Initiative # 248

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

INITIAL FISCAL IMPACT STATEMENT

Date: February 18, 2020 **Fiscal Analyst:** Katie Ruedebusch (303-866-3001)

LCS TITLE: PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Fiscal Impact Summary*		FY 2021-22	FY 2022-23	FY 2023-24
Revenue	Cash Fund	-	$612.0 million	$1.2 billion
	Total	**-**	**$612.0 million**	**$1.2 billion**
Expenditures	General Fund	$3.2 million	$2.9 million	$5.6 million
	Cash Fund		$5.7 million	$271.7 million
	Total	**$3.2 million**	**$8.6 million**	**$277.3 million**

Disclaimer. *This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.*

Summary of Measure

The measure creates a statewide paid family and medical leave insurance program and division as an enterprise in the Department of Labor and Employment (CDLE). The purpose of the Family and Medical Leave Insurance (FAMLI) program and division is to provide partial wage-replacement benefits for up to 12 weeks per year to eligible employees, and employment protections for employees that take that leave. Premium payments for the program are split between employers and employees.

Applicability and definitions. The measure requires a premium payment from each employer and employee, with the exception of federal employees. Sole proprietors may opt-in to the program. "Family member" is defined as a person who is related by blood, marriage, domestic partnership, civil union, or adoption, or any individual with whom the covered individual has a significant personal bond that is like a family relationship, regardless of a biological or legal relationship. Qualifying events include an individual's serious health condition; caring for a newborn, an adopted child, or a child placed through foster care for the first year; caring for a family member with a serious health condition; and circumstances related to a family member's active military duty. Under the measure, domestic abuse, sexual assault or abuse, and stalking are also defined as safe leave for which a person may receive benefits.

Premiums. Employer and employee premium payments begin on January 1, 2023. Premiums are split 50 percent from the employer and 50 percent from the employee. The initial premium amount is set in the measure at 0.88 percent of wages per employee in the program's first two years. Premiums are applied on up to 80 percent of the maximum amount of wages subject to the Social Security Old-Age, Survivors, and Disability Insurance Tax. The division is required to set the premium for calendar year 2025 at a rate necessary to obtain a total amount of premium contributions equal to 135 percent of the prior year's claims and 100 percent of the cost of administration.

FAMLI Fund. The FAMLI fund is created as an enterprise fund within the State Treasury. The fund may be used only to repay revenue bonds issued to cover start-up costs; collect FAMLI premiums; pay FAMLI benefits to eligible individuals; and cover program administration and outreach costs. The fund may also receive and spend any gifts, grants, or donations received by the division to finance program set-up costs. The fund is continuously appropriated to the FAMLI division.

Benefits. The FAMLI division will pay benefits using revenue bond proceeds, premiums, and fines from the FAMLI fund. The amount of benefits an eligible individual can receive is based on the individual's wage in relation to the state average weekly wage (AWW) set annually by the CDLE based on the covered individual's AWW earned from the jobs or jobs from with the individual is taking leave. An eligible individual will receive 90 percent of their weekly wage for wages that are less than 50 percent of the state AWW and 50 percent of wages that equal or exceed 50 percent of the AWW, up to a maximum weekly benefit of $1,100 through January 1, 2025.

The FAMLI division must make the first benefit payment to a claimant within 2 weeks after the claim is filed, bi-weekly thereafter, for up to 12 weeks. The maximum number of weeks for which FAMLI benefits are payable to an eligible individual in aggregate for separate purposes in any consecutive 52-week period is 12 weeks, except that benefits are payable up to an additional 4 weeks (16 weeks in total) to an eligible individual with a serious health condition related to pregnancy or childbirth complications.

An eligible individual may take intermittent leave in increments of one hour or shorter if consistent with the increments the employer uses to measure employee leave, but the benefit is not payable until the eligible individual accumulates one day or eight hours of FAMLI leave. A covered individual must make a reasonable effort to schedule leave as not to unduly disrupt the operations of the employer.

