

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: SFC DATE TYPED: 3/6/03 HB _____
 Public Peace, Health, Safety and Welfare/Family
 SHORT TITLE: Leave Act SB 880/SFCS
 ANALYST: Collard

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Labor Department

SUMMARY

Synopsis of Bill

The Senate Finance Committee substitute for Senate Bill 880 enacts the Family Leave Act, requiring employers, regardless of size, to allow employees to use either sick leave or other paid time off for family leave. Employees can do this either through a collective bargaining agreement or employer rule. Family Leave Act circumstances include assisting a child with a health condition or assisting a spouse, parent, parent-in-law, or grandparent who has a serious health condition or an emergency condition. The bill prohibits an employee from taking leave prior to earning it. Finally, the bill prohibits employers from threatening discharge, demotion, suspension, or disciplinary action for use of the Family Leave Act.

FISCAL IMPLICATIONS

There is no appropriation or significant fiscal impact associated with the bill. The Labor Department notes it is difficult to identify a fiscal impact because the number of employees requesting leave based on the Family Leave Act is unknown; however, since employees must use earned leave, the impact should be no more than if sick leave or annual leave were used.

OTHER SUBSTANTIVE ISSUES

The Labor Department notes the larger issue that the bill poses is whether and to what extent its provisions are different from the federal Family Medical Leave Act (FMLA). FMLA mandates allowing medical leave in certain circumstances to care for a family member who is sick. FMLA applies to employers of a certain size, includes a certification process that assures employees are legitimately taking the leave and limits the applicability to a certain time period. In contrast, bill mandates when a person is already entitled to leave by a collective bargaining agreement or employer rule, the person is also entitled to leave for family purposes as defined in the act. The bill does not contain a limitation on the size of the employer, a time limit or a certification provision. However, the bill does state the leave must be taken pursuant to collective bargaining agreement or employer rule, leaving the option of adopting a rule requiring the employee to certify that the leave is legitimate.

Relative to state government, recent developments in the federal courts suggest that the FMLA does not apply to state governments. However, there is a state personnel board rule, 1.7.7.10.D, NMAC, which authorizes the same type of leave that this bill authorizes. Enacting through legislation what is otherwise a beneficial rule makes it more permanent and less susceptible to administrative change in disregard of the legislative will. The bill's clear applicability to state government will assure that state employees will continue to benefit from the state personnel board rule.

KBC/njw:prr