LFC Requester:	Jennifer Faubion

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original x **Amendment** ______
Correction ______ **Substitute** ______

Date Prepared: 1/19/2024
Bill No: HB 11

Sponsor: Rep. Marian Matthews

Short Title: Paid Family & Medical Leave Insurance Act

Agency Name and Code Number: 305 – New Mexico Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

House Bill ("HB") 11 would enact the Paid Family and Medical Leave Insurance Act (the "Act"). The Act would establish the Paid Family and Medical Leave Insurance Fund ("Fund") and create the Paid Family and Medical Leave Insurance Authority ("Authority") to administer the Fund. The Authority is administratively attached to the Department of Workforce Solutions ("DWS"). The Act would also create the Paid Family and Medical Leave Insurance Board (the "Board") to oversee and operate the Authority. The Act provides for the composition of the Board, whose members shall receive per diem and mileage, but no other compensation.

The Authority must establish and administer the Paid Family and Medical Leave Insurance Program ("Program"). The Program would provide up to six weeks of family and medical leave compensation to covered employees during any twelve-month period. Covered employees, which may include self-employed individuals, must pay into the Fund for a period of ay least six months to apply for compensation from the Fund. Employees enrolled in the Program will contribute a percentage of their earnings at a rate to be determined by the Authority. Money in the fund is appropriated to the Authority to distribute compensation to covered employees, to pay operational and administrative costs of the Authority and to fund public education regarding the Program.

Beginning January 1, 2027, covered employees will be entitled to a total of six weeks of family and medical leave compensation during any calendar year for the birth of the covered employee's child, placement of a child with the covered employee, for the covered employee to care for a family member with a serious health condition, or for the covered employee to recover from a serious health condition. Weekly compensation under the program would be equal to 95% of an employee's base weekly earnings up to forty times the minimum wage. The Act would also provide a procedure to appeal an adverse determination of an application for compensation.

The Act would prohibit an employer from interfering with, restraining, or denying the exercise of any right protected by the Act, or discriminating or retaliating against a covered employee for the exercise of any right protected under the Act. Employers would be required to provide information regarding the employee's rights and obligations under the Act. The Act would prohibit cities, counties, or municipalities from adopting or continuing any ordinance, rule, or regulation that establishes a program of the rights and benefits conferred by the Act with some exceptions.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

The New Mexico Department of Justice ("DOJ") provides legal counsel for New Mexico boards and commissions that do not have budget or authority to retain staff legal counsel. Because HB 11 makes no provision for retention of counsel by the Board, the DOJ would fulfill its legal needs. During implementation of the Act, it is likely that the Board would require 80 hours of legal services monthly, or one-half of an FTE. The fiscal impact of staffing this role, including burden, would be approximately $100,000.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

HB 11 could provide more clarity regarding the penalties against an employer who interferes with or retaliates against employees exercising their rights under the Act, or who would enforce such violations.

Additionally, HB 11 does not detail the enrollment process and whether employees are required to "opt-in" to the program, or if enrollment will be automatic.

HB 11 does not address when an application for compensation must be made, before or after the period of leave begins, and whether such compensation would be backdated.

HB 11 could use more clarity regarding notice to employers of an employee's intent to seek leave. Section 7(E)(2) provides detailed requirements for employees seeking intermittent leave but does not extend those requirements to non-intermittent leave.

PERFORMANCE IMPLICATIONS

As noted, the DOJ would provide legal counsel for the Board. The DOJ currently does not have a budgeted position available for this function.

ADMINISTRATIVE IMPLICATIONS

None for this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 11 conflicts with HB 6, the Paid Family & Medical Leave Act. Unlike HB 11, HB 6 provides for the program to be administered by the Department of Workforce Solutions, rather than creation of new public entities to administer the fund. HB 6 provides for up to 12 weeks of paid leave, and includes "safe leave" for employees and their family members who are the victims of domestic violence, stalking, sexual assault, or abuse. These bills would also impose significantly different tax rates.

HB 11 also conflicts with SB 3, which is the companion to HB 6.

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

HB 11 would fund the insurance pool through a payroll tax on employees. The tax shall not exceed "one-half percent of subject earnings" even if an actuarial study determines that a payroll tax set at or below that percentage would be inadequate to meet fund obligations. This could result in a deficit that would require a legislative appropriation to meet those obligations. Currently, the New Mexico Patient Compensation Fund and the state employee health care insurance fund are in deficit positions because of inadequate assessments. Absent the ability to set tax rates based on actuarial studies, the parental leave fund could also end up running a deficit.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.