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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 91
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. Boggs and Boyd

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill establishes the Family and Medical Leave Insurance Program that will provide up to 12 weeks of family and medical leave insurance benefits to an individual by charging premiums to employees. The amount of the premiums will be determined by actuarial evaluation. Premiums will be deposited into and benefits will be paid out of a custodial fund created by the bill.
- If the Director of the Ohio Department of Job and Family Services (ODJFS) does not raise sufficient funds to cover the costs of establishing the Family and Medical Leave Insurance Program, the Director may request an appropriation to cover those costs. The total amount to implement and administer the program and a premium and benefit information system is unknown at this time.
- ODJFS will incur ongoing administrative costs to implement the program, as well as to administer an outreach program.
- State and local governments will have to deduct and withhold employee-paid premiums for participating employees, posing administrative costs and possibly information technology costs to these entities. There could be other administrative costs related to employee outreach and assistance, as well as tracking time and leave.
- State income tax collections may go down if employers that currently offer paid parental leave choose to suspend their programs and encourage employees to sign up for the program in this bill (which provides benefits exempt from state income taxes).
- If the state sees a reduction in state income tax collections, it will proportionally reduce the amount of moneys available for the Local Government Fund and Public Library Fund. That in turn would reduce revenue by a corresponding total amount to counties, municipalities, townships, and public libraries statewide.

Detailed Analysis

Overview of provisions with a fiscal effect

H.B. 91 creates the Family and Medical Leave Insurance Program to provide family and medical leave insurance benefits to individuals. Any paid leave under this bill must be taken concurrently with leave under the federal Family and Medical Leave Act (FMLA).¹ Funding for the program comes from premiums deducted from employees' wages and remitted to the Ohio Department of Job and Family Services (ODJFS). The cost of premiums, which will not be part of the state treasury, will be determined following an actuarial evaluation. However, the bill allows the ODJFS Director to accept gifts, grants, donations, and federal funding to pay for establishing the program, as well as request an appropriation if insufficient funds are received.

Program establishment and operation

The bill requires the ODJFS Director to conduct an actuarial evaluation by July 1, 2020, before establishing the program. This evaluation will determine the premium amounts, the balance needed in the Family and Medical Leave Insurance Fund (established by the bill) to ensure its solvency, and the administrative and technology costs necessary to establish and operate the program. However, the bill prohibits the ODJFS Director from performing the actuarial evaluation unless sufficient funding is available. The ODJFS Director may apply for and accept gifts, grants, donations, and any available federal funding to conduct the evaluation and to establish the program. Any funding received will be deposited into the Family and Medical Leave Insurance Fund,² created by the bill. If the Director does not receive sufficient funds to cover the costs of establishing the program, the Director may request an appropriation.

Fiscal impact

ODJFS is prohibited from performing the actuarial study unless sufficient funding is available. It is unknown how much the actuarial study will be and how much ODJFS will collect in grants and revenues. The fiscal impact of the appropriation, if needed, is difficult to estimate because the cost of establishing the program will be determined by the actuarial evaluation following the bill's passage. However, ODJFS would incur start-up and ongoing costs, which would likely include information technology costs, legal services, and possibly additional staff. In addition, once the program was operating there would be costs for appeals. The total amount to implement and administer the program and a premium and benefit information system was unknown at the time of publication.

Other states that have considered similar legislation include costs that vary widely depending on a number of factors including the size of the state and program. In addition, the costs varied depending on whether the state had an existing program, such as a temporary disability program, that could be modified to include family and medical leave benefits. A

¹ FMLA provides employees working for companies with 50 or more employees, along with state and local governments, job protection for taking up to 12 weeks of unpaid leave for a personal medical condition or to care for an immediate family member.

² The fund is a custodial fund. Thus, it is not subject to appropriations.

couple examples from states LBO analyzed are provided. For example, Connecticut expanded the state's current Family Medical Leave Act and established a Family and Medical Leave Insurance Program (FMLI). The estimated costs for the FMLI were \$13.6 million in start-up costs and then \$18.6 million per year for administration.³ Another example is Illinois legislation that created a Family Leave Insurance Program, which allowed employees to take leave to provide care for the birth of a child, adoption of a child or placement of a foster child, or serious health condition of a family member. This program was estimated to cost between \$75.0 million to \$100.0 million to develop the program and \$46.0 annually for administration.⁴

Premiums and benefits

Employers will be required to deduct and withhold premiums from employees' wages beginning July 1, 2022, and the program will begin dispensing benefits July 1, 2023, to individuals. However, an employer is not required to deduct and withhold premiums if the employer opts to pay contributions on behalf of an employee. The bill establishes waiting periods and specifies that the maximum benefit amount may not exceed \$1,000 per week; beginning January 1, 2024, the Director must adjust the maximum weekly benefit amount annually to take into account changes to the Consumer Price Index. The weekly benefit amount is determined based on the yearly wage of the individual and the statewide average weekly wage (AWW) as seen in the table below.

Family and Medical Leave Act Weekly Benefit Amount	
Individual's Yearly Wage Compared to the Statewide AWW	Percent of the Individual's Weekly Wage that will be Provided as a Benefit
20% or less of AWW	95%
More than 20% but less than or equal to 30% of AWW	90%
More than 30% but less than or equal to 50% of AWW	85%
More than 50% of AWW	66%

The ODJFS Director will establish rules and procedures that will allow individuals to opt out of the program. An individual will be able to opt out if he or she is covered by an employer

³ Connecticut Office of Fiscal Analysis. Fiscal Note for H.B. 5387, Session Year 2018. <https://www.cga.ct.gov/2018/FN/pdf/2018HB-05387-R000197-FN.pdf>.