Employer private plans. An employer with an approved private family and medical leave plan is not required to pay premiums. Private plans must confer all the same rights, protections, and benefits. The employer must furnish a bond to the state in a manner required by division, along with several other requirements. The division must annually determine the total amount expended by the division for the cost of administering private plans and seek reimbursement from employers offering private plans for the cost of administering the private plan requirements.

Local government employer declination. A local government can decline coverage according to rules set by the FAMLI program director.

Elective coverage. Self-employed individuals and employees of a local government employer that has declined coverage may elect coverage for not less than three years or a subsequent period of not less than one year immediately following another period of coverage. Self-employed individuals, or local government employees whose employer does not participate in the FAMLI program, who choose to opt-in, pay only the employee portion of the premium directly to the FAMLI division.

Employee eligibility. An employee is eligible to participate in the program if the employee has worked at least 180 days for his or her current employer. The initiative specifies procedures for self-employed individuals to elect coverage.

Employer requirements. Employers must collect employee premiums through a payroll deduction and remit the employer and employee contributions to the FAMLI division. If an employer has a disability or family leave policy already in place, this leave can be taken concurrently with FAMLI leave. Employers must post program notices and notify new hires of the FAMLI benefit program. Employers must also inform employees about the program upon learning of an employee's qualifying life event.

Employer penalties. While an employee is on leave, an employer must maintain the employee's benefits and may not discriminate against the employee in response to the employee's actual or requested leave. The FAMLI division will, by rule, create a fine structure for employers who violate these requirements. Fines are deposited into the FAMLI fund.

Appeals process and judicial review. The measure specifies that the FAMLI division shall establish a system for administrative review, determination of claims, and appeal. If an employee files a civil action to enforce a judgment made under the process, any court filing fee is waived. Claims against employers for violations of protections must be filed within two years of the event, with claims for wilful violations being brought within three years of the last event.

Federal and state income tax deduction. The measure requires the division to inform individuals filing claims about IRS implications on benefits, requirements, and that tax can be deducted on the front end from benefit payments. Under the initiative, FAMLI benefits are not subject to state income tax.

Outreach. FAMLI division must develop an outreach program by July 1, 2022, that explains the eligibility requirements, claims process, benefit amounts, notice and medical certification requirements, reinstatement and nondiscrimination rights, confidentiality of records, employment protection, and any other pertinent details, paid for by the newly created FAMLI fund.

Rulemaking, reporting, and other division responsibilities. The FAMLI division must adopt rules establishing the form and manner of filing a claim, setting premium amounts, and establishing a fine structure for employers. The division must follow federal tax withholding policies and may establish any other rules as necessary to establish the program. The division must report to the General Assembly by January 1, 2025, and by each April 1 thereafter, on program participation, including demographics, as well as premium rates, fund balances, and outreach efforts.

State Revenue

The measure is expected to increase state revenue from premiums by $612.0 million in FY 2022-23 and $1.2 billion in FY 2023-24. The measure may increase state revenue to the FAMLI fund from bond revenue and potentially gifts, grants, or donations to cover the expenditures beginning in FY 2021-22. The timing of revenue will depend on final budget estimates for the division and the timing of the issuance of the revenue bonds. As the FAMLI division is created as a state enterprise, these revenue sources are not subject to TABOR.

State Expenditures

The measure will increase state expenditures by:

- $3.2 million in FY 2021-22;
- $8.6 million in FY 2022-23; and
- $277.3 million in FY 2023-24;

The fiscal impact statement assumes that CDLE will use a General Fund loan for FY 2021-22 to fund the establishment of the enterprise, promulgate rules, begin system development, and issue revenue bonds. The measure also increases workload for all state agencies, and specifically the Department of Personnel and Administration (DPA) and the Judicial Department. These impacts are shown in Table 2 and discussed below.

