HB15-1258

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL FISCAL IMPACT

Drafting Number:	LLS 15-0578	**Date:**	March 18, 2015
Prime Sponsor(s):	Rep. Winter; Salazar Sen. Ulibarri	**Bill Status:**	House Health, Insurance, and Environment
		Fiscal Analyst:	Clare Pramuk (303-866-2677)

BILL TOPIC: FAMLI INSURANCE PROGRAM WAGE REPLACEMENT

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	See State Revenue section.	
State Expenditures	**$8,747,480**	**$9,102,790**
General Fund	8,707,686	8,940,931
Centrally Appropriated Costs**	39,794	161,859
FTE Position Change	1.5 FTE	6.0 FTE
Appropriation Required: $8,707,686 - Department of Labor and Employment (FY 2015-16)		

** This summary shows changes from current law under the bill for each fiscal year.*
*** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.*

Summary of Legislation

This bill creates the Family Medical Leave Insurance Program (FMLI) in the newly created Division of Family and Medical Leave Insurance (division) in the Colorado Department of Labor and Employment (CDLE). The FMLI program provides partial wage replacement benefits to eligible individuals who are unable to work due to their own serious health condition, or who take leave from work to care for a new child or a family member with a serious health condition. Prior to establishing the FMLI program, the division will conduct an actuarial evaluation to determine the amount of premium required to support the FMLI program and the fund balance necessary to maintain the FMLI program's solvency. The actual evaluation must be completed by July 1, 2016, at which time the division will establish rules and procedures to administer the FMLI program including development of an outreach program to educate the public.

Beginning January 1, 2018, every individual employed by an employer will begin paying a premium based on a percentage of annual wages through a payroll deduction to the FMLI Fund. If the FMLI program director determines that a solvency surcharge is required to ensure the solvency of the FMLI Fund, employees will pay that amount through a payroll deduction as well. A self-employed person may elect to purchase coverage for an initial period of not less than three years.

FMLI benefits will be payable to covered individuals beginning one year after the division begins collection of premiums January 1, 2019. The amount of weekly benefits is based on the individual's income and is capped at $1,000 per week for up to 12 weeks in a 12-month period. Claimants with lower incomes will receive a higher percentage of their weekly wage than claimants with higher incomes. The division director can adjust the benefit caps over time according to the Consumer Price Index. Benefits received are not subject to state income tax but may be determined to be subject to federal income tax. Leave taken runs concurrently with leave taken

under the FMLA or the state Family Care Act which expands Family and Medical Leave Act (FMLA) eligibility to include partners in civil unions and domestic partnerships. A claimant cannot receive benefits from multiple sources (e.g. workers' compensation, unemployment insurance, disability insurance) that exceed his or her actual wages.

Employers covered by the federal FMLA include private employers with at least 50 employees, all government agencies, and elementary and secondary schools, regardless of the number of employees. To be eligible for FMLA, an employee must work 1,250 hours. Under FMLI, an employee is eligible if employed for 680 hours. The bill expands the employment protections from the FMLA to private employers with fewer than 50 employees by requiring that an employee be restored to an equivalent position of employment with the employer after taking leave and receiving FMLI benefits.

The division is required to provide annual reports beginning September 1, 2018, to the General Assembly on projected and actual FMLI program participation, and other details about the FMLI program.

Premiums are deposited into, and all benefits and administrative expenses are paid from, the newly created FMLI Fund. The division is established as an enterprise and premiums are not considered state revenue for purposes of Section 20 of Article X of the Colorado Constitution (TABOR). The General Assembly and the Governor must approve the division's authority to issue revenue bonds by a separate bill or joint resolution.

The division director is authorized to assess a fine up to $3,000 for violations of the bill. If an employer violates the employment protection provisions of the bill, the aggrieved employee may bring action in state court against the employer to recover damages and equitable relief as specified under the FMLA.

Background

The federal FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave for specified family and medical reasons, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Employees may use sick time, vacation time, or other accrued leave time along with FMLA leave in order to continue being paid. The employer must have at least 50 employees within 75 miles of an employee's worksite for the employer to be subject to FMLA requirements.

Three states: California, New Jersey, and Rhode Island currently have paid family leave programs. California's began in 2002, New Jersey's in 2008, and Rhode Island's in 2013. The family leave programs operate in conjunction with each state's temporary disability insurance program. The programs are funded through employee contributions which range from a maximum of $31.50 per year in New Jersey, to $770 per year in Rhode Island, and $1,120 in California. These states, as well as New York and Hawaii, operate temporary disability insurance programs; Colorado does not.

State Revenue

This division will begin collecting premiums January 1, 2018, for deposit into the FMLI Fund. The amount of premium revenue will depend on the findings of an actuarial evaluation to estimate the utilization rate of the FMLI program prior to setting a premium rate in order to ensure funds will

be sufficient to cover the administration costs and benefit obligations. While not estimated for the fiscal note, annual revenue amounts are expected to be in the hundreds of millions of dollars. Preliminary calculations suggest that a premium rate less than 1 percent of salaries with a $300 cap will be sufficient to fund the FAMLI program. A minimal amount of fine revenue is expected beginning in FY 2018-19.

