
OLR Bill Analysis

sSB 1 (File 35, as amended by Senate "A")*

AN ACT CONCERNING PAID FAMILY AND MEDICAL LEAVE.

SUMMARY

This bill creates the Family and Medical Leave Insurance (FMLI) program to provide wage replacement benefits to certain employees taking leave for reasons allowed under the state's Family and Medical Leave Act (FMLA), which the bill also amends, or the family violence leave law. It provides them with up to 12 weeks of FMLI benefits over a 12-month period. The program also provides two additional weeks of benefits for a serious health condition that results in incapacitation during pregnancy.

Under the bill, individuals eligible for benefits are those who earned at least \$2,325 during their highest earning quarter within their base period (the first four of the five most recently completed quarters) and (1) are private-sector employees or certain "covered public employees," (2) were employed in the previous 12 weeks, or (3) are sole proprietors or self-employed people who voluntarily enroll in the program.

The program is funded by employee contributions, with collections beginning in January 2021. The Paid Family and Medical Leave Insurance Authority (i.e., "authority"), which the bill creates, must annually determine the employee contribution rate, which cannot exceed 0.5%. The bill also caps the amount of an employee's earnings subject to contributions at the same amount of earnings subject to Social Security taxes (currently \$132,900).

A covered employee's weekly benefits under the program are generally calculated as 95% of his or her average weekly wage, up to 40 times the state minimum wage, plus 60% of his or her average weekly wage that exceeds 40 times the minimum wage, with total

benefits capped at 60 times the minimum wage. If employee contributions are at the maximum rate allowed and the authority determines that they are not sufficient to ensure the program's solvency, the bill requires it to reduce the benefit by the minimum amount needed to ensure the program's solvency.

The bill allows employers to alternatively provide benefits through a private plan, which must provide their employees with at least the same level of benefits, under the same conditions and employee costs, as the FMLI program. Private plans must meet certain requirements for approval, and employees covered by an employer's private plan do not have to contribute to the FMLI program.

The bill establishes the authority as a quasi-public agency to develop and administer the program. It creates a 15-member board of directors for the authority and requires it to, among other things, develop written procedures to implement the program in accordance with the law governing the adoption of procedures by quasi-public agencies.

The bill authorizes the authority to (1) design the process through which covered employees will make contributions to the program; (2) adopt procedures for (a) determining a covered employee's eligibility for benefits, (b) establishing the program's contribution rate, and (c) certifying the program's solvency; (3) enter into contracts as needed; and (4) take various other actions related to implementing and administering the program.

If the board decides to use an outside contractor's services to implement certain elements of the program (e.g., initial claims processing or website development), it must do so through a request for proposals. It must evaluate the proposals using authority-developed criteria that must include elements such as transparency, cost, and a cost-benefit analysis.

The bill establishes the FMLI Trust Fund, administered by the state treasurer, to hold employee contributions and pay for FMLI benefits and the program's administrative costs. It requires that any funds

expended from the General Fund to administer the program or provide benefits be repaid by October 1, 2022.

Starting on January 1, 2022, the bill also changes various provisions of the state's FMLA, which generally requires certain private-sector employers to provide job-protected unpaid leave to employees for various reasons related to their health or their family members' health. Among other things, the bill:

1. extends the FMLA to cover private-sector employers with at least one, rather than 75, employees;
2. lowers the employee work threshold to qualify for job-protected leave from (a) 12 months of employment and 1,000 work-hours with the employer to (b) three months of employment with the employer, with no minimum requirement for hours worked;
3. changes the maximum FMLA leave allowed from 16 weeks over a 24-month period to 12 weeks over a 12-month period and allows an additional two weeks of leave due to a serious health condition that results in incapacitation during pregnancy;
4. limits the extent to which an employer may require an employee taking FMLA leave to use his or her employer-provided paid leave;
5. adds to the family members for whom an employee can take FMLA leave to include the employee's siblings, grandparents, grandchildren, and anyone else related by blood or affinity whose close association the employee shows to be the equivalent of a spouse, sibling, son or daughter, grandparent, grandchild, or parent;
6. similarly expands the family members for which employers must allow their employees to use up to two weeks of any employer-provided paid sick leave; and
7. makes numerous technical and conforming changes.

Lastly, starting July 1, 2019, the bill creates a “non-charge” against an employer's unemployment tax experience rate when an employee’s separation from employment with the employer is due to the return of someone who was on bona fide FMLA leave. In effect, this allows an employer to lay off an employee who was temporarily filling the job of an employee on FMLA leave without increasing the employer's unemployment taxes.

*Senate Amendment “A” replaces the underlying bill (File 35) and, among other things, (1) establishes the Paid FMLI Authority and tasks it, rather than the Department of Labor (DOL), with implementing and administering the program; (2) changes the formula used to determine FMLI benefits; (3) lowers the work-threshold for FMLA eligibility, rather than using the FMLI program’s earnings threshold; and (4) limits the extent to which employers may require employees to use employer-provided paid leave concurrently with FMLA leave, rather than prohibiting employers from doing so.

EFFECTIVE DATE: Upon passage, except the provisions that (1) extend requirements for funds administered by the treasurer to the FMLI Trust Fund, bring the authority under certain laws that apply to quasi-public agencies, and create a non-charge for employer’s unemployment taxes are effective July, 1, 2019; (2) require the authority to conduct a public education campaign are effective January 1, 2020; (3) require the labor commissioner to adopt regulations are effective July 1, 2020; (4) affect the terms of the current FMLA are effective January 1, 2022; and (5) establish employer notice requirements are effective July 1, 2022.

