LFC Requester:	Jennifer Faubion

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 2/21/2025

Bill Number: HB11

Check all that apply:

Original ___ Correction ___

Amendment ___ Substitute X

Sponsor: Rep. Christine Chandler, Sen. Mimi Stewart, Rep. Linda Serrato, Rep. Patricia Roybal Caballero, Rep. Javier Martinez

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

Person Writing Analysis: AAG Erica Schiff, AAG Jeff Herrera as to Anti-Donation

Short Title: Paid Family & Medical Leave Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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

Synopsis:

The substitute HB11 ("HB11S") proposes the Welcome Child and Family Wellness Leave Act (the "Act"), a new program for paid family leave, to be administered by the New Mexico Department of Workplace Solutions (the "Department").

Section 1 of HB11S contains the short title, the "Welcome Child and Family Wellness Leave Act."

Section 1 of the original HB11 (HB11O) contained the short title, the "Paid Family and Medical Leave Act"

Section 2 of HB11S defines the terms "applicant," "application year," "bereavement leave," "claim for leave," "department," "domestic partner," "employee," "employee leasing arrangement," "employee leasing contractor," "employer," "family member," "family wellness leave," "foster leave," "health care provider," "Indian tribe," "leased worker," "medical leave," "qualifying exigency leave," "safe leave," "secretary," "serious health condition," "spouse," "wages," and "welcome child benefit."

Section 2 of HB11S added the terms "bereavement leave," and "welcome child benefit," and expanded the term "family leave" to "family wellness leave," which now encompasses bereavement leave, foster leave, medical leavy, qualifying exigency leave and safe leave. The terms "fund," "leave," and "leave compensation," have been removed.

Section 3 of HB11S creates the "family wellness leave fund," which raises revenue through a tax collected through premiums paid from employee paychecks within the state, including self-employed individuals. The revenue is remitted to a new fund—the "Family Wellness Leave Fund"—which is appropriated to the Department to distribute family wellness leave compensation to eligible employees. Premiums are to be recalculated by the Department annually.

Section 3 of HB11O is substantively similar to Section 3 of HB11S.

Section 4 of HB11S addresses applicability, contributions to the Family Wellness Leave Fund, remittance of contributions, an exemption for certain leave plans or programs, and requirements for waiver. Initially, employees will contribute .2% of their paycheck toward the Family Wellness Leave Fund, employers will contribute .15% of employee wages, and self-employed individuals will contribute .2% of net income. Employers may obtain a waiver from contributions to the Family Wellness Leave Fund if they have a leave plan or program with similar benefits.

> In HB11O, employee contributions were to be .4% of wages, employer contributions were to be .5% of employee wages, and self-employed individuals would contribute .5% of net income. All other terms of this section are substantively the same.

Section 5 of HB11S provides for eligibility for leave, leave calculation leave duration, and documentation requirements. Eligible applicants can receive up to six weeks of family wellness leave in a single application year.

> HB11O provided for up to twelve weeks of family leave. Otherwise, the two versions are substantively the same.

Section 6 of HB11S creates the "Welcome Child Fund," to be administered by the Department.

> There is no comparable section in HB11O.

Section 7 of HB11S outlines the welcome child benefit, consisting of a "welcome child refund" of $3,000 to be paid to one of the child's parents each month for three months immediately following the birth or adoption of a child, as well as up to twelve weeks of welcome child leave.

> There is no comparable section in HB11O.

Section 8 of HB11S specifies the requirements for claims for family wellness leave.

> Section 6 of the HB11O contained similar documentation requirements for leave. HB11S adds subsections specific to bereavement leave and foster leave.

Section 9 of HB11S lists requirements for notification of employers of intent to take leave.

> Section 7 of HB11O contains the same requirements for notification. HB11S has removed the subsection providing that an employee may take up to a combined total of twelve weeks of family, medical, safe, and qualifying exigency leave.

Section 10 of HB11S provides the requirements for the return to employment following leave.

> Section 8 of HB11O is substantively similar to Section 10 of HB11S.

Section 11 of HB11S prohibits employers from retaliating against any employee who uses either family wellness leave or welcome child leave.

> Section 9 of HB11O is substantively similar to Section 11 of HB11S

Section 12 of HB11S provides for appeal of adverse determinations and creates a grievance procedure for complainants to file administrative actions with the Department for alleged violations of provisions of the Act.

Section 10 of HB11O is substantively similar to Section 12 of HB11S.

Section 13 of HB11S preempts cities, counties, and other municipalities or political subdivisions from enacting programs with comparable provisions to those created under HB11S.

Section 11 of HB11O is substantively similar to Section 13 of HB11S

Section 14 of HB11S states that nothing in the Act diminishes the rights of any employee under any collective bargaining agreement.

Section 12 of HB11O is substantively similar to Section 14 of HB11S

Section 15 of HB11S provides for the Department to promulgate rules to implement the Act

Section 13 of HB11O is substantively similar to Section 15 of HB11S

Section 16 of HB11S is a temporary provision for an advisory committee to implement the Act.

Section 14 of HB11O is substantively similar to Section 16 of HB11S

HB11S does not include the terms of HB11O Section 15, providing for repayment of appropriations to the paid family and medical leave fund.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

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

N/A.

