

SB 1-FN - AS AMENDED BY THE SENATE

02/14/2019 0321s

2019 SESSION

19-1052

06/10

SENATE BILL ***1-FN***

AN ACT relative to family and medical leave.

SPONSORS: Sen. Feltes, Dist 15; Sen. Rosenwald, Dist 13; Sen. Chandley, Dist 11; Sen. Levesque, Dist 12; Sen. Cavanaugh, Dist 16; Sen. Dietsch, Dist 9; Sen. Morgan, Dist 23; Sen. Sherman, Dist 24; Sen. Kahn, Dist 10; Sen. Watters, Dist 4; Sen. Fuller Clark, Dist 21; Sen. Soucy, Dist 18; Sen. Hennessey, Dist 5; Sen. D'Allesandro, Dist 20; Rep. McMahon, Rock. 7; Rep. Fothergill, Coos 1; Rep. Wallner, Merr. 10

COMMITTEE: Finance

ANALYSIS

This bill establishes a system of paid family and medical leave insurance.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to family and medical leave.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Short Title. This act shall be known as the Granite Caregiving Act of 2019.

2 2 New Chapter; Family and Medical Leave Insurance. Amend RSA by inserting after chapter
3 282-A the following new chapter:

4 CHAPTER 282-B

5 FAMILY AND MEDICAL LEAVE INSURANCE

6 282-B:1 Findings. The general court finds that family and medical leave insurance will help
7 New Hampshire attract and retain the workforce of tomorrow, will help enable parents to bond with
8 biological, adopted, or foster children, will help meet the needs of an aging population and address
9 our caregiving crisis, will help advance the health of New Hampshire's workforce, including
10 combating the opioid public health epidemic. The general court therefore finds that it is in the
11 public interest to establish family and medical leave insurance (FMLI), while expanding business
12 options and maximizing the private sector as much as practicable.

13 282-B:2 Definitions. In this chapter:

14 I. "Benefit year" means the 12-month period beginning with the first day of the calendar
15 week in which the individual next files an application for FMLI benefits after the expiration of the
16 individual's last preceding application year.

17 II. "Calendar quarter" has the same meaning as in RSA 282-A:5.

18 III. "Commissioner" means the commissioner of the department of employment security.

19 IV. "Department" means the department of employment security.

20 V. "Employer" has the same definition as relevant provisions of RSA 282-A:8, except as
21 provided in RSA 282-A:9.

22 VI. "Employment" means wages paid for services by an employer that is covered by this
23 chapter.

24 VII. "Family member" means a spouse or domestic partner under RSA 457, son, daughter,
25 parent, stepparent, grandparent, or step grandparent related through birth, marriage, adoption,
26 foster care, or legal guardianship.

27 VIII. "Family and medical leave" means leave from work:

28 (a) Because of the birth of a child of the employee, within the past 12 months; or

29 (b) Because of the placement of a child with the employee for adoption, legal
30 guardianship, or fostering, within the past 12 months; or

31 (c) Because of a serious health condition of a family member; or

SB 1-FN - AS AMENDED BY THE SENATE
- Page 2 -

1 (d) Because of a serious health condition of the employee that isn't related to
2 employment; or

3 (e) Because of any qualifying exigency arising from the foreign deployment with the
4 Armed Forces, or to care for a service member with a serious injury or illness as permitted under
5 the federal Family and Medical Leave Act, 29 U.S.C. section 2612(a)(1)

6 IX. "FMLI" means family and medical leave insurance.

7 X. "Federal Family and Medical Leave Act" means the federal Family and Medical Leave
8 Act of 1993, 29 U.S.C. section 28.

9 XI. "Serious health condition" means any illness covered by the federal Family and Medical
10 Leave Act including treatment for addiction as prescribed by a treating clinician, consistent with
11 American Society of Addiction Medicine criteria, as well as treatment for a mental health condition,
12 consistent with American Psychiatric Association criteria.

13 XII. "Fund" means the family and medical leave insurance fund as described in RSA 282-
14 B:4.

15 282-B:3 Business Options; Applicability; Falsity by Employers.

16 I. This chapter applies to the state and nongovernmental employers beginning January 1,
17 2020, provided that any employer may instead exercise a business option of: participating in a self-
18 insured plan, self-insuring, purchasing insurance, providing benefits, or any combination thereof,
19 upon employer application and certification by the commissioner or authorized representative that
20 the employer will provide an equivalent benefit to all of its employees. If the employer is subject to
21 a collective bargaining agreement, this chapter shall apply to the employer upon the effective date
22 of the first successor collective bargaining agreement following January 1, 2020 to permit the
23 employer and the union to negotiate the premium rate share under RSA 282-B:3, II. Political
24 subdivisions of the state may opt into this chapter upon certification by the authorized
25 representative that this chapter's insurance benefits are at least equivalent to the benefits provided
26 under the collective bargaining agreement, provided the applicable bargaining unit has first ratified
27 this option. Beginning January 1, 2020, this chapter shall be a mandatory subject of bargaining for
28 collective bargaining agreements. Employees not covered by a collective bargaining agreement in a
29 political subdivision of the state may opt into this chapter if the political subdivision has not.