§§ 1, 3, 9, 11-12 & 14 — FMLI PROGRAM

Covered Employees & Employers (§ 1)

Under the bill, “covered employees” (those eligible for benefits) are individuals who earned at least \$2,325 during their highest earning quarter within their base period (the first four of the five most recently completed quarters) and (1) are employed by an employer with at least one employee, (2) were employed by an employer in the previous twelve weeks, or (3) are sole proprietors and self-employed people

who live in the state and voluntarily enroll in the program.

“Employers” under the bill are private-sector employers (except nonpublic elementary or secondary schools) with at least one employee. The state, municipalities, and local or regional boards of education are also “employers” under the bill, but only for each of their “covered public employees.” Thus, covered public employees must contribute to the program and, if they meet the same earnings threshold, will also be eligible for FMLI benefits under the bill. The federal government and its employees are not included.

Covered public employees are those who are (1) employed in state service (i.e., state employees), but are not in a collective bargaining unit and (2) state, municipal, or local or regional board of education (BOE) employees whose exclusive collective bargaining agent negotiates inclusion in the program. Once a municipal employer or BOE negotiates inclusion in the program for the members of one of its bargaining units, any of the municipality’s or BOE’s employees who are not part of a collective bargaining unit also become covered public employees.

Employee Contributions (§§ 1 & 3)

Starting on January 1, 2021, and not later than February 1, 2021, the bill requires each private-sector employee (except nonpublic elementary or secondary school employees), covered public employees, and the self-employed and sole proprietors who opt in to the program to contribute a percentage of their subject earnings to the FMLI trust fund. Under the bill “subject earnings” are total wages, as defined in the state’s unemployment law (i.e., all remuneration for employment and dismissal payments), or self-employment income as defined in the federal tax law, up to the amount of earnings subject to Social Security taxes.

The bill requires each employer paying wages to an employee to deduct and withhold from those wages, for each payroll period, a contribution computed in a way that results, as practicable, in annually withholding an amount substantially equal to the employee’s

contribution reasonably estimated to be due from such wages during the year. If, after notice, an employee, employer, or participating self-employed or sole proprietor fails to make a required payment to the program, the bill requires a state collection agency (the state treasurer, revenue services commissioner, or any other official authorized to collect state taxes) to collect the payment and interest under the processes for collecting unpaid state taxes or unemployment taxes, which can include liens and foreclosures. (The bill does not further specify which agency and which process applies.)

Contribution Rate and Adjustments. The bill requires the authority to establish the contribution rate but caps it at 0.5%. It also uses the Social Security contribution base (i.e., amount of earnings subject to Social Security taxes, currently \$132,900) to cap the amount of a contributor's earnings subject to contributions.

The bill requires the authority, on September 1, 2022, and each subsequent September 1, to publish the following information:

1. the total amount of contributions collected and benefits paid during the previous fiscal year and the total amount needed to administer the program in the year;
2. the total amount remaining in the trust fund at the end of the fiscal year;
3. a target fund balance, in light of these totals, sufficient to ensure the fund's ongoing ability to pay program benefits and limit the need for contribution rate increases or benefit reductions due to changing economic conditions; and
4. the amount by which the total amount in the trust fund at the end of the previous fiscal year differs from the target fund balance.

The bill allows the authority, on November 1, 2022, and each subsequent November 1, to announce a revision to the contribution rate, subject to the same 0.5% cap, that must be sufficient to ensure that

the trust fund will achieve and maintain the target fund balance. The new contribution rate supersedes the previous rate and becomes effective on the following January 1.

FMLI Benefits (§ 3)

Starting on January 1, 2022, and no later than February 1, 2022, the bill requires that the program begin paying FMLI benefits to covered employees who (1) provide notice to the authority and, if applicable, the employee's employer, about the need for benefits in a form and manner prescribed by the authority and (2) provide certification, upon the authority's request, about their need for leave and compensation. The certifications must be provided in the same manner the state FMLA requires for medical certifications.

Benefit Uses. Under the bill the program must provide up to 12 weeks of FMLI benefits to covered employees during any 12-month period, plus two additional weeks of benefits for a serious health condition resulting in incapacitation that occurs during a pregnancy. The bill allows a covered employee to receive FMLI benefits for leave taken for the same reasons allowed under the state's FMLA which the bill also amends, or family violence leave law. Unemployed covered employees and self-employed individuals and sole proprietors who opt in to the program must receive benefits under like circumstances.

Current law allows FMLA leave:

1. on the birth of the employee's son or daughter;
2. on the placement of a son or daughter with the employee for adoption or foster care;
3. for a spouse's, son's, daughter's, or parent's serious health condition;
4. for the employee's own serious health condition;
5. to serve as an organ or bone marrow donor;
6. for certain family members who are armed forces members

undergoing treatment for an injury or illness incurred in the line of duty;

7. under certain circumstances when certain family members are in the armed forces and on active duty or have been notified of an impending call or order to active duty; and
8. for family violence victims to (a) seek medical care or psychological counseling, (b) obtain services from a victim services organization, (c) relocate because of family violence, or (d) participate in any civil or criminal proceeding related to, or resulting from, the family violence.

