HB 712-FN - FINAL VERSION

27Feb2019... 0418h
8Jan2020... 2786h
11Jun2020... 1503EBA

2020 SESSION

19-0371
06/10

HOUSE BILL ***712-FN***

AN ACT relative to a family and medical leave insurance program.

SPONSORS: Rep. Wallner, Merr. 10; Rep. Martin, Hills. 23; Rep. Fothergill, Coos 1; Rep. K. Murray, Rock. 24; Rep. Altschiller, Rock. 19; Rep. McBeath, Rock. 26; Rep. Wazir, Merr. 17; Rep. McMahon, Rock. 7; Rep. Luneau, Merr. 10; Rep. Le, Rock. 31; Rep. Loughman, Rock. 21; Sen. Fuller Clark, Dist 21; Sen. Rosenwald, Dist 13

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

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

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

AN ACT relative to a family and medical leave insurance program.

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

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

CHAPTER 282-B

FAMILY AND MEDICAL LEAVE INSURANCE

282-B:1 Findings. The general court finds that family and medical leave insurance will help New Hampshire attract and retain workers, including younger workers, will enable parents to bond with biological, adopted, or foster children, will help meet the needs of an aging population, will advance the health of New Hampshire's workforce and workplace stability, and will enhance worker retention and productivity. The general court therefore finds that it is in the public interest to establish a system of family and medical leave insurance (FMLI) with benefits to be provided to qualified workers on a limited basis.

282-B:2 Definitions. In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

282-B:3 Employer Applicability.

I. This chapter applies to the state and nongovernmental employers beginning January 1, 2021, provided that any employer may instead exercise a business option of: participating in a self-insured plan, self-insuring, purchasing insurance, providing benefits, or any combination thereof, upon employer application and certification by the commissioner or authorized representative that the employer will provide an equivalent benefit to all of its employees. If the employer is subject to a collective bargaining agreement, this chapter shall apply to the employer upon the effective date of the first successor collective bargaining agreement following January 1, 2021 to permit the employer and the union to negotiate the premium rate share under RSA 282-B:3, II. Political subdivisions of the state may opt into this chapter upon certification by the authorized representative that this chapter's insurance benefits are at least equivalent to the benefits provided under the collective bargaining agreement, provided the applicable bargaining unit has first ratified this option. Beginning January 1, 2021, this chapter shall be a mandatory subject of bargaining for collective bargaining agreements. Employees not covered by a collective bargaining agreement in a political subdivision of the state may opt into this chapter if the political subdivision has not.

II. All employers subject to this chapter shall remit FMLI premium payments on a calendar quarter basis. These quarterly insurance premium payments shall amount to 0.5 percent of wages per employee per week for each week of the preceding quarter. Employers may withhold or divert no greater than 0.5 percent of wages per week per employee to satisfy this paragraph, provided that such employers provide employees, before employment commences, a department approved information sheet containing conspicuous language explaining the costs and benefits of the insurance.

III. The penalties for falsity by employers shall be in accordance and consistent with RSA 282-A:166. The process for failing to adequately report shall be in accordance and consistent with RSA 282-A:151-152 and 282-A:166-a, and any resulting appeals shall be processed in accordance and consistent with RSA 282-A:94-98.

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

282-B:5 Employer and Employee Responsibilities.

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

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

III. An employer may require that leave taken under this chapter be taken concurrently or otherwise coordinated with leave allowed under the terms of a collective bargaining agreement or employer policy. The employer shall give individuals in its employ written notice of this requirement.

282-B:6 Eligibility Process, Calculation, and Appeals.

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

II. An employee shall be eligible for FMLI for reasons identified in paragraph I and RSA 282-B:2, VIII.

III. The calculation of weekly FMLI benefits shall be the highest quarter of wages in either the base period or alternate base period as defined in RSA 282-A:2, then divided by 13 and multiplied by 0.6, provided that no such calculation of FMLI benefits shall be less than $125 per week or greater than 0.85 of the average weekly wage in New Hampshire. The calculation for partial FMLI benefits shall be in a manner consistent with RSA 282-A:14.