Table 2
Expenditures Under Ballot Initiative #248
FY 2021-22 to FY 2023-24

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24
Department of Labor and Employment			
Personal Services	$1,070,072	$1,400,819	$3,898,668
Operating Expenses and Capital Outlay	$105,025	$41,550	$370,250
Information Technology Contractors	$927,680	$954,720	$981,760
IT Equipment	$103,332	-	-
Legal Services	$154,570	$77,285	-
Actuarial and Statistical Contract Services	$180,000	$180,000	$180,000
Market Outreach	$286,761	$286,761	$286,761
Financial Advisor	-	-	$429,000
Leased Space	$105,750	$123,375	$429,000
Other Costs	$220,409	$296,180	$980,597
Estimated Leave Benefits Paid	-	-	$258,292,683
FTE – Personal Services	12.4 FTE	17.0 FTE	63.0 FTE
FTE – Legal Services	0.9 FTE	0.4 FTE	-
CDLE Subtotal	**$3,153,599**	**$3,360,690**	**$265,848,719**
All State Agencies			
Premium Payments – General Fund		$2,882,954	$5,932,923
Premium Payments – Cash Funds		$2,318,816	$5,560,612
State Agencies (Subtotal)		**$5,201,770**	**$11,493,535**
Total	**$3,153,599**	**$8,562,460**	**$277,342,254**
Total FTE	**13.3 FTE**	**17.4 FTE**	**63.0 FTE**

Department of Labor and Employment. The newly created FAMLI division will work on bonding, general programmatic structure, providing input to the Office of Information Technology (OIT), and ramping up staff. CDLE will also bring on additional staff in future years when employee benefit payments begin and continue this staffing level in future years. Staffing will occur in phases, with 12.4 FTE in FY 2021-22, 17.0 FTE in FY 2022-23, and 63.0 FTE in FY 2023-24. Eventually, the division plans to employ 196 FTE within the division. The division also has costs related to: legal services, IT contracting, actuarial and financial advisors, bond interest payments, leased space, fleet vehicles, and mailings.

In addition, CDLE and OIT will need to build out a new premium and benefit IT system. The full cost to build the system is not known at this time and will likely be paid for with bond revenue. For informational purposes, past estimates for a premium and benefit system are approximately $40.0 million.

FAMLI benefits. Beginning January 1, 2024, this bill will increase expenditures for FAMLI benefit payments by $258.3 million in FY 2023-24 (half-year impact) and $516.6 million in FY 2024-25 (full). This fiscal impact statement assumes an state AWW of $1,294 and a 3.53 percent utilization rate for 12 weeks of leave.

Department of Personnel and Administration. The DPA will set up the new deduction for the state agencies it serves. It will also perform outreach to the state personnel system and update rules, technical guidance, and existing documentation to include information about the FAMLI benefit program. These workload increases can be accomplished within existing appropriations.

Judicial Department. Beginning in FY 2023-24, trial courts may see a minimal increase in workload from discrimination cases against employers for violating the employment protection provisions of the initiative. To the extent that these workload increases require additional appropriations, these will be requested through the annual budget process.

All state agencies. This measure is expected to increase state expenditures for premium contributions by $5.2 million in FY 2022-23 and $11.5 million in FY 2023-24 for all state agencies including institutions of higher education. These expenditures are estimated to be 56 percent General Fund and 44 percent cash funds. All state agencies will have an increase in workload to perform employee outreach and to track and administer leave and claims. Tracking of the FMLA, short-term disability, workers' compensation, and Public Employees' Retirement Association can be administratively complex.

Increased utilization of leave. Because the measure allows employees who have worked for at least 180 days during their qualifying year to receive benefits and expands the circumstances for which an employee can take leave, the utilization of leave by state employees is expected to increase. This may have a significant fiscal and operational impact to departments that hire temporary employees, especially in round-the-clock departments such as the Departments of Corrections, Human Services, and Public Safety. To the extent additional resources are required related to these two issues, these will be requested during the annual budget process.

Short-term disability benefits. The measure may result in a reduction in the amount of short-term disability benefits paid to employees, which may result in a cost savings through a reduction of the short-term disability premium. If this occurs, this adjustment will be addressed through the total compensation analysis included in the annual budget process.

Local Government Impact

Like the state, local governments that choose to participate, school districts, and statutory public entities will be required to pay the employer share of premiums, implement payroll deductions for employees, and coordinate sick leave, FMLA, short-term disability, and PERA benefits when an employee applies for FAMLI leave. These costs have not been estimated.