Since the bill also adds to the family members for whom an employee can take FMLA leave (see “Changes to Current FMLA,” below), FMLI benefits will also be available with respect to these family members. Under the bill, the added family members include the employee's siblings, grandparents, grandchildren, and anyone else related by blood or affinity who has a close association with the employee that the employee shows to be the equivalent of spouse, sibling, son or daughter, grandparent, grandchild, or parent.

If the authority determines that it is administratively feasible and prudent, the bill allows the program to begin paying benefits for parental bonding leave (i.e., for the birth, adoption, or foster placement of an employee’s child) before it begins paying benefits for the other types of leave.

In addition, the bill allows two spouses employed by the same employer to each be eligible for up to 12 weeks of benefits in any 12-month period. It specifies that this eligibility for benefits does not increase their eligibility for job-protected leave beyond what is allowed under the state’s FMLA (which, under the bill, requires an employer to provide such spouses with 12 weeks of leave in the aggregate).

Benefit Amounts. The bill requires that a covered employee’s weekly benefit be calculated as 95% of his or her base weekly earnings, up to 40 times the state minimum wage, plus 60% of the amount of the

employee's base weekly earnings that exceeds 40 times the minimum wage. Total benefits cannot exceed 60 times the minimum wage. Under the bill, a covered employee's base weekly earnings is 1/26 of his or her total wages or self-employment income earned during the two highest paid quarters in the worker's base period (i.e., the average weekly earnings during his or her two highest- paid quarters).

However, if contributions are at the maximum allowed rate (0.5%) and the authority determines that it is not enough to ensure the program's solvency, the bill requires the authority to reduce benefits by the minimum amount needed to ensure the program's solvency.

Under the bill, if a covered employee elects to have income taxes deducted and withheld from his or benefits, the amount specified must be deducted and withheld in a way consistent with state law.

The bill allows covered employees to receive benefits for nonconsecutive hours of leave and requires that benefits be available on a prorated basis. Employees may also receive FMLI benefits concurrently with any employer-provided employment benefits as long as their total compensation while they are on leave does not exceed their regular compensation rate. Under the bill, no employees can receive FMLI benefits concurrently with unemployment compensation benefits or workers' compensation benefits, or any other state or federal program that provides wage replacement benefits.

Participation by Sole Proprietors and the Self-Employed (§ 9)

The bill allows sole proprietors and self-employed individuals to enroll in the FMLI program and includes them in its definition of "covered employees." They must apply to the authority for enrollment in the program in a form and manner the authority prescribes. Their initial enrollment must be for a term of at least three years, and they will be automatically re-enrolled for subsequent periods of at least one year beginning immediately after their current period of participation in the program. They can withdraw from the program by submitting a written notice to the authority (1) at least 30 days before their initial or subsequent enrollment period expires or (2) at other times the

authority may prescribe by rule.

Private Plan Option (§ 11)

The bill allows an employer to apply to the authority for approval to meet its obligations under the program through a private plan, which the authority must evaluate in coordination with the Insurance Department, as appropriate.

Plan Approval. To be approved, a private plan must:

1. confer all of the same rights, protections, and benefits provided by the program, including at least the same (a) number of benefit weeks, (b) level of wage replacement for each of those weeks, and (c) benefits in each circumstance specified in the FMLA and family violence leave law;
2. impose no additional conditions or restrictions on using family or medical leave beyond those explicitly authorized in the bill's provisions about the program or regulations;
3. cost employees no more than the premium charged to employees under the state program;
4. cover all employees for the duration of their employment;
5. provide for including future employees;
6. not result in a substantial selection of risks adverse to the FMLI trust or otherwise significantly endanger the fund's solvency;
7. be approved by a majority vote of the employer's employees;
and
8. meet any additional requirements the authority establishes.

In addition, if the plan is self-insured, the employer must provide a surety bond to the state from a surety company authorized to do business in the state as a surety. The bond must be in a form as may be approved by the authority and an amount as may be required by the

department. If the plan provides for insurance, the policy forms must be approved by the insurance commissioner and issued by an approved insurer.

Withdrawal of Approval. The bill allows the authority to withdraw approval for a private plan when the plan's terms or conditions have been violated. The causes for a plan's termination include failures to (1) pay benefits; (2) pay benefits timely and in a manner consistent with the public plan (presumably, the FMLI program); (3) maintain an adequate security deposit (i.e., meet the bill's surety bond requirement); (4) properly use private plan funds; (5) submit required reports; or (6) comply with the bill's FMLI provisions.

Employee Contributions. Under the bill, employees enrolled in an approved private plan do not have to contribute to the FMLI trust fund, but their employers may withhold or divert a portion of their wages that corresponds to the FMLI program's contribution rate. The employer can increase the amount of wages withheld or diverted only (1) on the anniversary of the private plan's effective date or (2) within 30 days after the state adjusts the contribution rate.

Employee Rights. Under the bill, an employee covered by an approved private plan retains all applicable rights under the state's FMLA. The bill allows an employee to appeal a private plan's denial of benefits to the labor commissioner and Superior Court under the same appeals procedure established by the bill (see § 12).

Anti-Fraud Enforcement (§ 14)

The bill allows the authority to seek repayment of any benefits paid (1) erroneously, (2) due to willful misrepresentation, or (3) before a FMLI claim was rejected. It also gives the authority discretion to waive any repayments or related penalties (see below), in whole or in part, when they would be against equity and good conscience.