30 II. All employers subject to this chapter not exercising the business option in paragraph I
31 shall remit FMLI premium payments on a calendar quarter basis, beginning January 1, 2020.
32 These quarterly insurance premium payments shall amount to 0.5 percent of wages per employee
33 per week for each week of the preceding quarter. Such employers with the obligation to remit have
34 the option of paying some or all of the FMLI premium payments on behalf of employees, or may
35 instead withhold or divert no greater than 0.5 percent of wages per week per employee to satisfy
36 this paragraph.

37 III. The penalties for falsity by employers shall be in accordance and consistent with RSA
38 282-A:166. The process for failing to adequately report shall be in accordance and consistent with

SB 1-FN - AS AMENDED BY THE SENATE
- Page 3 -

1 RSA 282-A:151, RSA282-A:152, and 282-A:166-a, and any resulting appeals shall be processed in
2 accordance and consistent with RSA 282-A:94 through RSA 282:98.

3 282-B:4 Family and Medical Leave Insurance Fund Administration. The department shall
4 create and administer a family and medical leave insurance fund for deposits of insurance payments
5 paid pursuant to RSA 282-B:3, and accept any other deposit of moneys as authorized by law or by
6 the commissioner or authorized representative. No FMLI fund moneys shall be co-mingled with
7 unemployment insurance fund moneys. The department is authorized to withdraw or deduct from
8 the FMLI fund where there are qualifying FMLI benefit payments or for any amounts reasonably
9 necessary to implement and administer the provisions of this chapter.

10 282-B:5 Employer and Employee Responsibilities.

11 I. An employee shall both file an application with the department, including any applicable
12 medical certification or birth certificate, and provide his or her employer with written notice of
13 intent to take a leave of absence at least 30 days before the leave will begin unless the leave was not
14 reasonably foreseeable or the time of the leave changes due to circumstances that were not
15 reasonably foreseeable. An employee's failure to provide required notice may delay or reduce
16 benefits.

17 II. Any employee of an employer with 20 or more employees who takes leave under this
18 chapter shall be restored to the position he or she held in the application period or to an equivalent
19 position by his or her employer in accordance and consistent with the Federal Family and Medical
20 Leave Act. Employers shall continue to provide health insurance to employees during the leave, but
21 employees remain responsible for any employee-shared costs associated with the health insurance
22 benefits. Employers shall not retaliate against any employee for exercising his or her rights under
23 this chapter.

24 III. An employer may require that leave taken under this chapter be taken concurrently or
25 otherwise coordinated with leave allowed under the terms of a collective bargaining agreement or
26 other established employer policy. The employer shall give individuals in its employ written notice
27 of such requirement, if applicable.

28 282-B:6 Eligibility Process; Calculation; Appeals.

29 I. An employee shall be limited up to 12 weeks of FMLI in any one application period. An
30 employee shall have had premium payments remitted as a percent of his or her wages for at least 6
31 months to be eligible for benefits and shall have worked in employment resulting in wages in the
32 amount of at least 1,040 multiplied by the applicable minimum wage, in either the "base period" or
33 "alternative base period", as those terms are defined in RSA 282-A:2.

34 II. An employee shall be eligible for FMLI if she or he meets the provisions of paragraph I
35 and has a qualifying leave under RSA 282-B:2, IX.

36 III. The calculation of weekly FMLI benefits shall be the highest quarter of wages in either
37 the base period or alternate base period as defined in RSA 282-A:2, then divided by 13 and
38 multiplied by 0.6, provided that no such calculation of FMLI benefits shall be less than \$125 per

SB 1-FN - AS AMENDED BY THE SENATE
- Page 4 -

1 week or greater than 0.85 of the average weekly wage in New Hampshire. The calculation for
2 partial FMLI benefits shall be in a manner consistent with RSA 282-A:14. A determination on a
3 FMLI claim must be made within 3 business days of the application.

4 IV. The process for FMLI benefits claims, violations, and any resulting appeals shall be in
5 accordance and consistent with RSA 282-A:42 through RSA 282:68 and RSA 282-A:118. The
6 standard and process for handling overpayments shall be in accordance and consistent with RSA
7 282-A:29, RSA 282-A:141-RSA 282-A:156 and RSA 282-A:165. In addition, an individual shall be
8 disqualified from FMLI benefits beginning with the first day of the calendar week, and continuing
9 for the next 26 weeks, in which the individual has been found to willfully made a false statement or
10 misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain
11 benefits under this chapter.

