

LFC Requester:

Kelly Klundt

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared 2/18/25 *Check all that apply:*
Bill Number: HB0446 Original Correction
Amendment Substitute

Sponsor: Rebecca Dow, Gail Armstrong,
Luis M. Terrazas, Angelita
Mejia, Jennifer Jones **Agency Name
and Code** Dept. of Workforce Solutions-631
Number: _____
**Person Writing
Analysis:** Sarita Nair
Email _____
**Short
Title:** Parental Leave and Fund **Phone:** 505-263-3187 : Evan.Sanchez@dws.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
Unknown	Unknown		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
0	Unknown	Unknown		Supplemental Paid Parental Leave Fund

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	13,750.0	14,556.9	14,545.6	42,852.5	Year 3 costs recurring	Unclear

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 11
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 446 would create the Paid Parental Leave program, which would provide 6 weeks of paid leave for employees within 12 months of the birth or adoption or foster placement of a child, with the ability to expand leave for an additional 3 weeks of supplemental leave under certain conditions. The bill would amend the Early Childhood Education and Care Fund to allow the legislature to appropriate from that fund to WSD to pay the leave compensation (but not the administrative costs) of the Paid Parental Leave Act.

How it works. Eligible individuals are entitled to six weeks of paid leave within 12 months of the birth, adoption or foster placement of a child. Because this term is not defined in the bill, we refer to the six-week entitlement as “Base Leave.” Employees and self-employed individuals may opt into a Supplemental Paid Parental Leave Program by contributing 0.5% of their wages up to the social security earnings cap. We refer to this as “Supplemental Leave.”

Who is eligible? HB 446 does not provide eligibility factors for the Base Leave program, other than being employed or having documentation of self-employment. (Section 6(G)). Eligible individuals for the Supplemental Leave program (Section 6(B)) must have:

- filed a claim for leave compensation,
- received the initial 6 weeks of Base Leave, and
- contributed to the Supplemental Paid Parental Leave Fund for at least six months in the 12-month period before applying.

An individual may become ineligible by willfully or knowingly filing a fraudulent claim, receiving unemployment insurance for the period of the claim, not using the leave for the purpose intended, is receiving duplicate payments from workers’ comp, or is earning wages for the same time period. (Section 6(D))

How much is leave compensation? An employee’s weekly leave compensation payment is calculated by first determining their average weekly wage in the 12 months leading up to the application for leave. Next, multiply the current state minimum wage by the number of hours per week the employee works. To that figure, add 67% of the employee’s average weekly wage to determine the amount of their weekly leave compensation payment. (Section 6(E))

For the self-employed, multiply the current state minimum wage by the number of weekly hours a person working full time (presumably in the self-employed individual’s position) would work.

To that figure, add 67% of the self-employed person's annual net income divided by 52. (Section 6(F))

For both employees and self-employed persons, weekly payments are capped and may not exceed the annual mean wage of all occupations in New Mexico as calculated by the United States bureau of labor statistics state occupational employment and wage estimates for the most recent year available divided by fifty-two. (Section 6(E)(3) and (F)(4))

How is the program funded?

HB 446 does not state how the benefits of the Base Leave program are funded, but presumably the amendments to the Early Childhood Education and Care Fund are meant to enable the legislature to appropriate money from that fund to pay for the benefits of the Base Leave program.

HB 446 creates a "supplemental paid parental leave fund" (Section 4) to be funded by quarterly contributions by employees and self-employed who opt into the program, individuals starting January 1, 2027. (Sections 4(D) and (E)). Money from the fund will then be appropriated to pay for leave compensation payments, administrative costs, and outreach activity required by the Act.

How are contributions determined?

For employees. From January 1, 2027 to January 1, 2030, each employee who opts into the Supplemental Paid Parental Leave Fund will be assessed one-half percent of their quarterly wages as contributions, up to the earnings cap set by the federal social security program. Because the bill does not have provisions to adjust the contribution amount, it is unclear what is supposed to happen after January 1, 2030. (Section 5(D))

For the self-employed. From January 1, 2027, to January 1, 2030, self-employed persons who opt into the Supplemental Paid Parental Leave Fund will be assessed one-half percent of their net income. The self-employed calculation does not include the social security cap. Again, it is unclear what happens after that. (Section 5(E))

To whom does the Act apply? (Section 5(A))

- All public and private employees subject to state jurisdiction, except employees of the United States.
- All employers of public and private employees, regardless of whether they are physically located in the state, except those with fewer than five employees.
- Self-employed individuals subject to state jurisdiction who opt into the program.
- Indian nations, tribes and pueblos that elect to be covered in the program for their employees.

Claims processing. WSD would be required process and claims according to the timelines and protocols expressly stated in HB 446. For example, WSD would protect the confidentiality of information received (Section 7(B)), and provide employers and claimants notice of approval of their claim within 20 business days (Section 6(H)).

