



House of Representatives

General Assembly

File No. 600

February Session, 2018

Substitute House Bill No. 5584

House of Representatives, April 19, 2018

The Committee on Finance, Revenue and Bonding reported through REP. ROJAS of the 9th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2019, and applicable to income or*
2 *taxable years commencing on or after January 1, 2019*) (a) Any employer
3 that employs fifty or fewer employees in the state and provides to its
4 employees paid family and medical leave benefits for approved leave
5 pursuant to the provisions of the federal Family and Medical Leave
6 Act of 1993 and the regulations promulgated pursuant to said act or
7 pursuant to sections 31-51kk to 31-51qq, inclusive, of the general
8 statutes may claim a credit against the tax imposed under chapter 208
9 or 229 of the general statutes, as applicable. The credit shall be equal to
10 fifty per cent of the gross amount of wages or compensation such
11 employer paid to an employee or employees for such approved leave
12 during the income or taxable year, as applicable, for which the
13 employer is claiming the credit. The credit may not be claimed in any

14 other income or taxable year. As used in this section, "employer" does
15 not include the state or any political subdivision thereof.

16 (b) Any such employer may apply to the Commissioner of Revenue
17 Services to reserve a credit under this section in the amount indicated
18 by such employer. The aggregate amount of all credits under
19 subsection (a) of this section shall not exceed two million five hundred
20 thousand dollars annually for the fiscal year commencing July 1, 2019,
21 and for each fiscal year thereafter. The amount of the credit allowed to
22 any employer pursuant to this section shall not exceed the amount of
23 tax due from such employer under chapter 208 or 229 of the general
24 statutes, as applicable.

25 (c) An employer that reserves or claims a credit under this section
26 shall provide any documentation required by the commissioner in a
27 form and manner prescribed by said commissioner.

28 Sec. 2. (NEW) (*Effective October 1, 2018*) (a) As used in this section:

29 (1) "Family and medical leave benefits account" or "FMLA account"
30 means an account established and maintained pursuant to this section
31 for the purposes of paying qualified family and medical leave
32 expenses;

33 (2) "Deposit" means a deposit, payment, contribution, gift or other
34 transfer of funds;

35 (3) "Depositor" means any individual making a deposit into an
36 FMLA account pursuant to a participation agreement;

37 (4) "Designated beneficiary" means any individual state resident
38 designated in the participation agreement as the owner of an FMLA
39 account;

40 (5) "Participation agreement" means an agreement between the trust
41 established pursuant to subsection (c) of this section and a depositor
42 that provides for participation in an FMLA account for the benefit of a
43 designated beneficiary; and

44 (6) "Qualified family and medical leave expenses" means any
45 expenses incurred during periods when the designated beneficiary is
46 on approved leave pursuant to the provisions of the federal Family
47 and Medical Leave Act of 1993 and the regulations promulgated
48 pursuant to said act or pursuant to sections 31-51kk to 31-51qq,
49 inclusive, of the general statutes.

50 (b) (1) The Treasurer shall establish an FMLA account program to
51 allow individuals to make deposits to an FMLA account to meet
52 qualified family and medical leave expenses of the designated
53 beneficiary of the account. Under the program, the Treasurer shall
54 administer individual FMLA accounts to encourage and assist eligible
55 individuals to save private funds to provide support during periods of
56 approved job protected leave under the provisions of the federal
57 Family and Medical Leave Act of 1993 and the regulations
58 promulgated pursuant to said act or pursuant to sections 31-51kk to
59 31-51qq, inclusive, of the general statutes.

60 (2) Any individual may make a deposit to an FMLA account,
61 provided such individual has entered into a participation agreement
62 with the trust established pursuant to subsection (c) of this section.

63 (c) (1) There is established within the Office of the Treasurer the
64 Connecticut Family and Medical Benefit Trust. The trust shall
65 constitute an instrumentality of the state and shall perform essential
66 governmental functions, as provided in this section. The trust shall
67 receive and hold all payments and deposits intended for FMLA
68 accounts as well as gifts, bequests, endowments or federal, state or
69 local grants and any other funds from public or private sources and all
70 earnings.

71 (2) The Treasurer shall be responsible for the receipt, maintenance,
72 administration, investment and disbursements of amounts from the
73 trust. The trust shall not receive deposits in any form other than cash.
74 No depositor or designated beneficiary may direct the investment of
75 any contributions or amounts held in the trust other than in the
76 specific fund options provided for by the trust and shall not direct

77 investments in such specific fund options more than two times in any
78 calendar year. No interest, or portion of any interest, in the program
79 shall be used as security for a loan.