12 285-B:7 Limitations. Nothing in this chapter shall diminish an employer's obligation to comply
13 with a collective bargaining agreement or employer policy, nor does this chapter, or any decision by
14 the commissioner or authorized representative under this chapter, limit the ability of employers to
15 provide FMLI benefits or benefits beyond what is required by this chapter.

16 282-B:8 Report and Outreach.

17 I. The department shall make public and provide semi-annual reports to the governor,
18 senate president, speaker of the house of representatives, and the advisory council established
19 pursuant to RSA 282-A:128 involving a summary to include but not be limited to, compliance with
20 this chapter, payments into and out of the fund, fund balance, utilization rates including for low
21 wage employees, and retention of employees who received FMLI benefits.

22 II. The department shall develop and implement an outreach program to ensure that
23 individuals who may be eligible to receive FMLI benefits under this chapter are made aware of
24 these benefits. Outreach information shall explain in an easy to understand format, eligibility
25 requirements, the claims process, weekly benefit amounts, maximum benefits available, notice
26 requirements, reinstatement and non-discrimination rights, confidentiality, and coordination of
27 leave under this chapter and other laws, collective bargaining agreements, and employer policies.

28 282-B:9 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to
29 implementation of this chapter. In adopting rules, the commissioner shall maintain consistency
30 with the rules adopted to implement the federal Family and Medical Leave Act, to the extent such
31 rules are not in conflict with this chapter.

32 282-B:10 Sustainability Mechanism. The commissioner shall continuously monitor the
33 solvency of the fund. Should the commissioner determine at any time that the solvency of the fund
34 is in jeopardy, or that the fund is in excess of necessary funds, the commissioner shall provide the
35 advisory council with data supporting such solvency determination and may prospectively, effective
36 in a future calendar quarter, increase or reduce FMLI premiums in RSA 282-B:3, II, decrease the
37 benefits payable in RSA 282-B:6, III, or decrease the allowable length of leave in RSA 282-B:6, I, or
38 any combination thereof, provided such prospective changes are no greater than or less than 10

percent of those required under this chapter. If the commissioner thereafter determines such changes are no longer necessary for fund solvency the commissioner shall reverse such changes. Advance notice of any and all changes pursuant to this paragraph shall be provided to all covered employers and employees.

282-B:11 Third Party Administration. The department shall undertake best efforts to secure a suitable third party administrator. The department shall issue an initial request for proposals for a third party administrator for actuarial support, fund administration, the processing of benefits claims, payments, and appeals up to the appellate board, no later than July 30, 2019. No proposal shall be selected unless it is demonstrated that the benefits claims, payments, and appeals can be processed in accordance with this chapter and at less cost than the department. A contract for the third party administration shall include a clause for department termination for noncompliance with this chapter. A contract for the third party administration shall be first reviewed and approved by governor and executive council.

3 Advisory Council. Amend RSA 282-A:128 to read as follows:

282-A:128 Advisory Council. There is hereby created within the unemployment compensation bureau an advisory council on unemployment compensation *and family medical leave insurance*, hereinafter called the advisory council. The advisory council shall consist of 9 members to be appointed, with the exception of the legislative members, by the governor with the consent and advice of the governor's council. Three of the appointees of this advisory council shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employers; 3 shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employees; one shall be a senator from the insurance committee appointed by the senate president; one shall be a representative from the labor, industrial and rehabilitative services committee appointed by the speaker of the house; the remaining appointee, who shall be designated as chairman, shall be a person whose training and experience qualify him to deal with the problems of unemployment compensation. Such advisory council shall meet no later than 45 days after each calendar quarter and aid the commissioner in formulating policies and discussing problems related to the administration of this chapter *and RSA 282-B* and in assuring impartiality and freedom from political influence in the solution of such problems. Advisory council meetings shall provide opportunity for public comment. *The advisory council shall quarterly review and evaluate family medical leave insurance and, after 2 years of administration, the commissioner shall assess utilization, finances, and benefit levels and provide the general court with rate adjustment or fiscal recommendations.*

4 New Subparagraph; State Treasurer; Application of Receipts. Amend RSA 6:12, I(b) by inserting after subparagraph (343) the following new subparagraph:

(344) Moneys deposited in the family and medial leave insurance fund established in RSA 282-B:4.