Under the bill, any program participant who willfully makes a false statement or misrepresentation regarding a material fact, or willfully fails to report a material fact, to obtain FMLI benefits is disqualified

from receiving program benefits for two years after making the false statement or failing to report. In such cases, the authority may also impose a penalty equal to 50% of the benefits paid due to the misrepresentation. Anyone, including an employer, who intentionally aids, abets, assists, promotes or facilitates the making of, or attempt to make, such a claim is liable for the same financial penalty as the person attempting to make the claim or receiving benefits under it.

In addition, if benefits are paid to someone due to a health care provider's willful misrepresentation, the authority must notify the labor commissioner and may impose on the health care provider a penalty equal to three times the benefits paid due to the misrepresentation.

The bill requires a health care provider to complete a medical certification for a patient's serious medical condition at the patient's request and with no charge.

Appeals (§ 12)

The bill allows a covered employee aggrieved by a denial of benefits, and anyone aggrieved by the imposition of the above anti-fraud penalties, to file a complaint with the labor commissioner. The commissioner must hold a hearing after receiving the complaint and must subsequently send each party a written copy of his decision. The commissioner may award the participant all appropriate relief, including any compensation or benefits for which the covered employee would have otherwise been eligible. Any party aggrieved by the commissioner's decision may appeal to the Superior Court under the Uniform Administrative Procedure Act.

§§ 2 & 8 — PAID FAMILY AND MEDICAL LEAVE INSURANCE AUTHORITY

The bill establishes a quasi-public agency called the Paid Family and Medical Leave Insurance Authority to establish and administer the FMLI program. It is a body politic and corporate that constitutes a public instrumentality and political subdivision of the state created to perform an essential public and governmental function. However, it

must not be construed as a state department, institution, or agency.

Under the bill, the authority continues as long as the FMLI program remains in effect and until its existence is terminated by law. Upon the authority's termination, all of its rights and properties must pass to and be vested in the state.

The bill subjects the authority to the same requirements and procedures applicable to the state's other statutorily defined quasi-public agencies (see § 24).

Board of Directors (§§ 2 & 8)

Members (§ 2). Under the bill, the authority's powers are vested in and exercised by a board of directors with 15 voting members. The board's members include six ex-officio members: the labor commissioner, Office of Policy and Management (OPM) secretary, state treasurer, state comptroller, administrative services (DAS) commissioner, and the economic and community development commissioner. All of the ex-officio members may appoint a designee in their place, although the DAS commissioner's designee must be the state's chief information officer.

Table 1 shows the appointing authority and required qualifications of the other nine board members.

Table 1: Appointed Authority Board Members

Appointing Authority	Qualifications
House speaker	Skill, knowledge, and experience in the interests of employees
House majority leader	Attorney advocating for employee rights, benefits, and opportunities
House minority leader	Skill, knowledge, and experience in the interests of disability insurance plans
Senate president pro tempore	Impacted person who has personal knowledge and experience with economically distressed and underserved communities and is reflective of such communities' ethnic and economic diversity
Senate majority leader	Skill, knowledge, and experience in the interests of small business employees
Senate minority leader	Skill, knowledge, and experience in the interests of

Appointing Authority	Qualifications
	employees of large businesses
Governor	Skill, knowledge, and expertise in modern software practices
Governor	Skill, knowledge, and expertise in family and medical leave programs
Governor	Skill, knowledge, and expertise in family and medical leave programs

The bill requires that all initial appointments be made by July 1, 2019, and each of the appointed board members must serve an initial four-year term. After that, members appointed to succeed appointees whose terms have expired must serve six-year terms from July 1 of the appointment year. Under the bill, (1) members hold office until a successor is duly appointed, (2) appointing authorities must fill vacancies within 30 days after the office becomes vacant, and (3) previously appointed members may be reappointed.

The bill requires the governor, House speaker, and Senate president pro tempore to collectively select the board's chairperson from among its members. The board must annually elect a vice-chairperson and any other officers as it deems necessary from among the board members. A majority of board members constitutes a quorum for transacting any of the board's business or exercising any of its powers.

The bill requires each board member, within 10 calendar days after his or her appointment, to take and subscribe the oath of affirmation required under the state constitution. The oath must be filed with the secretary of the state. The board members must serve without compensation but be reimbursed, within available appropriations, according to standard travel regulations for the necessary expenses they may incur by serving on the board.

Financial Protections & Conflicts of Interest (§2). Each board member or officer authorized by board resolution to handle funds or sign checks for the program must, within 10 calendar days after the board adopts the resolution, execute a surety bond in the penal sum of \$50,000 or procure an equivalent insurance product. Alternatively, the board's chairperson must obtain a blanket position bond covering the

executive director and each board member and other authority employee and authorized officer in the penal sum of \$50,000. Each bond or equivalent insurance product must be (1) conditioned upon the faithful performance of the covered individuals' duties and (2) issued by an insurance company authorized to transact business in the state as a surety. Each bond's cost must be paid by the authority.

The bill prohibits board members and the authority's officers, agents, and employees from directly or indirectly having any financial interest in any legal or commercial entity contracting with the authority, including a corporation, business trust, estate, trust, partnership or association, or two or more people having a joint or common interest.