80 (3) The amounts on deposit in the trust shall not constitute property
81 of the state and the trust shall not be construed to be a department,
82 institution or agency of the state. Amounts on deposit in the trust shall
83 not be commingled with state funds and the state shall have no claim
84 to or against, or interest in, such amounts, except as provided in
85 subdivision (5) of this subsection. Any contract entered into by, or any
86 obligation of, the trust shall not constitute a debt or obligation of the
87 state and the state shall have no obligation to any designated
88 beneficiary or any other person on account of the trust and all amounts
89 obligated to be paid from the trust shall be limited to amounts
90 available for such obligation on deposit in the trust. The amounts on
91 deposit in the trust may only be disbursed in accordance with the
92 provisions of this section.

93 (4) The property of the trust and the earnings on the trust shall be
94 exempt from taxation by the state and political subdivisions of the
95 state.

96 (5) The trust shall continue in existence as long as it holds any
97 deposits or other funds or has any obligations and until its existence is
98 terminated by law. Upon termination of the trust, any unclaimed
99 assets of the trust shall return to the state. Property of the trust shall be
100 governed by section 3-61a of the general statutes.

101 (d) (1) The Treasurer, on behalf of the trust and for purposes of the
102 trust, shall:

103 (A) Establish consistent terms for each participation agreement, bulk
104 deposit, coupon or installment payments, including, but not limited to,
105 (i) the method of payment into an FMLA account by payroll
106 deduction, transfer from bank accounts or otherwise, (ii) the
107 termination, withdrawal or transfer of payments under an FMLA
108 account, (iii) the method of disbursement from an FMLA account, (iv)

109 penalties for disbursements not used for qualified family and medical
110 leave expenses, and (v) the amount of any charges or fees to be
111 assessed in connection with the administration of the trust; and

112 (B) Establish one or more funds within the trust and maintain
113 separate FMLA accounts for each designated beneficiary.

114 (2) The Treasurer, on behalf of the trust and for purposes of the
115 trust, may:

116 (A) Receive and invest moneys in the trust in any instruments,
117 obligations, securities or property in accordance with subsection (e) of
118 this section;

119 (B) Enter into one or more contractual agreements, including
120 contracts for legal, actuarial, accounting, custodial, advisory,
121 management, administrative, advertising, marketing and consulting
122 services for the trust and pay for such services from the gains and
123 earnings of the trust;

124 (C) Procure insurance in connection with the trust's property, assets,
125 activities or deposits or contributions to the trust;

126 (D) Apply for, accept and expend gifts, grants or donations from
127 public or private sources to enable the Connecticut Family and
128 Medical Benefit Trust to carry out its objectives;

129 (E) Sue and be sued; and

130 (F) Take any other action necessary to carry out the purposes of this
131 section and incidental to the duties imposed on the Treasurer pursuant
132 to this section.

133 (e) Notwithstanding the provisions of sections 3-13 to 3-13h,
134 inclusive, of the general statutes, the Treasurer shall invest the
135 amounts on deposit in the trust in a manner reasonable and
136 appropriate to achieve the objectives of the trust, exercising the
137 discretion and care of a prudent person in similar circumstances with

138 similar objectives. The Treasurer shall give due consideration to the
139 rate of return, risk, term or maturity, diversification of the total
140 portfolio within the trust, liquidity, projected disbursements and
141 expenditures and the expected payments, deposits, contributions and
142 gifts to be received. The Treasurer shall not require the trust to invest
143 directly in obligations of the state or any political subdivision of the
144 state or in any investment or other fund administered by the Treasurer.
145 The assets of the trust shall be continuously invested and reinvested in
146 a manner consistent with the objectives of the trust until disbursed for
147 qualified family and medical leave expenses, expended on expenses
148 incurred by the operations of the trust or refunded to the depositor or
149 designated beneficiary on the conditions provided in the participation
150 agreement.

151 (f) Participation in the trust and the offering, sale and solicitation of
152 opportunities to participate in the trust shall be exempt from sections
153 36b-16 and 36b-22 of the general statutes, provided the Treasurer has
154 obtained written advice of counsel or written advice from the
155 Securities Exchange Commission, or both, that the trust and the
156 offering, sale and solicitation of opportunities to participate in the trust
157 are not subject to federal securities laws.

158 (g) The state pledges to depositors, designated beneficiaries and any
159 party who enters into contracts with the trust, pursuant to the
160 provisions of this section, that the state will not limit or alter the rights
161 under said sections vested in the trust or contract with the trust until
162 such obligations are fully met and discharged and such contracts are
163 fully performed on the part of the trust, provided nothing in this
164 section shall preclude such limitation or alteration if adequate
165 provision is made by law for the protection of such depositors and
166 designated beneficiaries pursuant to the obligations of the trust or
167 parties who entered into such contracts with the trust. The trust, on
168 behalf of the state, may include a description of such pledge and
169 undertaking for the state in participation agreements and such other
170 obligations or contracts.