1 5 Family and Medical Leave Insurance Program; Funding. The state treasurer shall transfer
2 funds from the general fund for fiscal year ending June 30, 2019 for the initial administrative and
3 implementation costs associated with the this chapter, including the FMLI premium collections
4 computer upgrades. If a third-party administrator is not selected, the state treasurer shall transfer
5 funds necessary to begin full administration and implementation from fiscal year ending June 30,
6 2020. Within the first 5 years after the family and medical leave insurance program is operational,
7 the department shall repay the general fund transfer in installments from funds deducted from the
8 family and medical leave fund.

9 6 Effective Date. This act shall take effect 60 days after passage.

SB 1-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2019-0321s)

AN ACT relative to family and medical leave.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	Indeterminable	Indeterminable
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Funding Source:	☒ General ☐ Education ☐ Highway ☒ Other - Family and Medical Leave Insurance Fund			

METHODOLOGY:

This bill would create a system of paid family medical leave to be administered either wholly or partially by the Department of Employment Security. As amended by the Senate, the scope of the responsibilities that could possibly be undertaken by the third-party administrator (TPA) is broadened to include actuarial analysis and fund administration. As introduced, the bill limited the areas that could be administered by the TPA to processing of benefits claims, payments and appeals up to the appellate board. As a result of the amendment, the Department considered two scenarios regarding development and administration of the FMLI program. Either, the Department would develop and administer the entire program, or the entire program would be developed and administered by the TPA.

The Department updated the revenue estimate from the original fiscal note based on more recent wage and employment data (4th quarter of 2017 and 1st quarter of 2018 vs 2016 data used in the original fiscal note). In addition, the revenue attributable to state government was understated in the original fiscal note. Based on the most recently available wage and employment data, the revised estimated annual revenue amounts are \$163.17 million from private sector employment and \$5.45 million from state government employment for a total of \$168.62 million. Because the estimate is based on currently available data from 4th quarter of 2017 and 1st quarter of 2018, any projection forward to FY 2022 would be speculative, therefore the revenue to the FMLI fund beginning in FY 2022 cannot be determined.

The costs to the Department associated with development and maintenance of the FMLI Program would depend upon the outcome of the request for proposals (RFP) from third party

administrators.

Third Party administered (TPA). If the RFP is successful and results in the Department entering into a contract for administration of the entire FMLI program, the Department would not have development and administration costs as those would be the responsibility of the TPA. The costs associated with the TPA's development and administration of the FMLI program would be determined during the RFP process and are not known at this time.

Department developed and administered program. The FMLI program would be maintained separate from the Department's unemployment compensation program. The program would require IT infrastructure for processing and paying FMLI benefits, and separate IT infrastructure for the processing and accounting for the associated FMLI revenue. The new IT infrastructure associated with the FMLI benefits would be developed by a private vendor selected after a competitive request for proposals process. The Department currently relies upon a private IT vendor to administer and maintain the unemployment compensation benefit system. Since the FMLI Benefits system would be constructed as an enhancement to but separate from the unemployment compensation benefit system, it would be logical to have the IT development for the FMLI Benefits system done by a private IT vendor. The Department estimates development of the benefit program would take 30 months including time for an RFP process and contract approval.

The new IT infrastructure associated with FMLI Revenue would be developed by existing and new staff at the state Department of Information Technology (DoIT). The Department currently relies upon state DoIT staff to administer and maintain the existing unemployment compensation revenue program. As FMLI Revenue would be constructed as an enhancement to but separate from the existing unemployment compensation revenue system, it is logical to have existing and new staff from DoIT responsible for this development. The Department estimates development of the revenue program would take 24 months.

Based on the assumptions above, the Department prepared the following cost estimates to develop and maintain the FMLI program by state fiscal year:

	FY 2020	FY 2021	FY 2022	FY 2023
Development Costs Only	\$3,924,710	\$6,565,239		
Development and Maintenance Costs			\$7,706,397	
Maintenance Costs Only				\$6,641,571
Additional Staff	6.88 FTEs	9.13 FTEs	38.61FTEs	43.61FTEs

Notes: FTE = Full-time equivalent.

Because completion of the benefit IT Infrastructure is estimated to take 30 months, completion of development and start of the program would be midway through FY 2022. Ongoing maintenance cost will be \$6.42 million in FY 2023 the first complete year of operation.

FMLI Total Program Development Costs	
FMLI Benefit Payment Application – Vendor	\$10,000,000
State Staffing for Development	\$4,693,147
New Hardware – Revenue Application	\$200,000
New Hardware – Benefit Payment Application	\$200,000
Total:	\$15,093,147

Annual Maintenance Cost	
Benefit System Application - Vendor Payment	\$2,000,000
State Staffing	\$4,641,571
Total:	\$6,641,571

AGENCIES CONTACTED:

Department of Employment Security