The bill specifies that it is not a conflict of interest under the bill, or any other state law, for a trustee, director, officer or employee of a bank, insurance company, investment advisor, investment company, or investment banking firm to serve as a board member. However, such a board member must abstain from board discussions, deliberations, actions, and votes about any undertaking under the bill in which such firm has a direct interest separate from the interests of all similar firms generally.

The bill also extends to the authority's board members, directors and employees the same civil liability indemnification protections provided by law to officials and employees of other quasi-public agencies (see § 25).

Standard of Care (§ 8). The bill requires board members, in conducting the authority's business, including its oversight functions, to act (1) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use to conduct an enterprise of like character and with like aims and (2) in accordance with the bill and other applicable laws. It also requires the board, to the extent reasonable and practicable, to require any agents engaged or appointed by the authority to abide by the same standard of care.

Executive Director (§ 2)

The bill allows the board to appoint an executive director, who serves at the pleasure of the board and may not be a board member. The executive director must be an employee of the authority and receive compensation prescribed by the board.

Under the bill, an authorized officer or the executive director, if one is appointed, must supervise the program's administrative affairs and technical activities according to the board's directives. The officer or director must keep a record of the program's proceedings and be the custodian of (1) all books, documents, and papers filed with the program; (2) the program's minute book or journal; and (3) its official seal. He or she may also (1) have copies made of all of the program's minutes and other records and documents and (2) certify under the program's official seal that the copies are true copies. All persons dealing with the program may rely upon these certifications.

Authority Employees (§ 2)

Starting on January 1, 2022, the bill requires that the authority's employees to be considered state employees for collective bargaining purposes. To the extent that they are performing jobs that would normally be within a current executive branch bargaining unit, their jobs must be added to the unit descriptions of those bargaining units and deemed part of those units (i.e., they will be covered by those units' collective bargaining agreements).

Under the bill, managerial employees and other employees not covered by a collective bargaining unit are exempt from the state classified service (i.e., they will not be subject to certain civil service tests and other requirements). For these exempt positions, the authority does not have to comply with DAS personnel policies and procedures or need OPM approval for creating new positions, the number of positions, filling the positions, or the time to fill the positions.

The bill authorizes the authority, not the executive branch, to determine whether someone is qualified to fill an unclassified position

at the authority. The authority must determine the qualifications and set the terms and conditions of employment for employees who are not covered by a collective bargaining agreement, including establishing compensation and incentive plans, subject to any bargaining obligation that may be created if the employees choose an exclusive bargaining agent under the state employee collective bargaining laws.

The bill authorizes and empowers the executive branch to (1) negotiate with the authority's collective bargaining employees on the authority's behalf and (2) represent the authority in all other collective bargaining matters. However, the authority is entitled to have a representative present at all such bargaining.

Under the bill, in any interest arbitration regarding the authority's employees, the arbitrator must take into account the purpose of the bill's provisions on authority employees and the other factors arbitrators must consider under the state employee collective bargaining law (e.g., the existing employment conditions of similar employees; the wages, fringe benefits and working conditions prevailing in the labor market; and the employer's ability to pay).

Benefits (§ 2)

Under the bill, the authority's officers and employees are state employees under the state employee retirement system, life insurance, and health insurance plans. The authority must reimburse the appropriate state agencies for all costs incurred by this designation.

§ 4 — AUTHORITY POWERS

Board Procedures

The bill requires the board, on behalf of the authority and to implement the program, to adopt written procedures in accordance with the law governing quasi-public agencies' adoption of procedures (see BACKGROUND). The procedures must be for the following:

1. adopting an annual budget and plan of operations, including a requirement for board approval before the budget or plan may

- take effect;
2. adopting bylaws for regulating the board's affairs and conducting its business;
 3. hiring, dismissing, promoting, and compensating authority employees and instituting an affirmative action policy;
 4. acquiring real and personal property and personal services, including requiring board approval for any non-budgeted expenditure that exceeds \$5,000;
 5. contracting for financial, legal, and other professional services, and requiring the authority to solicit proposals at least every three years for such services that it uses;
 6. using surplus funds to the extent allowed under the bill or by law;
 7. establishing an administrative process for the board to review and address grievances, complaints, and appeals about employment at the authority; and
 8. implementing the program or any other appropriate provisions of the law.

Authority Powers

The bill allows the authority to do the following:

1. adopt an official seal and alter it at the pleasure of the board;
2. maintain an office at places designated by the board;
3. sue and be sued, and plea and be impleaded, in its own name;
4. establish criteria and guidelines for the FMLI program;
5. employ staff, agents, and contractors as necessary or desirable and set their compensation;

6. design, establish, and operate the program to ensure transparency in its management through oversight and ethics review of fiduciaries;
7. design and establish a process by which employees and participating self-employed and sole proprietors must contribute a portion of their subject earnings to the trust;
8. evaluate and establish a process by which employers may credit employee contributions to the trust through payroll deposit;
9. ensure that contributions to the trust from employees and participating self-employed and sole proprietors are not used for anything except paying benefits; educating and informing people about the program; and paying the program's operational, administrative, and investment costs;
10. establish and maintain a secure Internet website that displays all public notices issued by the authority and other information it deems relevant and necessary to implement the program and educate the public about it; and
11. do all things necessary or convenient to carry out the bill's provisions establishing the program.

