LFC Requester:	Nathan Eckberg

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

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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 ___ **Amendment** X
Correction ___ **Substitute** ___

Date February 11, 2024
Bill No: SB 3

Sponsor: M. Stewart,, C. Chandler
Short Title: Paid Family and Medical Leave Act

Agency Name and Code Number: 63100-NMDWS
Person Writing Sarita Nair
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
	$36,000		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
	$200,000	**$417,000**	Recurring	Newly established, Paid Family Medical Leave Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	24,362.5	$23,215*		47,487.5	Non-Recurring	General Fund or Paid Family and Medical Leave Fund*
			$28,725.0		Recurring	Paid Family and Medical Leave Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB6
Duplicates/Relates to Appropriation in the General Appropriation Act

*** The estimates already project the need for an additional one-time appropriation in FY26 for start-up costs. DWS estimates it may collect enough funds in FY26 to cover the additional costs of start up and administration, although the timing of receipt of those funds (collection of contributions would start half-way through FY26), may necessitate an additional one-time appropriation in FY26. All general fund appropriations would be repaid to the general fund from the PFML fund over time.**

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 3 creates the Paid Family Medical Leave Act (PFMLA or Act) which would establish a paid family and medical leave program in New Mexico, to be administered by the workforce solutions department (WSD). As this bill was amended in the Senate, Employees and self-employed individuals can take up to twelve (12) weeks of leave per year for "family leave," which is defined as leave for new parents or for a parent who has lost a child under the age of 18 (collectively "family leave"). Employees would receive nine (9) weeks of leave for the employee's own medical reasons or those of their family members (collectively "medical leave"), and seeking protection from domestic violence, stalking, or sexual assault ("safe leave"). Medical and safe leave duration is subject to adjustment to 12 weeks if the Paid Family Medical Leave Trust Fund is solvent after two years of full operation. The Senate amendments also removed military exigency leave.

If the bill as amended passes this year, then the roll-out would be:
1/1/2026 – Premium collection begins
1/1/2027 – Claim payment begins
10/1/2028 – Solvency calculations due, based on CY2027 data
10/1/2029 – Annual solvency calculation based on CY2028 data would be due and used to determine whether to increase number of weeks
1/1/2030 – First year in which there might be 12 weeks available for all types of leave

How it works. Eligible individuals may take time off from work as described above, which does not need to be used consecutively, and receive leave compensation while on leave. The leave under the Act may be used:

- to care for oneself or family members with a "serious health condition" (physical or mental)
- for bonding with newborn or recently adopted children, or after the death of a child under the age of 18.
- as "safe leave" to seek protective measures against domestic violence, stalking, or sexual assault or abuse for oneself or family member(s).
- The Senate amendments removed "qualifying exigency leave" for individuals on active military duty or who've received an impending call to active duty.

Under SB3 as amended, claimants are limited to a total of 12 weeks of PFML in an "application year," which begins when an employee files their first claim. This addresses concerns about the possibility that an employee may have multiple qualifying events in the course of one year.

Before amendments, SB3 referred to taking intermittent leave in 8-hour increments. This caused concerns for DWS because it forced the Department into the realm of negotiations between employers and employees on how and when the leave would be used. The amendments to SB3 fixed this issue by clarifying simply that the bill does not require leave to be used consecutively. This allows employers to establish their own policies on how leave may be taken and to arrange for leave with their employees given the specifics of that employee's schedule and responsibilities, the availability of cover, and the use of other types of leave.

How much is leave compensation? The amendments to SB3 did not change the calculation of leave compensation.

Who is eligible? The amendments to SB3 did not change eligibility for the fund.

How is the program funded? The amendments to SB3 did not change the funding mechanism.

How are contributions determined? The amendments to SB3 did not change contributions.

Exemptions authorized. The amendments to SB3 did not change exemptions.

Claims processing. The amendments to SB3 did not change claims processing.

Administrative Actions. The amendments to SB3 did not change administrative actions.

Preemption. The amendments to SB3 did not change pre-emption.

Collective bargaining. The amendments to SB3 did not change the provisions related to collective bargaining agreements.

Promulgation of Rules. The amendments to SB3 did not change the rule making process.

