

LFC Requester:

Jennifer Faubion

## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 2/24/2025

*Check all that apply:*

**Bill Number:** HB446

Original  Correction   
Amendment  Substitute

**Sponsor:** Rep. Rebecca Dow, Rep. Gail  
Armstrong, Rep. Luis M.  
Terrazas, Rep. Angelita  
Mejia, Rep. Jenifer Jones

**Agency Name and Code Number:** 305 – New Mexico  
Department of Justice

**Short**

**Title:** Parental Leave & Fund

**Person Writing**

**Analysis:** AAG Erica Schiff

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### SECTION II: FISCAL IMPACT

#### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

#### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

#### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: May be duplicative of HB11 (discussed in greater detail in the Conflicts section, below)

Duplicates/Relates to Appropriation in the General Appropriation Act: none noted

### **SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

### **BILL SUMMARY**

#### Synopsis:

HB446 proposes an amendment to the Early Childhood Education and Care Fund (the "Care Fund") to allow appropriations for parental leave compensation. HB446 also enacts the Paid Parental Leave Act (the "Act"), to be administered by the New Mexico Department of Workplace Solutions (the "Department") and creates the Supplemental Paid Parental Leave Fund, which would pay an eligible applicant a percentage of their wages for six to nine weeks to bond with a new child, be it through birth, adoption, or fostering.

Section 1 would amend NMSA 1978, Section 9-29A-1 concerning the Care Fund to include subsection F, which provides that the Legislature may appropriate funds from the Care Fund to the Department for the purpose of paying leave to employees and self-employed individuals covered by the Act.

Section 2 contains the short title, the Paid Parental Leave Act.

Section 3 defines the terms "applicant," "application year," "claim for leave," "department," "employee," "employer," "Indian tribe," "leave compensation," "parental leave," "secretary," "supplemental leave compensation," "supplemental parental leave," and "wages."

Section 4 creates the "Supplemental Paid Parental Leave Fund," (the "Parental Leave Fund"), to be administered by the Department. The Parental Leave Fund is to be held for the benefit of employees and self-employed individuals who opt-in to paying into the Parental Leave Fund.

Section 5 states that the Act applies to all public and private employees, self-employed individuals and Indian tribes in New Mexico. The Act provides eligible applicants to receive up to six weeks of leave compensation, as well as three weeks of supplemental leave compensation, if the employee opts in, paid from the Parental Leave Fund. Individuals who opt-in to the supplemental leave program contribute .5% of their wages to the Parental Leave Fund.

Section 6 outlines who is and is not eligible for leave compensation, how leave compensation is to be calculated, and what documentation is required.

Section 7 outlines the claim procedure. Eligible applicants must provide proof of the birth or adoption of a child or placement of a foster child with the applicant.

Section 8 details notification to employers regarding an employee's intent to take parental leave and provides a right to appeal a determination to the Department, as described in greater detail in Section 11.

Section 9 provides for an employee's return to employment following a period of parental leave.

Section 10 prohibits interference and retaliation against an employee using leave under the Act.

Section 11 provides for appeals of adverse determinations and creates a grievance procedure for complainants to file administrative actions with the Department for alleged violations of provisions of the Act. Complaints must be filed within thirty business days of becoming aware of a violation of the Act.

Section 12 preempts cities, counties, and other municipalities or political subdivisions from enacting programs with comparable provisions to those created under HB446, excluding paid sick leave or paid time off ordinance, policy, or resolution. Cities, counties and municipalities may still establish policies for its own employees.

Section 13 states that the Act shall not be construed to diminish rights, privileges, and remedies under any collective bargaining agreement

Section 14 provides that the Department will promulgate rules to implement the Act.

Section 15 is a temporary provision for creation of an advisory committee to implement the Act.

## **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

None noted for this agency.

## **SIGNIFICANT ISSUES**

The timeline for filing an administrative action with the Department alleging violation of the Act is an extremely short timeline. HB446 limits the timeframe for which an aggrieved party may file a complaint to within thirty business days the complainant becoming aware of the alleged violation. Comparable administrative grievance procedures for violations of state employment law currently exist in statute. *See, e.g.*, the New Mexico Human Rights Act, NMSA 1978, § 28-1-10(A) (requiring a complainant to file a grievance with the Human Rights Commission within three hundred days of the alleged wrongful act).

The only apparent source of funding for the six weeks of non-supplemental leave described in Section 5 is the Early Childhood Education and Care Fund. The Early Childhood Education and Care Fund is created pursuant to NMSA 1978, Section 9-29A-1

(2024), which is funded by “distributions, appropriations, gifts, grants and donations.” The Early Childhood Education and Care Fund was created in 2020 and is funded by money received by New Mexico pursuant to the federal Mineral Leasing Act in excess of the average annual amount. NMSA 1978, § 9-29A-3 (2024). Given the unreliable nature of funding for the Early Childhood Education and Care Fund, it is unclear whether this fund could serve to pay six weeks of parental leave for all eligible parents, particularly as three weeks of supplemental leave would require contributions of .5% of wages to the Supplemental Paid Parental Leave Fund.

## **PERFORMANCE IMPLICATIONS**

None for this agency.

## **ADMINISTRATIVE IMPLICATIONS**

None for this agency.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB11 and its substitute propose creation of a statewide program of paid family leave, which would include welcome child leave, bereavement leave, foster leave, medical leave, qualifying exigency leave, and safe leave, administered by the Department and funded through employee contributions. Unlike HB446, employees would not “opt-in” to contribute under any portion of HB11, although employers may obtain a waiver if they have implemented a similar leave plan. HB446 does not legally conflict with HB11 or its substitute, but the bills are similar and may be duplicative, in that both create a fund, funded by contributions from employee paychecks, for payment of leave that includes parental leave.

## **TECHNICAL ISSUES**

None.

## **OTHER SUBSTANTIVE ISSUES**

None.

## **ALTERNATIVES**

None.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**

None.