SIGNIFICANT ISSUES

As noted in this office's previous legislative analysis, the timeline for filing an administrative action with the Department alleging violation of the provisions of the Bill is an extremely short timeline The Bill limits the timeframe for which an aggrieved party may file a complaint to within thirty business days after the complainant becomes aware of the alleged violation. Comparable administrative grievance procedures for violations of state employment law currently exist in statute. *See, e.g.*, the New Mexico Human Rights Act, NMSA 1978, § 28-1-10(A) (requiring a complainant to file a grievance with the Human Rights Commission within three hundred days of the alleged wrongful act).

HB11S creates the Welcome Child Fund but does not provide for any appropriations, premiums, or other means of funding the Welcome Child Fund, apart from a provision

that income from investment of the fund is credited to the fund. There is, therefore, no means of funding the welcome child benefit. Also, although the monetary portion of the welcome child benefit is described as a "refund," there is no mechanism for parents to pay into the fund and therefore no way for them to receive a "refund" from the fund.

Anti-Donation Clause – Discussion Added on 3/6/2025

The New Mexico Department of Justice received a request from a Senate Finance Committee analyst for a supplemental analysis regarding the application of the Anti-Donation Clause of the New Mexico Constitution (N.M. Const., art. IX, § 14) to the Welcome Child benefit proposed in the committee substitute for HB11 (HB11S).

The Anti-Donation Clause of the New Mexico Constitution states that "[n]either the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise[…]." The Clause goes on to address multiple exceptions, including that, "[n]othing in this Section prohibits the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons." *Id.* Additionally, the Anti-Donation Clause has been interpreted to not prohibit agreements in which there is a legitimate exchange of benefit and consideration between the public and the private individual or entity receiving monies. *See, e.g., State ex rel. State Park & Recreation Comm'n v. N.M. State Auth.*, 1966-NMSC-033, ¶¶ 50-51, 76 N.M. 1, 411 P.2d 984.

A legal challenge of the Welcome Child benefit under the Anti-Donation Clause would raise a novel question as to whether the benefit is a $3,000 cash transfer—called a "refund" in HB11S—per month, for the three months immediately following the birth or adoption of a child, along with twelve months of leave would constitute an improper donation as to private employees. With no caselaw on point, we cannot state with certainty what the outcome of such a challenge would be. However, there are key features of the Welcome Child benefit that suggest that it would survive an Anti-Donation Clause challenge.

First, eligibility for the benefit applies to all private employees and all non-federal public employees who have contributed to the Welcome Child fund for at least six months during any employment in the twelve-month period prior to applying for such benefit. Both the employee and the employer contribute to the fund, with the employer's portion being akin to a payroll tax. A court could consider the minimum period of time contributing to the fund in conjunction with perpetual contributions thereafter to be adequate consideration such that the cash transfer is not considered a "donation" in violation of the Anti-Donation Clause.

Second, with the exception of the employee's contribution, the Welcome Child benefit is similarly constructed to the Unemployment Compensation Law, Chapter 51 NMSA 1978. Both are state-administered funds to provide a cash transfer to individuals meeting certain criteria. Unemployment compensation exists to mitigate the "economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state." NMSA 1978, § 51-1-3. Presumably, HB11S has a similar broader public policy and societal interest—such as broad public health and welfare goals associated with early child welfare—that goes beyond the individualized benefit. (HB11S's sponsors may consider adopting a declaration of policy for HB11S akin to the declaration found in NMSA 1978, § 51-1-3 for Unemployment Compensation Law.) There has seemingly been no challenge to the Unemployment Compensation Law under

the Anti-Donation Clause, which suggests that HB11S would similarly avoid or survive such a challenge.

Third, because requirements to contribute to the fund apply equally to public and private non-federal employees, the contributions function as a tax and the benefit can be construed as a type of tax refund, as HB11S suggests. Individuals that do not contribute to the fund are not eligible for the benefit. A court could find that this tax and refund structure is not a donation under the Anti-Donation clause, or if a donation, then a court could find that is it supported by adequate consideration.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB446 proposes an amendment to the Early Childhood Education and Care Fund to allow appropriations for parental leave compensation. HB446 also enacts the Paid Parental Leave Act and creates the Supplemental Paid Parental Leave Fund, which would pay an eligible applicant a percentage of their wages for six to nine weeks to bond with a new child. HB446 does not provide for medical leave, or any other form of leave provided for under HB11S. HB446 does not legally conflict with HB11S, but the bills are similar, in that both create a fund, funded by contributions from employee paychecks, for payment of leave that includes parental leave.

The safety leave provided for in HB11S relates to, but does not seemingly conflict with, a subject covered by the Promoting Financial Independence for Victims of Domestic Abuse Act, NMSA 1978, §§ 50-4A-1 to -8. The Bill's safe leave provisions permit employees to apply for leave compensation through the Department where the employee or a family member of the employee is the victim of domestic violence, stalking, sexual assault, or abuse. The Promoting Financial Independence for Victims of Domestic Abuse Act requires employers to permit victims of domestic abuse to take leave from work consistent with the employer's policies. Further, employers are prohibited from retaliating against any employee that lawfully requests and exercises the right to take leave under such circumstances.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None.