Contracts and RFPs. The bill allows the authority to make and enter into contracts or agreements necessary or incidental to performing its duties and executing its powers. These contracts and agreements are not subject to approval by any other state department, office, or agency, as long as the authority maintains copies of them as public records subject to the proprietary rights of any party to the contracts. The bill prohibits any contract from containing a provision in which a contractor derives a direct or indirect economic benefit from denying or otherwise influencing the outcome of any claim for benefits.

The bill requires the authority's board of directors to issue requests for proposals (RFPs) if it wants to use an outside contractor's services

for initial claims processing, website development, database development, marketing and advertising, or implementing any other program elements. The authority must develop criteria for evaluating proposals related to these RFPs and all other contracts that exceed \$500,000. The criteria must at least include transparency, cost, efficiency of operations, work quality related to the contracts, user experience, accountability, and a cost-benefit analysis documenting the direct and indirect costs that will result from implementing the contracts. Under the bill, criteria establishment is subject to the notice and adoption requirements specified in the law governing quasi-public agencies' adoption of procedures.

Authority Policies and Procedures. The bill allows the authority to establish policies or written procedures, as appropriate, in accordance with the law governing quasi-public agencies' adoption of procedures. These may include policies or procedures for the following:

1. establishing a process to determine whether someone meets the requirements for FMLI benefits, including the certification needed to establish eligibility;
2. establishing how any books, records, documents, contracts, or other papers relevant to a covered employee's eligibility must be examined or caused to be produced or examined;
3. establishing how to summon and examine under oath witnesses who provide information relevant to a covered employee's claim for benefits;
4. ensuring the confidentiality of records and documents related to medical certifications, recertifications, or medical histories of covered employees and their family members, as required under the FMLA;
5. establishing the percentage of subject earnings each employee and participating self-employed and sole proprietor must contribute to the trust fund, as long as it does not exceed 0.5%;

6. certifying the fund's ongoing solvency and adjusting benefits as needed to ensure the fund's solvency, as allowed under the bill, as long as the contribution rate is at its statutory maximum (i.e., 0.5%); and
7. (a) determining whether an employer meets the requirements for administering a private plan, including approving, overseeing, and terminating a private plan, and (b) developing potential alternate subject earning measures to calculate benefits under private plans.

MOUs with other Agencies. The bill allows the authority to enter into agreements with any Connecticut or federal department, agency, office, or instrumentality to carry the program's purposes. It specifies that these may include the following memoranda of understanding (MOUs):

1. with the state DOL and other state agencies for (a) gathering or disseminating information needed to operate the program, subject to any agreed upon or legally required confidentiality obligations; (b) sharing costs incurred by gathering and disseminating this information; and (c) reimbursing costs for any enforcement activities conducted under the bill's anti-fraud provisions;
2. with DOL and the Department of Revenue Services for (a) collecting employee contributions and (b) the authority's reimbursement of costs incurred related to collecting the contributions; and
3. with DOL for (a) adjudicating claims by covered employees for a denial of FMLI benefits and (b) the reimbursement of costs by the authority for any costs incurred by DOL related to adjudicating contested claims or penalties imposed under the bill's anti-fraud provisions.

The bill also correspondingly allows each state agency to enter into these agreements with the authority.

Authority Data Use. The bill allows the authority, regardless of any state law but consistent with federal law, to use state administrative data collected by any agency to carry out and implement the program. This can include eligibility determinations, benefit calculations, program planning, recipient outreach, and continuous improvement and program evaluation, including assessments of longitudinal impacts. Subject to the same limits, the authority may also share user data and other data collected through program administration with other state agencies for, among other things, (1) improving benefit and service delivery to program participants and others; (2) streamlining eligibility determinations for programs administered by other agencies; and (3) recipient outreach and continuous improvement and program evaluation, including assessments of longitudinal impacts.

Under the bill, these data-sharing activities, as well as compensation to other state agencies for any associated costs, are appropriate administrative expenses for the program.

§§ 5 – 7 & 23 — THE FMLI TRUST FUND

Trust Fund (§ 5)

The bill establishes the FMLI Trust Fund to provide FMLI benefits to covered employees. The trust's assets must be used for (1) FMLI benefits; (2) paying the authority's operational and administrative costs; (3) educating and informing people about the program; and (4) paying the trust's operational, administrative, and investment costs. The trust is a non-lapsing fund held by the state treasurer separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the fund must become part of it.

The bill makes the trust an instrumentality of the state and requires it to perform essential government functions. It must receive and hold all payments and deposits or contributions intended for it, plus any gifts, bequests, and endowments; federal, state, or local grants; any other funds from a public or private source; and all earnings until disbursed.

Under the bill, the amounts deposited in the trust are not state property, and the trust must not be construed as a state department, institution, or agency. Amounts in the trust cannot be comingled with state funds, and the state must not have any claim to or against, or interest in, the funds.

Any contract or obligation made by the trust is not a state debt or obligation, and the state does not have any obligation to a designated beneficiary or any other person because of the trust. All debts owed by the trust are limited to the amounts available to pay the debt deposited in the trust. The trust must exist (1) as long as it holds any deposits or has any obligations and (2) until it is terminated by law. If the fund is terminated by law, however, any unclaimed funds become assets of the state.