State Expenditures

This bill will have expenditures for both benefit payments and administration. These are explained separately below.

State Expenditures - Benefits. This bill is expected to increase FMLI Fund expenditures for FMLI benefits by **$278 million in FY 2018-19 and $556 million in FY 2019-20**, the first full year in which benefits will be paid based on the following assumptions.

- 2.9 million employees;
- 5 percent of employees will make claims; and
- FMLI benefits will average 8 weeks per claimant.

These figures will be further defined in the actuarial evaluation and could be affected by a number of variables.

State Expenditures - Administration. This bill will increase General Fund expenditures by **$8,747,480 and 1.5 FTE in FY 2015-16 and $9,102.789 and 6.0 FTE in FY 2016-17** for the Division of Family Medical Leave Insurance. These costs are shown in Table 1 and explained below. Once sufficient revenues are received from premiums, expenditures will be paid from the FMLI Fund. If the division receives and exercises bonding authority, the division may be able to use cash funds prior to FY 2018-19. Gifts, grants and donations may be collected to conduct the actuarial evaluation. In the absence of cash funds, General Funds will need to be appropriated to support the division.

Costs for administration will increase exponentially as the division begins collecting premiums in FY 2017-18, and processing claims and issuing benefits in FY 2018-19. These costs are not estimated in this fiscal note, but are expected to be significant. Funding for the outyears will be addressed in the annual budget process.

Table 1. Initial Expenditures Under HB15-1258 for CDLE

Cost Components	FY 2015-16	FY 2016-17
Personal Services	$86,415	$343,491
FTE	1.5 FTE	6.0 FTE
Operating Expenses and Capital Outlay Costs	1,010,831	1,024,512
Legal Services		17,487
System Hardware	6,250,000	6,250,000
Computer Programming	1,285,440	1,285,440
Actuarial Consulting	75,000	20,000
Centrally Appropriated Costs*	39,794	161,859
TOTAL	**$8,747,480**	**$9,102,789**

** Centrally appropriated costs are not included in the bill's appropriation.*

Division of Family Medical Leave Insurance. In FY 2015-16, the division will hire a contract actuary and data specialist to conduct an actuarial evaluation to determine the amount of premiums that will need to be charged. Division staff will support this effort and work with programmers and vendors to begin system development for both premium collection and eligibility determination. The eligibility system will require $25 million in hardware, which is budgeted evenly over four years.

In FY 2016-17, system development will continue and the division will begin promulgating rules, and developing forms and procedures. Legal services costs of $17,487 (192 hours x $103 per hour) are required to assist staff in rulemaking. Staff will begin mailing information to employers to make them aware of the upcoming payroll deduction requirements.

In FY 2017-18, the division will begin collecting premiums, conducting outreach with employers and employees, and responding to inquiries about the FMLI program. Development of the eligibility system will continue.

Department of Personnel and Administration (DPA). The DPA will have an increase of $37,790 and 0.5 FTE in FY 2017-18 and $62,790 and 0.5 FTE in FY 2018-19 and thereafter from the General Fund. The DPA will add a 0.5 FTE contract manager to coordinate and manage the collection of premiums and the claims process for state employees through a third-party administrator (TPA). The cost of the TPA is estimated at $25,000 annually beginning in FY 2018-19. These costs will be addressed in the annual budget process for FY 2017-18.

Department of Revenue. The Department of Revenue (DOR) will have an increase in General Fund expenditures of $315,000 and 4.1 FTE in FY 2019-20, and $330,000 and 5.4 FTE in FY 2020-21 and thereafter. Expenditures are for personal services, operating, postage, programming, and document management costs. Because the DPA processes documents for the DOR, the DPA will require a separate appropriation equal to the DOR's spending authority for document processing. These costs will be addressed in the annual budget process for FY 2019-20.

Judicial Department. Beginning in FY 2017-18, the department may see a minimal increase in discrimination claims against employers for violating the employment protection provisions of the bill. This increase is not expected to require new appropriations.

All State Agencies. All agencies will be required to implement payroll deductions for employees and coordinate sick leave, FMLA, and disability benefits when an employee applies for family and medical leave. This increase in workload is not expected to require new appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under HB15-1258		
Cost Components	**FY 2015-16**	**FY 2016-17**
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$12,061	$48,240
Supplemental Employee Retirement Payments	6,698	29,394
Indirect Costs	21,035	84,225
TOTAL	**$39,794**	**$161,859**

**More information is available at: http://colorado.gov/fiscalnotes*

Local Government Impact

Like state agencies, all local governments will be required to implement payroll deductions for employees and coordinate sick leave, FMLA, and disability benefits when an employee applies for family and medical leave.

Effective Date

The bill takes effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2015-16, the Department of Labor and Employment requires a General Fund appropriation of $8,707,686 and 1.5 FTE. Of this, the Office of Information Technology requires $1,285,440 in reappropriated funds.

State and Local Government Contacts

Labor and Employment
Office of Information Technology
Municipalities
Regulatory Agencies
Revenue
Law
Treasurer
Personnel and Administration
Counties
Judicial