IV. The process for FMLI benefits claims, violations, and any resulting appeals shall be in accordance and consistent with RSA 282-A:42 through RSA 282-A:68 and RSA 282-A:118. Processing of benefits claims and benefit payment may be administered by a third party selected through a request for proposals issued by the department. The standard and process for handling overpayments shall be in accordance and consistent with RSA 282-A:29, RSA 282-A:141-RSA 282-A:156 and RSA 282-A:165. In addition, an individual shall be disqualified from FMLI benefits beginning with the first day of the calendar week, and continuing for the next 26 weeks, in which the individual has been found to willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter.

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

282-B:8 Report and Outreach.

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

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

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

282-B:10 Sustainability Mechanism. The commissioner shall continuously monitor the solvency of the fund. Should the commissioner determine at any time that the solvency of the fund is in jeopardy, or that the fund is in excess of necessary funds, the commissioner shall provide the advisory council with data supporting such solvency determination and may prospectively, effective in a future calendar quarter, reduce FMLI premiums in RSA 282-B:3, II, decrease the benefits payable in RSA 282-B:6, III, or decrease the allowable length of leave in RSA 282-B:6, I, or 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 Family and Medical Leave Insurance Program; Funding Transfer and Repayment. The state treasurer shall transfer funds from the general fund to the department of employment security for payment of the initial administrative and implementation costs associated with this chapter. In the first year the family and medical leave insurance program becomes operational, the treasurer shall transfer $3,500,000. In the second year of operation, the treasurer shall transfer $12,000,000. Within the first 5 years after the family and medical leave insurance program becomes operational, the department shall repay the general fund transfers in installments from funds deducted from the family medical leave insurance fund as follows: 10 percent in year 3, 40 percent in year 4, and 50 percent in year 5. The department shall have the option of prepaying the full amount at any time.

2 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 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 ***or her*** 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.***

3 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 medical leave insurance fund established in RSA 282-B:4.

4 Effective Date. This act shall take effect July 1, 2020.

VETOED July 10, 2020

LBAO
19-0371
Amended 2/28/20

HB 712-FN- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2019-2786h)

AN ACT relative to a family and medical leave insurance program.

FISCAL IMPACT: [X] State [X] County [X] Local [ ] None

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

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	$0	$0	$0	$0

Expenditures	$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill establishes a system of paid family and medical leave insurance. The Department of Employment Security would administer the program. The program would apply to non-governmental employers, but provide an option for employers to opt out of the program if they could demonstrate they were providing an equivalent insurance plan for employees. The program would allow the state and political subdivisions to opt in to the program provided they could show that the program benefits are at least equivalent to the benefits in their existing plans. Participating employers would remit payments equal to 0.5% of wages on a quarterly basis for deposit in the family medical leave insurance fund (FMLI fund). Qualifying employees would be able to take up to 12 weeks of paid leave during any 12 month period for certain qualifying events. The benefit would be 60% of the employee's average wage during the highest earning quarter in the base period, but not less than $125 per week and not higher than 85% of the average weekly NH wage. The Department made the following assumptions in considering the fiscal impact of the bill:

- Full participation from non-governmental employers, as the Department does not have information on how many employers may elect to obtain their own insurance. It is not possible at this time to speculate which public employers may opt into the program.
- The Department would be responsible for administering the FMLI fund regardless of whether or not a third party administrator is engaged to administer the benefits. Based on data from the 4th quarter of 2017 through the 3rd quarter of 2018, the Department calculated the proposed 0.5% premium would generate annual revenue of $168.6 million from state and private employers. Since participation from local public employers is unknown, no revenue is assumed for local governments.
- It is not possible to estimate the total annual FMLI benefit costs as the number of participants in the program and/or the number of applications for leave cannot be predicted, however the Department does have wage and employment information.
- Concerning development and maintenance of the program, the cost to the Department would depend on whether the benefits are administered by the Department or by a third party administrator. If the benefits are administered by a third party, costs to the Department would be limited to issuing an RFP for administration of the FMLI benefit program, developing and administering the outreach program to create awareness of the program to employers and employees and developing, administering and maintaining of the FMLI revenue application.
- If the FMLI benefit program is administered by a third party, the Department assumes the vendor would be paid from the FMLI fund.
- If the RFP is not successful, the Department would incur additional costs to develop, administer and maintain the benefit component of the FMLI program.
- Development of the programs would take 24 months, regardless of who administers the benefits. This is the amount of time required to develop both the benefit and revenue IT infrastructures, which would be maintained separately from the Department's unemployment compensation program. The benefit infrastructure, if administered by a third party, would be developed by a private vendor selected through a competitive RFP process.
- The IT infrastructure associated with the FMLI revenue program would be developed by existing and new staff at the Department of Information Technology (DoIT). The Department currently relies on DoIT staff to manage the existing unemployment compensation revenue program. The Department assumes the FMLI revenue component would be constructed as an enhancement, but separate from the existing program.
- Both the FMLI benefit program and the FMLI revenue program would be developed simultaneously. Completion of the revenue program would be in 24 months, and completion of the benefits program would be in 30 months due to the time needed to issue an RFP, negotiate a contract and receive Governor and Council approval of the contract.
- Additional costs would include staff from the Department and DoIT working alongside the IT vendor to develop and test the systems, annual maintenance services for the FMLI benefit system from and outside vendor (20% of development cost), additional hardware, and leased office space and equipment for the new staff.