The law for determining when property held by a fiduciary is presumed abandoned applies to the trust's property (CGS § 3-61a). Thus, property in the trust is presumed abandoned unless, within seven years after it became payable or distributable, the owner has (1) increased or decreased the principal; (2) accepted payment of principal or income; (3) corresponded in writing with the fiduciary about the property; or (4) otherwise indicated an interest through a memorandum on file with the fiduciary.

State Treasurer's Duties (§§ 5-7 & 23)

The bill makes the state treasurer responsible for receiving and investing money held by the trust. The trust can only receive cash deposits, and no depositor or designated beneficiary may direct the investments of any contributions or amounts in the trust other than the specific fund options the trust provides.

The bill requires the treasurer, on behalf of the FMLI Trust Fund and for its purposes, to:

1. receive and invest the trust's funds in any instruments, obligations, securities, or property as required under the bill;
2. procure insurance, if he deems it necessary, to protect the trust's

property, assets, activities, deposits, or contributions; and

3. apply for, accept, and expend gifts, grants, or donations from public or private sources to carry out the trust's objectives.

The bill requires the treasurer to invest funds in the trust in a manner reasonable and appropriate to achieve the trust's objectives. In doing so, he must exercise the discretion and care of a prudent person in similar circumstances with similar objectives. The treasurer must give due consideration to (1) rate of return; (2) risk; (3) term or maturity; (4) diversification of the trust's total portfolio; (5) liquidity; (6) projected disbursements and expenditures; and (7) expected payments, deposits, contributions, and gifts to be received.

The bill prohibits the treasurer from requiring the trust to invest directly in (1) any obligations of the state or its political subdivisions or (2) any other treasurer-administered investment or fund. The trust's assets must be continuously invested and reinvested in a manner consistent with the trust's objectives until they are disbursed under the authority's order or spent on the trust's operating expenses.

The bill places the treasurer's trust investments under the same oversight and requirements the law establishes for treasurer-administered funds, including the Teachers' Pension Fund, the State Employee Retirement Fund, and the Connecticut Municipal Employees' Retirement Fund (§ 23).

§ 10 — FMLI PUBLIC EDUCATION CAMPAIGN AND WEBSITE

Starting January 1, 2020, the bill requires the authority to conduct a public education campaign to inform people and employers about the FMLI program. The campaign must at least include information about (1) requirements for receiving program benefits , (2) benefit application process, and (3) circumstances under which benefits may be available. The bill allows the authority to use funds from the FMLI Trust Fund for the campaign. Information distributed or available under the campaign must be in English, Spanish, and any other language the authority prescribes.

The bill requires the authority to ensure, to the greatest extent practicable, that any website, web-based form, application, or digital service meets the following criteria:

1. is accessible to people with disabilities in accordance with WCAG (Web Content Accessibility Guidelines) 2.0AA or a similar, updated standard;
2. has a consistent appearance;
3. contains a search function that allows users to easily search content intended for public use;
4. is provided through an industry standard secure connection;
5. is designed around user needs with data-driven analysis influencing management and development decisions, using qualitative and quantitative data to (a) determine user goals, needs, and behaviors and (b) continually test it to ensure that user needs are addressed;
6. provides users with the option for a more customized digital experience that allows them to complete digital transactions in an efficient and accurate manner;
7. is fully functional and usable on common mobile devices; and
8. uses free and open-source tools when possible, such as open standards in accordance with the U.S. Web Design Standards built by the U.S. General Services Administration.

§ 13 — EMPLOYER NOTICE REQUIREMENT

Starting July 1, 2022, the bill requires employers to notify their employees at the time of hiring and every year thereafter:

1. about their entitlement to family and medical leave, as amended by the bill, and family violence leave and the terms under which the leaves may be used;

2. about the opportunity to file a benefits claim under the FMLI program;
3. that employer retaliation against an employee for requesting, applying for, or using family medical leave for which an employee is eligible is prohibited; and
4. that the employee can file a complaint with the labor commissioner for any violation of the FMLA or family violence leave law, as amended by the bill.

The bill allows the labor commissioner to adopt regulations establishing additional requirements about how employers must provide notice.

§ 15 — OTHER PROVISIONS

The bill specifies that nothing in its FMLI provisions or the state FMLA, as amended by the bill, (1) prevents employers from providing more expansive benefits; (2) diminishes any rights provided to covered employees under the terms of their employment or a collective bargaining agreement; or (3) interferes with, impedes, or diminishes any employee's right to collectively bargain for wages or working conditions that exceed the minimums established in the bill's FMLI program or the state FMLA.

§ 16 — REPORT REQUIREMENT

Beginning by July 1, 2022, the bill requires the authority to submit an annual report to OPM and the Labor and Appropriations committees on the:

1. projected and actual program participation;
2. trust's balance;
3. reasons why covered employees are receiving FMLI benefits;
4. success of outreach and education efforts;
5. claimants' demographic information, including their gender,

age, town of residence, and income level; and

6. total number of claims made and denied.

§§ 17-22 — CHANGES TO CURRENT FMLA

Covered Employers and Employee Eligibility (§ 17)

Current law requires private-sector employers with at least 75 employees to provide eligible employees with unpaid, job-protected FMLA leave. The bill reduces this employee threshold from 75 to one, thus covering all private-sectors employers in the state (except non-public elementary or secondary schools). It correspondingly eliminates a requirement for DOL to determine the number of employees for an employer each October 1.