171 (h) (1) Moneys invested in a designated beneficiary's FMLA
172 account, contributions to an individual FMLA account and
173 distributions to a designated beneficiary from an FMLA account for
174 qualified family and medical leave expenses shall be disregarded for
175 purposes of determining a designated beneficiary's eligibility for
176 assistance under the temporary family assistance program, as
177 described in section 17b-112 of the general statutes, programs funded
178 under the federal Low Income Home Energy Assistance Program
179 block grant and any other federally funded assistance or benefit
180 program, including, but not limited to, the state's medical assistance
181 program, whenever such program requires consideration of one or
182 more financial circumstances of an individual for the purpose of
183 determining the individual's eligibility to receive any assistance or
184 benefit or the amount of any assistance or benefit.

185 (2) No moneys invested in a designated beneficiary's FMLA account
186 or distributions to a designated beneficiary from an FMLA account for
187 qualified family and medical leave expenses shall be considered to be
188 an asset for purposes of determining a designated beneficiary's
189 eligibility for need-based, institutional aid grants offered to an
190 individual at the public eligible educational institutions in the state.

191 (i) On or before December 31, 2019, and annually thereafter, the
192 Treasurer shall submit (1) in accordance with the provisions of
193 subsection (a) of section 3-37 of the general statutes, a report to the
194 Governor on the operations of the trust, including the receipts,
195 disbursements, assets, investments and liabilities and administrative
196 costs of the trust for the immediately preceding fiscal year ending June
197 thirtieth, and (2) in accordance with the provisions of section 11-4a of
198 the general statutes, a report on the trust to the joint standing
199 committee of the General Assembly having cognizance of matters
200 relating to finance, revenue and bonding and shall make such report
201 available to each depositor and designated beneficiary. The report
202 required under subdivision (2) of this subsection shall include, but
203 need not be limited to: (A) The number of FMLA accounts; (B) the total
204 amount of contributions to such accounts; (C) the total amount and

205 nature of disbursements from such accounts; and (D) a description of
206 issues relating to the abuse of such accounts, if any.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2019, and applicable to income or taxable years commencing on or after January 1, 2019</i>	New section
Sec. 2	<i>October 1, 2018</i>	New section

Statement of Legislative Commissioners:

In Section 2(c)(3), "subdivision (4)" was changed to "subdivision (5)" for accuracy.

FIN *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 19 \$	FY 20 \$
Department of Revenue Services	GF - Revenue Loss	None	Up to \$2.5 million
Department of Revenue Services	GF - Cost	Less than 74,525	59,367
State Comptroller - Fringe Benefits ¹	GF - Cost	16,176	21,568
Treasurer	GF - Cost	At least 75,000	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which establishes a Family and Medical Leave Act (FMLA) trust account and a business tax credit for paid FMLA benefits, results in an annualized revenue loss of up to \$2.5 million in FY 20 and various costs outlined in detail below.

The new tax credit for small employers that provide paid FMLA benefits results in a revenue loss of up to \$2.5 million annually beginning in FY 20. This also results in: 1) a one-time cost of less than \$30,000 to the Department of Revenue Services (DRS) in FY 19 associated with updates to the online Taxpayer Service Center and the agency's Integrated Tax Administration System, and 2) an ongoing

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.33% of payroll in FY 19 and FY 20.

cost to DRS of \$60,701 in FY 19 and \$80,935 (\$59,367 for salary and \$21,568 for fringe costs) in FY 20 and annually thereafter associated with one Revenue Examiner to receive and verify applications for credits and to administer the overall tax credit cap established in the bill.

The bill requires the Treasurer to set up and administer a Connecticut Family and Medical Benefit Trust (FMBT) account program. There is expected to be one-time start-up costs to the Treasurer of up to \$75,000 in FY 19. Once established, the Treasurer's costs of ongoing administration would be dependent on the number of accounts opened under the program and the total amount of participants' deposits available to be invested, along with other indeterminate factors surrounding use of the program.

Like other elective, tax-advantaged savings plans administered by the Office of the Treasurer, it is expected that the office would enter into a contract with a third party for administration of the program, to the extent that the program has the participation necessary to warrant use of an outside provider. Administrative and investment costs of similar programs are often paid using a portion of the fund's investment gains. However, the investment potential for the FMBT, like other investment programs at their start, is expected to be limited without significant initial capitalization funds available. Therefore, it is likely that administrative costs would be paid, partially or completely, by the General Fund until such time sufficient funds are available via investment gains.

The Out Years

The annualized ongoing cost impact identified above would continue into the future subject to inflation.

Additionally, the bill specifies that money in the FMBT account and any interest earnings on it is exempt from taxation. This results in a potential minimal revenue loss from the Personal Income Tax beginning in FY 21.

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)