Economic Impact

This measure will increase insurance premium costs for employers and employees, reducing spending or saving elsewhere in the economy. Changes to paid family and medical leave policies may influence hiring decisions made by employers, including employment of temporary workers, and will increase business administrative costs. The measure may influence employment and leave decisions made by employees, who would otherwise not seek work. This may improve employment and income opportunities for some workers, and may redistribute the provision of some caregiving services from paid services to unpaid caregiving by friends and family.

Effective Date

If approved by voters at the 2020 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

State and Local Government Contacts

Counties	Information Technology	Judicial
Labor	Municipalities	Personnel and Administration
Revenue	School Districts	

Other Sources Considered

The following sources were submitted for consideration by Wendy Howell, Martha Tierney, and Timothy Tyler:

- University of Minnesota and Institute for Women's Policy Research Report: "Colorado Paid Family and Medical Leave: Program Design and Implementation": https://drive.google.com/file/d/1nN9QAwS0cfL5QqnlIKIJJb3dxKbxbxob/view

- University of Denver report: "Expert Analysis for Potential Colorado Paid Family and Medical Leave Program": https://drive.google.com/file/d/1nHrayv2WBJqJxauaoWMUnhL-iKJgz5r8/view

- Urban Institute Report: "An evidence-backed policy framework for paid family and medical leave in Colorado": https://drive.google.com/file/d/1n0lOSptfbT2AenR7QvHrafrylv03o8Zf/view

- Fact Sheet from the National Partnership for Women and Families with recent data from various state paid leave programs: http://www.nationalpartnership.org/research-library/work-family/paid-leave/paid-leave-works-in-california-new-jersey-and-rhode-island.pdf

- Summary report of 2016 paid family and medical leave usage in New Jersey, compiled by the New Jersey Department of Labor and Workforce Development: https://www.nj.gov/labor/forms_pdfs/tdi/FLI%20Summary%20Report%20for%202016.pdf

- Statistics on paid family leave compiled by the California Employment Development Department: https://www.edd.ca.gov/about_edd/Quick_Statistics.htm#DIStatistics

- US Department of Labor Microsimulation Model on Family and Medical Leave: https://www.dol.gov/agencies/oasp/evaluation/currentstudies/Microsimulation-Model-on-Worker-Leave

- IMPAQ International: "Estimating Usage and Costs of Alternative Policies to Provide Paid Family and Medical Leave in the United States": https://www.impaqint.com/work/issue-briefs/estimating-usage-and-costs-alternative-policies-provide-paid-family-and-medical

- Rhode Island Department of Labor and Training Temporary Disability Insurance and Family Leave Insurance program statistics: http://www.dlt.ri.gov/tdi/

Abstract of Initiative 248: PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of February 2020, identifies the following impacts:

State revenue. The measure expected to increase state revenue from premiums by $612.0 million in FY 2022-23 and $1.2 billion in FY 2023-24. The measure may increase state revenue from bond revenue and gifts, grants, or donations to cover the expenditures.

State expenditures. The measure will increase state expenditures by: $3.2 million in FY 2021-22; $8.6 million in FY 2022-23; and $277.3 million in FY 2023-24 to create and administer the paid family and medical leave program, as well as pay state employer contributions. In FY 2023-24, expenditures will increase to pay benefits.

Local government impact. Like the state, local governments that choose to participate, school districts, and statutory public entities will be required to pay the employer share of premiums, implement payroll deductions for employees, and coordinate leave and benefits for employees.

Economic impacts. This measure will increase insurance premium costs for employers and employees, reducing spending or saving elsewhere in the economy. Changes to paid family and medical leave policies may influence hiring decisions made by employers, including employment of temporary workers, and will increase business administrative costs. The measure may influence employment and leave decisions made by employees, who would otherwise not seek work. This may improve employment and income opportunities for some workers, and may redistribute the provision of some caregiving services from paid services to unpaid caregiving by friends and family.