PFMLA Advisory Committee. Section 14 as amended now creates an 8 (rather than 16) member "paid family and medical leave implementation advisory committee" whose purpose is to provide input regarding best practices for the efficient and timely development, implementation and promulgation of rules and educational materials to carry out the provisions of the PFMLA. The WSD secretary shall consult with the committee at least quarterly and provide staff for it. The deadline to appoint the committee is October 1, 2024. Half of committee members must represent employers and the other half represent employees.

FISCAL IMPLICATIONS

The following is the DWS estimate of costs.

Program Year	Year 1	Year 2	Year 3	Ongoing
Fiscal Year	State Fiscal Year 2025 7/1/24 to 6/30/25	State Fiscal Year 2026 7/1/25 - 6/30/26	State Fiscal Year 2027 7/1/26 to 6/30/27	State Fiscal Year 2028+ 7/1/28 +
Activities	Planning/Rule Making/ Initial Contract Awards/ Start IT build	Operational Builds and IT and Facilities, Half Operations	Full implementation, O&M, post-implementation improvements	Running Full Program
Milestones	Rulemaking Complete 6/30/2025	Premium Collections begin 1/1/26	Benefit begins 1/1/27 New governor 1/1/27	Subject to annual escalation related to COLA pay increases, etc.
IT	$ 17,000,000	$ 10,500,000	$ 9,250,000	$ 4,000,000
Ops	$ 2,490,000	$ 8,000,000	$ 13,730,000	$ 14,279,200
Totals	$ 19,490,000	$ 18,500,000	$ 22,980,000	$ 18,279,200
With AS&T	$ 24,362,500	$ 23,125,000	$ 28,725,000	$ 22,849,000

DWS has not changed its estimate of costs, but notes that the change in the job protection provisions, requiring an employee to be with the employer for 180 (instead of 90) days before protection attaches, may decrease the number of job protection claims and the related administrative costs. DWS could not determine a reliable methodology for determining the cost savings.

The change in the number of weeks that are available for medical leave will have a positive impact on the solvency of the fund. For example, Connecticut's paid leave program with benefits very comparable to New Mexico had the following utilization in 2023:

Type of Claim	**Percentage of all claims in these categories**
Employee's Own Serious Health Condition	61.5%
Pregnancy/Childbirth	25.5%
Care of a Family Member	12.8%
Adoption/Foster Care	0.3%

Safe Leave	0.1%

Based on the Connecticut ratios, the duration of 74.3% of claims would be reduced from 12 to 9 weeks in the initial years, under the bill as amended.

BBER estimated that the cost of claims[1] would be $368,330,880, based on an assumption of 35,253 claims being granted for 12 weeks. Applying the Connecticut ratio of types of claims to the BBER assumptions, the cost of claims under the amended bill would be reduced to $299,924,741 – a savings of $68,406,139 or 18.6%. This savings, combined with the increase in the percentage in the solvency ratio, would contribute significantly to fund solvency, making the increase in the number of weeks more feasible in out years.

This same methodology could be applied to the other estimates related to fund solvency, or using other states' ratios of types of claims.

SIGNIFICANT ISSUES

The amended bill addresses DWS concerns about the phrase "subject to state jurisdiction" – this phrase no longer appears in the bill.

DWS understands that the Senate version of House Bill 2 contains an appropriation of start-up funds for DWS, to be expended in FY25 and 26. This resolves DWS's concerns about start-up funding.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

Nothing in the bill appears to prohibit DWS from outsourcing components of the program. For example, Colorado outsources the call center for its PFML program.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 3 was originally a duplicate of HB 6, although as amended the bills are now different.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

This version of the bill resolves several issues that concerned DWS in the 2023 SB 11, as well as concerns with the original version of SB3, including issues related to intermittent leave, the time for measuring exhaustion of the benefit, and adding benefit industry expertise to the advisory committee.

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[1] BBER's estimates projected three years of claims in anticipation of the 2023 bill: 2024, 2025, and 2026. Because the first year of claims based on Senate Bill 3 would be 2027, DWS used BBER's 2026 estimates for these calculations.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Paid family and medical leave will not be a legal requirement.

AMENDMENTS