it are not subject to federal securities laws.

### *Tax Exemption*

The bill exempts money in the trust and interest earnings on it from state and local taxation while in the trust. In doing so, it defers state (but not federal) income taxes on the interest earnings until the funds are withdrawn for qualified family and medical leave expenses.

### *State Pledge*

Under the bill, the state pledges to depositors, designated beneficiaries, and any party entering into a contract with the trust that the state will not alter the rights of participants until all of its obligations are discharged and contracts performed, unless the law makes adequate provision for their protection. The trust may include a description of the pledge in its participation agreements and other contracts.

### *State Assistance Programs*

Under the bill, funds invested in, contributed to, or distributed from an FMLA account must be disregarded when determining an individual's eligibility for assistance under means-tested federally funded assistance or benefit programs, including:

1. the Temporary Family Assistance program,
2. programs funded under the federal Low Income Home Energy Assistance Program, and
3. the state's medical assistance programs (i.e., HUSKY and Medicaid).

The bill also prohibits the state's public educational institutions from considering funds invested in FMLA accounts when determining eligibility for need-based institutional aid.

### *Report*

By December 31, 2019, the bill requires the treasurer to begin including in her annual reports to the governor information on the operations of the trust, including receipts, disbursements, assets, investments and liabilities, and administrative costs for the prior fiscal year.

By that date, she must also begin submitting annual reports to the Finance, Revenue and Bonding Committee and making them available to depositors and designated beneficiaries. The reports must include:

1. the number of, and total amount of contributions to, FMLA accounts;
2. the total amount and nature of distributions from the accounts; and
3. a description of any issues relating to any abuse of the accounts.

## § 1 — TAX CREDIT FOR FMLA BENEFITS

The bill establishes a tax credit for employers with 50 or fewer employees, excluding the state and municipalities, providing paid family and medical leave benefits to their employees taking approved leave under state or federal FMLA laws. It caps at $2.5 million the aggregate amount of credits that employers may claim in any fiscal year, beginning with FY 19. Employers must apply to the Department of Revenue Services commissioner to reserve a credit and, in doing so, must provide any documentation the commissioner requires in the form and manner he prescribes. Employers may apply the credit against the personal income or corporation business tax, as applicable.

The credit equals 50% of the gross wages or compensation the employer paid for such approved leave during the year for which it claims the credit. The credit must be claimed in the income year or tax year for which the employer paid the benefits, as applicable, and cannot exceed the total tax due.

## BACKGROUND

### *Federal and State FMLA*

The federal FMLA provides up to 12 weeks of unpaid leave to employees who have worked at least 1,250 hours over the 12 months prior to the leave. It covers all employers with at least 50 employees, including all public-sector employers regardless of their number of employees.

The state's FMLA provides up to 16 weeks of unpaid leave over a 24-month period for certain family- and health-related reasons, such as the birth of a child or to tend to a close relative’s serious health condition. It covers private-sector employers with at least 75 employees in the state. To qualify for the leave, an employee must have worked for his or her employer for at least (1) 12 months and (2) 1,000 hours during the 12-month period prior to using the leave (CGS §§ 31-51kk through 31-51qq).

State employees also receive family and medical leave under a separate state law (CGS § 5-248a). Most municipal employees receive the leave under the federal FMLA, although certain municipal employees may qualify for leave under a different state law (CGS § 31-51rr).

### *Related Bills*

sSB 1 and sHB 5387, favorably reported by the Labor and Public Employees Committee, create the Family and Medical Leave Insurance (FMLI) program to provide wage replacement benefits to certain employees taking leave under the state's FMLA or the family violence leave law (CGS § 31-51ss) and makes changes various provisions of the state's FMLA.

## COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable
Yea 29 Nay 18 (04/05/2018)