Under current law, private-sector employees are eligible for FMLA leave if they have worked for their employer for at least 12 months and 1,000 work-hours over the 12-month period preceding their first day of leave. The bill instead makes employees eligible if they have worked for their employer for at least three months immediately preceding their request for leave with no minimum requirement for hours worked.

Maximum Leave Duration (§ 18)

The bill changes the maximum amount of leave to which an eligible employee is entitled from 16 weeks over a 24-month period to 12 weeks over a 12-month period. It also allows an additional two weeks of leave due to a serious health condition which results in incapacitation during pregnancy.

Expanded Family Members (§§ 17-18)

Current law allows employees to take leave for their own serious health condition or to provide care for the serious health condition of their children who are either under age 18 or unable to care for themselves, their spouses, or their parents (including in-laws).

The bill expands the family members for whom an employee can take leave to include the employee's siblings, grandparents,

grandchildren, and adult children. All of these family members include those related by adoption and through foster care. Siblings, grandparents, and grandchildren also include those related by marriage. The bill also allows an employee to take leave to care for anyone else with a serious health condition if they are related by blood or affinity and have a close association with the employee that the employee shows to be the equivalent of spouse, sibling, son or daughter, grandparent, grandchild, or parent.

Employer-provided Paid Leave (§§ 18 & 21)

Current law allows an employer to require employees to use their accrued employer-provided paid vacation, personal, family, medical, or sick leave when they are on FMLA leave. The bill limits the extent to which employers may impose this requirement by requiring that such employers allow employees to retain at least two weeks of their employer-provided paid leave. Current law requires employers to allow their employees to use up to two weeks of their employer-provided paid sick leave for a parent, spouse, or child's serious health condition or the birth or adoption of a child. The bill expands this requirement to include serious health conditions of siblings, grandparents, grandchildren, or anyone else with a serious health condition if they are related by blood or affinity and have a close association with the employee that the employee shows to be the equivalent of spouse, sibling, son or daughter, grandparent, grandchild, or parent.

Military Caregiver Leave (§ 18)

The law allows employees covered by the FMLA to take a one-time benefit of up to 26 weeks of unpaid leave when certain family members or "next of kin" in the armed forces undergo treatment for an injury or illness incurred in the line of duty. The bill allows the injured armed forces member to designate someone as their "next of kin" (thus making him or her eligible for the leave and FMLI benefits) if their close association is the equivalent of a family member.

Confidentiality (§ 20)

With certain exceptions, the FMLA requires employers to keep

records and documents related to their employees' medical histories and medical certifications as confidential medical records under the state's Personnel Files Act. The bill extends this requirement to include the same records related to providing FMLI benefits.

DOL Regulations (§ 22)

The bill requires the labor commissioner, by January 1, 2022, to adopt new regulations establishing the procedures and guidelines needed to implement the FMLA, as amended by the bill. The regulations must at least include (1) guidelines on the factors to be considered when determining whether someone's close association with an employee is the equivalent of a family member's and (2) as under current law, procedures for hearings and redress, including restoration and restitution, for an employee who believes an employer has violated any of the bill's or these laws' provisions. Unlike the required process for adopting the current FMLA regulations, the commissioner does not have to make reasonable efforts to ensure these new regulations are compatible with the federal FMLA and its regulations.

§ 26 — UNEMPLOYMENT NON-CHARGE

The bill creates a “non-charge” against an employer's experience rate when an employer lays off an employee due to the return of someone who had been out on bona fide FMLA leave. In effect, this allows an employer to lay off an employee who was temporarily filling the position of someone on FMLA leave without increasing the employer's unemployment taxes. The laid off employee would also be eligible to receive unemployment benefits, assuming he or she also met the law's other requirements.

In general, a portion of a private-sector employer's unemployment insurance tax is based on the employer's “experience rate,” which reflects the amount of unemployment benefits paid to former employees. Typically, laying off employees leads to a higher experience rate and higher unemployment tax for the employer. The law, however, allows several non-charging separations in which an employee can collect benefits that are not charged against a former

employer's experience rate (e.g., voluntarily leaving work to care for a seriously ill spouse, parent, or child), and thus do not increase the employer's unemployment taxes. In these instances, the cost of the benefits paid to the former employee is shared by all employers who pay unemployment taxes.

BACKGROUND

Quasi-Public Agency Procedure Adoption (CGS § 1-121)

The law requires quasi-public agencies, before adopting a proposed procedure, to provide at least 30 days' notice by publishing its intended action in the Connecticut Law Journal. The notice must include (1) either (a) a statement of the terms or substance of the proposed procedure or (b) a sufficiently detailed description to apprise people about the issues and subjects involved in the proposal; (2) a statement of the proposed procedure's purpose; and (3) when, where, and how interested persons may present their views on the proposed procedure.

A quasi-public agency may only adopt a proposed procedure by a two-thirds vote of the full membership of the quasi-public agency's board of directors.

Related Bills

sHB 5003 (File 22), reported favorably by the Labor and Public Employees Committee, establishes a Paid Family and Medical Leave Insurance Program administered by DOL.

SB 881 (File 525), reported favorably by the Labor and Public Employees Committee, establishes a Paid Family and Medical Leave Insurance Program administered by DOL or a quasi-public agency designated by DOL.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 5 (02/19/2019)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 27 Nay 21 (04/15/2019)

Appropriations Committee

Joint Favorable

Yea 27 Nay 17 (05/13/2019)