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| LFC Requester: | Connor Jorgenson |
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**AGENCY BILL ANALYSIS
2022 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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**
Correction **Substitute**

Date January 24, 2024
Bill No: SB3

Sponsor: Mimi Stewart & Christine Chandler
Short Title: Enacting the Paid Family & Medical Leave Act, Fund

Agency Name and Code AOC 21800
Number: _____
Person Writing Lynette Paulman-Rodriguez
Phone: _____ **Email** _____

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|-------------|---|---------------|
| FY23 | FY24 | | |
| | \$6,000,000 | Reoccurring until at least FY2028, then the repayment process outlined in Subsection 15 will commence | |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY23 | FY24 | FY25 | | |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB11
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

Is HB 6 a companion bill?

BILL SUMMARY

Synopsis:

SB3 is related to employment and would establish a 12-week Paid Family and Medical Leave Act (Act), would create a paid family and medical leave fund administered by the Workforce Solutions Department (WSD), and establish a temporary advisory committee. This legislation would provide partial wage replacement while the employee is out for qualifying reasons, which would include care of family member, family leave, qualifying exigency leave, safe leave or medical leave, and covers a broad segment of the workforce through minimal eligibility requirements. SB3 would apply to all public and private employees subject to state jurisdiction, excluding federal employees. The Act does not distinguish between employers who physically reside in New Mexico and those who do not. The Act allows self-employed individuals the ability to opt into the program. The Act also allows Indian nations, tribes and pueblos to elect to be covered.

The Act would apply to each employer with five or more employees, and would establish a quarterly fee to the employee of .50% of the employee’s wages up to the earning cap established by the federal social security administration program. The quarterly fee would begin on January 1, 2026 and continue for each calendar quarter thereafter until January 1, 2029.

The Act requires the WSD to contract with an independent actuarial consultant to determine a sound premium rate and to determine the future premium rate mechanism for the program. As of January 1, 2029 and for each calendar quarter thereafter, the fee assed on the employee’s wages would increase to 55% of the premium set by the DWS Secretary pursuant to Subsection E of Section 3 of the Act. Employees would not be required to contribute to the fund from wages earned while receiving leave compensation under the Act. The employer’s portion would be 45% of the premium set by the WSD.

The bill appropriates \$36.5 million from the general fund to WSD for expenditures in FY24 and FY25 for the administrative costs associated with establishing the Act. The bill also includes annual \$6 million fund transfers starting on January 1, 2026, from the newly created fund to the general fund until the total transfers equal the amount of appropriations made to WSD for administrative costs. The bill includes a provision allowing the department to waive employers and employees from contributing to the fund if the employer already has a leave program in

place that is equal to or more generous than the proposed Act's benefit. The bill creates an implementation advisory committee with members from various community organizations, provides for rule-making authority by WSD, clarifies that the Act would not affect collective bargaining unit agreements, preempts local entities' policies, creates an administrative process for appeals, establishes WSD disciplinary powers, and makes it unlawful for an employer or other person to interfere with a person attempting to exercise a right under the Act. Different provisions in this bill start at different times. However, the appropriations contained in the bill start on July 1, 2023.

The estimated cost to employers is approximately \$4 for every \$1,000 of wages while the costs for employees would be approximately \$5 for every \$1,000 of wages. That means an employee who earns \$50,000 will pay \$250 annually and the employer will pay approximately \$200 annually.

The Act establishes procedures for calculating paid leave, administering the leave benefit, taxing the paid leave, and requiring notice be provided to the employer by the employee upon taking leave or returning from leave. Specifically, the calculation of weekly leave compensation shall be based on an employee's average weekly wages during the twelve months (or weekly wages for weeks worked) immediately preceding the state of the claim for leave.

The Act limits the maximum amount of weekly leave compensation to no more than the annual mean wage of all occupations in New Mexico as calculated by the US bureau of labor statistics calculated as a weekly wage. The Act, similarly determines a weekly wage for self-employed individual as well as a maximum weekly amount of compensation. The Act outlines a verification process the WSD will go through determining earned net income. The Act includes a notification process where the WSD will notify the employer and the employee of the application's approval, denial or if additional information is required.