Appeals. An applicant, authorized representative or employer (see technical note below) would be able to appeal an adverse determination of a claim. (Section 11(A)) WSD would be required to hold a hearing within 10 business days after an appeal is properly made, due notice is given and mediation is refused. The Department would be required to must rule on the appeal within 20 business days of the hearing. (Section 10(A)(2))

Administrative Actions. Individuals or WSD on its own motion could bring “administrative actions” for alleged violations of the Act. WSD would then afford the parties a due process, on-the-record hearing within 10 business days and issue a ruling on the complaint within 20 business days of the hearing. HB 446 grants WSD authority to take disciplinary action against parties, such as fines, censure or revocation of a waivers of participation in the state PFML program. (Section 11(B)) Appeals or judicial review of the agency’s final decision on an appeal or administrative action would be pursuant to Section 39-3-1.1. (Section 11(C))

Preemption. HB 446 would preempt cities, counties, and other political subdivisions from having their own laws governing paid family and medical leave, with the exception of paid-time-off or paid-sick-leave ordinances, policies, or resolutions, or leave policies for its employees. (Section 12)

Collective bargaining. Nothing in the bill would be construed to diminish the rights, privileges or remedies of any employee under any collective bargaining agreement. (Section 13)

Promulgation of Rules. WSD would be obligated to promulgate rules and regulations necessary to carry out the purposes of the PFMLA. The deadline to promulgate rules to implement the Act is July 1, 2026. (Section 14)

Advisory Committee. Section 15 would create an 8-member “paid parental leave implementation advisory committee” whose purpose is to provide input regarding best practices for the efficient and timely development, implementation and promulgation of rules and educational materials to carry out the provisions of the PFMLA. The WSD secretary would consult with the committee at least quarterly and provide staff for it. The deadline to appoint the committee is October 1, 2025, and the committee’s work would end on January 1, 2027. Half of committee members must represent employers and the other half represent employees.

FISCAL IMPLICATIONS

The fiscal implications of the bill are less than those of HB 11 because of the limited scope of the bill. As explained in “Significant Issues,” a complex administrative system to track employees and employers would still be necessary. However, this system would not need the features required to determine medical claims, and proof submitted with an application to substantiate birth or adoption would be considerably simpler. The system would still contain protected information, but it may not include HIPAA-protected information.

DWS’s best estimate of staffing is 94 people, including all claims, supplemental leave plan,

appeals, and complaint-related staff. This is partially based on the fact that estimates for Paid Family and Medical Leave staffing were based on receiving about 45,000 claims per year, and New Mexico has about 22,000 births per year. The staffing estimate is less than half (42%) of the staffing estimate for the Agency Analysis for HB 11. As noted above, while IT costs would be somewhat less, the system development costs are estimated to be more than half (58%) of the costs estimated for that program.

Activities	Planning/Rule Making/ Initial Contract Awards/ Start IT build	Operational Builds and IT and Facilities, Half Operations	Full implementation, O&M, post- implementation improvements
Milestones	Rulemaking Complete 6/30/2026	Premium Collections Begin 1/1/2027; New Governor 1/1/27	Benefits begin 1/1/28
IT	\$ 10,000,000	\$ 7,000,000	\$ 5,000,000
Ops	\$ 1,000,000	\$ 4,645,514	\$ 6,636,448
Totals	\$ 11,000,000	\$ 11,645,514	\$ 11,636,448
With AS&T	\$ 13,750,000	\$ 14,556,892	\$ 14,545,560

Because WSD was not aware of this bill prior to today, the Department does not have any estimates of benefit costs. We defer to LFC on those matters.

Because the Supplemental Paid Leave Program is completely voluntary, it is not possible to estimate revenue. As noted above, it is not clear where funding for administration of the program comes from if contributions to the Supplemental Paid Parental Leave Fund are inadequate.

SIGNIFICANT ISSUES

WSD is not sure whether the language of the Early Childhood Education and Care Fund would allow for appropriations for the program created by HB 446, and is unable to make that determination in the time allotted.

The most significant concern overall is how the program is to be sustained given that:

- All administrative costs are to be paid from the Supplemental Paid Parental Leave Fund.
- HB 446 does not provide for a solvency determination in connection with the program, or for the Supplemental Paid Parental Leave Fund.
- HB 446 does not provide the authority for WSD to increase contributions to the Supplemental Paid Parental Leave Fund.
- HB 446 does not provide for contributions to the Supplemental Paid Parental Leave Fund after 2030.
- HB 446 does not provide for appropriations for the program.

It is also unclear what would happen if the Legislature failed to appropriate funds for the Base

Leave program.

The most significant administrative issue is how the Department or any administrator manages the accounts for the Program. Without all employers and employees paying into the program, the administrator would not have wage records and employment verification. Yet, those items would both be needed in order to establish a claim for Base Leave and calculate compensation. If the intent is that the administrator must reach out to the employer for these records each time a claim is filed, then the 10 business days for processing is insufficient. There are also no provisions for dealing with non-response from an employer. WSD would hesitate to rely solely on self-certification of wages and employment, due to the potential for abuse. WSD assumes that it would ultimately still be necessary to create an administrative system that would enable tracking of wages for all employers and employees covered by the Act. It would likely be necessary to establish wage reporting through rule. Unemployment Insurance (UI) records could not be used for this purpose without a statutory change that would need to be approved by the US Department of Labor. Also, the bill covers employers not covered by UI.

HB 446 does not contain a mechanism for employers to opt out of the Base Leave program. Employers who already provide equal or better plans would nevertheless be required to participate in the program.

Administrative and outreach costs are to be funded from the Supplemental Paid Parental Leave Fund, which contains contributions from employees and self-employed individuals who opt into the Fund. The Supplemental Paid Parental Leave Fund can also accept appropriations. It is unclear what happens if the Fund does not have adequate resources to support administration of the program.

HB 446 does not create a dedicated fund for receiving appropriations for the base Paid Parental Leave Program. This type of fund would be essential for keeping the contributions of opt-in employees segregated from the state funding that would support the base parental leave program.

PERFORMANCE IMPLICATIONS

HB 446 would require creation of a new program and division of WSD.

ADMINISTRATIVE IMPLICATIONS

See significant issues above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 11 seeks to establish a broader paid leave program.

TECHNICAL ISSUES

The employer right to appeal a determination in Section 8(C) is not clearly subject to the detailed appeal processes in Section 11. Suggest that Section 8(C) should be deleted and employers should be added into Section 11(A).

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Employers would continue to establish their own parental leave policies.

AMENDMENTS