⁴ Illinois General Assembly. Fiscal Analysis of H.B. 2376 of the 100th General Assembly. <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=2376&GAID=14&DocTypeID=HB&LegId=103013&SessionID=91&GA=100>.

policy or collective bargaining agreement that provides the employee with greater leave than that provided by the Family Medical Leave Act. Additionally, independent contractors may elect coverage by filing a notice to the Director with an initial period of coverage lasting at least three years. In both cases, the rate of participation will impact the cost of premiums.

The bill establishes a criminal penalty for whoever fails to remit premiums withheld from an employee's wages. The bill also permits the ODJFS Director to assess a civil penalty against an employer who takes an adverse employment action against an employee for participating in the program and allows an employee to sue such an employer. In addition, the bill establishes procedures for appeals and the collection of overpayments.

Fiscal impacts

Premium rates

The rates charged to employees will be determined in the actuarial study. However, based on the amounts charged by other states, this could vary depending on a number of factors including the size of the program, the anticipated utilization rate, and the weekly benefit amounts. A couple of examples from other states are provided. In pending legislation, Minnesota proposed an initial premium rate of 0.65% with an average estimated benefit of \$598 weekly.⁵ Washington state charges a premium of 0.4%, divided between the employee and employer, in order to provide a benefit up to 90% of an employee's wages (up to \$1,000 weekly).⁶ An actuarial study recently conducted for Colorado was higher depending on the benefits allotted.⁷

The program established in H.B. 91 allows employees to opt out if they have greater leave than the federal Family and Medical Leave Act. It is unknown how many individuals are eligible to opt out and how many of those would choose to do so. However, taking into consideration the size of Ohio and its annual payroll, the premiums collected could be significant. For instance, the federal Bureau of Labor Statistics estimated in May 2018, that Ohio had employment of 5.4 million workers earning a mean annual wage of about \$48,000;⁸ taken together, statewide annual payroll would total about \$259.2 billion. It is important to note that any premiums collected will be outside the state treasury and not be subject to appropriation.

Possible reduction in state income tax collections

Benefits paid under this bill are not subject to state income tax, but may be subject to federal income tax. Exempting the benefits from state income taxes generally does not create a fiscal effect because no tax revenue is currently being taken from benefits as none are being disbursed. However, some private and public employers currently offer paid leave for the birth or adoption of a child; if these employers were to suspend their paid parental leave programs in

⁵ Minnesota Fiscal Note for H.F. 5 of Session 91. <https://www.house.leg.state.mn.us/comm/docs/93e0d34d-88b8-4ee3-a15e-a23d2b425d45.pdf>.

⁶ Washington Paid Family and Medical Leave. <https://paidleave.wa.gov/>.

⁷ <https://drive.google.com/file/d/1SBcNkrHqgH9Tv8LqPEFZC07bPf0FIk8i/view>.

⁸ U.S. Bureau of Labor Statistics. May 2018 State Occupational Employment and Wage Estimates, Ohio. https://www.bls.gov/oes/2018/may/oes_oh.htm#21-0000.

favor of directing employees to the program established in this bill, the state would lose income tax revenue. A brief search of public universities that offered paid leave for birth or adoption revealed that the Ohio State University offers six weeks, Ohio University offers six weeks, and the University of Akron offers four weeks. All of the moneys paid through these programs, or any similar programs, are subject to state income taxes.

This reduction in state income tax collections may have a fiscal effect on municipalities, townships, and counties. State government shares a percentage of general tax revenue with local governments through the Local Government Fund (LGF) and the Public Library Fund (PLF). If state income collections fall as a result of the bill, the LGF and PLF revenue share will fall as well. Nationally, the U.S. Bureau of Labor Statistics estimated in 2018 that 17% of workers had access to some form of paid family leave; in the Midwest East North Central geographic area (which includes Indiana, Illinois, Michigan, Ohio, and Wisconsin) 16% of workers had access to paid family leave.⁹ However, without knowing how many employers would likely opt out of the program, it is difficult to estimate the size of any reduction in collections.

State and local government costs

The bill would allow state and local government employees to participate in the program. Since all of the taxes would be paid by the employee (unless a state or local government employer opted to pay contributions on an employee's behalf), the payment of premiums will not pose a cost.¹⁰ However, if this program results in government employees taking more leave from work than they currently do, this could result in more costs for state and local governments in the form of additional overtime paid or the need to hire temporary workers.

State and local governments would have to deduct and withhold premiums for participating employees, resulting in an increase in costs (administrative and possibly information technology) for these entities. In addition, these entities might experience costs to perform employee outreach and track and administer time, leave, and claims.

Other provisions

The bill requires the ODJFS Director to develop and implement an outreach program to educate the public about the Family and Medical Leave Insurance Program, resulting in an increase in costs. The bill also requires the ODJFS Director to submit an annual report to the standing committees of the House of Representatives and the Senate that are responsible for commerce and labor policy and health and human services policy. ODJFS could realize a minimal increase in administrative costs to complete this report.

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⁹ U.S. Bureau of Labor Statistics. National Compensation Survey: Employee Benefits in the United States, March 2018. https://www.bls.gov/ncs/ebs/benefits/2018/ownership/civ_all.pdf.

¹⁰ The bill does not address interactions between benefits paid under the bill and any paid leave provided by the employer.