The Department projected the anticipated costs assuming the Department administering the entire FMLI program, and then separately assuming a third party administrator would administer the FMLI benefit program and the Department would administer the FMLI revenue program.

Department Administers Both Applications	Staff*	FY 2021	FY 2022	FY 2023	FY 2024
Development	6.88 FTEs	$3,924,710			
Development	9.13 FTEs		$6,565,239		
Development / Maintenance	38.61 FTEs			$7,706,397	
Maintenance	43.61 FTEs				$6,641,571
Total		$3,924,710	$6,565,239	$7,706,397	$6,641,571
Source of Funds		General	General	TBD	FMLI Fund

*FTE = Full-time Equivalent

The Department projected the development and ongoing maintenance costs for both programs as follows:

Development Costs – Both Applications	
Vendor Develop FMLI Benefit Payment Application	$10,000,000
State staffing- Development	$4,693,147
New Hardware -Revenue Application	$200,000
New Hardware Benefit Application	$200,000
Total Development Costs:	$15,093,147
Annual Maintenance – Both Applications	
Maintenance of Benefit System Application (Paid to Outside Vendor)	$2,000,000
State Staffing - Maintenance	$4,641,571
Total Maintenance Costs:	$6,641,571

The Department provided the following cost projections to administer the FMLI revenue application:

Development Costs – Revenue Application	
State DoIT Staffing	$1,575,894
State Program Staffing	$1,006,041
New Hardware	$200,000
Office Lease, Equipment and In-State Travel	$176,062
Total Development	$2,957,997
Annual Maintenance – Revenue Application	
State DoIT Staffing	$275,236
State Program Staffing	$1,206,320
Office, In-State Travel, Banking Fees	$106,012
Total Maintenance Costs:	$1,587,568

The bill authorizes the State Treasurer to transfer General Funds in the amount of $3,500,000 to the Department of Employment Security in the first year the program becomes operational, and $12,000,000 of General Funds in the second year of operation for payment of the initial administrative and implementation costs. The program will not be operational until both applications are developed. The Department is concerned about the timing of the transfers as the program would not be operational until the applications are developed and, as written, the transfers occur well after the development costs will have been incurred. The Department indicates there is no other source of funds for the payment of these costs.

Within the first five years after the program becomes operational, the Department is to repay the general fund in installments from the FMLI fund. After the program is operational, if the Commissioner determines the solvency of the fund is in jeopardy, the Commissioner shall provide data supporting this determination to the advisory council and may reduce premiums, decrease benefits, or decrease the length of leave, but by no more than 10 percent. After the Commissioner determines the changes are no longer necessary for fund solvency the changes shall be reversed. If the Commissioner the fund balance is in excess of necessary funds, the Commissioner shall provide data supporting the determination to the advisory council and reduce FMLI premiums.

The Insurance Department assumes it would not be involved with the program and there would be no impact on its operating budget. The Department does not anticipate the program will impact existing insurance products or product sales. The Department acknowledges that there are some products that may duplicate some of this coverage, but assumes the differences between this program and market coverage are enough that the bill would not cause changes in market behavior. The Department further assumes there would be no impact on Insurance Premium Tax revenue or on county or municipal health insurance benefit costs.

AGENCIES CONTACTED:

Departments of Employment Security and Insurance