The formula for benefits is 100% of the minimum wage or \$24,960, plus 67% of wages above minimum wage. For a \$50,000 year earner that would be approximately \$16,776.80 plus the \$24,960 or a total of \$41,736.80 or 84% of their salary divided by 52 weeks or 2080 hours. If this same employee took 12 weeks of paid family and medical leave under the Act, they would receive approximately \$10,434.20 or \$869.52 per week.

The 12-week benefit could be taken intermittently and in increments of no less than eight hours at a time. To receive the benefit, the employee would have to pay into the fund for at least six-months during the twelve months prior to submitting their application and not be receiving unemployment insurance benefits during the period for which they file a claim. There are provisions in the Act that would make an employee or self-employed individual ineligible to receive the leave compensation. Specifically, Section 5 E (4), which states a self-employed individual, would be ineligible to receive leave compensation if the leave compensation would duplicate the amount the individual is receiving or has received in temporary total disability benefits from a workers' compensation claim for the same period, or if the leave compensation will duplicate what the employee is or has earned in wages for the same time period.

The money in the fund is appropriated to the department to distribute leave compensation pursuant to the Act and to cover the costs of administration and outreach for the program. Any fund balance shall not revert to the general fund or be transferred to any other fund. Starting on January 1, 2028, the WSD Secretary would be required to ensure the fund is self-sufficient by performing an annual financial analysis and setting the premium for the following calendar year

at a rate that would obtain contributions equal to 135% of the benefits paid during the previous fiscal year and all administrative costs minus net assets remaining in the fund as of June 30 of the current calendar year. The Act limits the premium increases to not exceed one-tenth percent of wages per employee per year. Public notice shall be required in advance of January 1 for any premium changes.

The bill includes a provision that could exempt an employer that has an established paid family and medical leave plan or program substantially similar to or greater than the leave and leave compensation offered under the Act. The employer may apply for a waiver of exemption requesting that the employer and its employees be excluded from participating in the paid family and medical leave program. The Act requires the employer to submit an exemption request each calendar year. Upon approval of the waiver, the employer must notify all employees covered by the employer's paid leave program that the employee is covered by a privately run leave program rather than a public plan, that employees may apply to the employer for leave, the employer must provide leave and leave compensation substantially similar to or greater than that granted to employees pursuant to the Act, and that employees may appeal to the WSD if they believe a right granted under the Act is violated. The Act provides additional restriction that would prohibit an employer from recouping the fees from the employees.

Employers subject to the federal Family and Medical Leave Act may require employees to take the Act's paid leave concurrently. The Act requires the employer to maintain the employee's health coverage and provides strict provisions to protect employees from possible retaliation from the employer. The Act establishes return to work rights of the employee, establishes an appeal process and administrative/disciplinary actions to employer or employees who violate the provisions in the Act, and clarifies that medical records shall remain confidential.

FISCAL IMPLICATIONS

It is unclear if the projected appropriation is sufficient or if the repayment will occur as quickly as estimated. When this was proposed in the 2023 legislative session the LFC's analysis estimated administrative initial two-year costs of approximately \$51.7 million.

Based on the exemption process outlined it seems larger businesses and public sector entities would be eligible for an exemption. If a public entity, such as the state of New Mexico or the judiciary, were not granted an exemption, then those entities would need to receive corresponding estimated funding to cover the contribution costs.

SIGNIFICANT ISSUES

Contradictory language: the bill defines an employer as "a person that has one or more employees within the state and includes an agency of an employer and the state or a political subdivision of the state". However, subsection 4 states "each employer with five or more employees" must submit contributions.

The bill provides reinstatement rights to an employee who has worked for their employer for 90 or more days. If an employer is exempt and therefore their employees are exempt and enact their rights under the federal Family and Medical Leave Act, they must have worked for their employer for 1250 hours in the past 12 months (over the past 7 years, need not be concurrent). It

should be noted that employees taking paid leave under the Act are provided greater benefits than those taking leave under the federal Act.

Section 8 F appears problematic. The bill states that the employer may require an employer who uses leave to report periodically to the employer on the status and intention of the employee to return to work. The federal Family and Medical Leave Act includes regulations that recertification can be no more than every 30-days. If an employee is using leave under the Act, concurrently with their federal entitlement, additional guidance should be included protecting both the employer and employee from a violation of the regulation.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS