

Department of Legislative Services  
 Maryland General Assembly  
 2022 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

House Bill 496  
 Economic Matters

(Delegate Valderrama, *et al.*)

Finance

Labor and Employment - Family and Medical Leave Insurance Program -  
 Establishment (Time to Care Act 2022)

This bill establishes the Family and Medical Leave Insurance (FAMLI) Program and FAMLI Fund to provide up to 12 weeks of benefits to a covered individual taking leave from employment due to specified personal and family circumstances. The weekly benefit is based on the individual’s average weekly wage, subject to a cap. The FAMLI Fund consists of contributions from employees and employers of at least 15 employees and pays for benefits, a public education program, and implementation and administrative costs. **The bill generally takes effect June 1, 2022, with the establishment of the FAMLI Program, among other provisions, taking effect January 1, 2023.**

Fiscal Summary

**State Effect:** General fund expenditures increase by \$19.7 million in FY 2023 for initial implementation costs and \$3.2 million in FY 2024 (until special funds become available). In FY 2024, FAMLI Fund revenues increase by at least \$561.2 million and expenditures increase by \$9.7 million. Beginning in FY 2024, State expenditures (all funds) increase significantly to cover employer contributions for State employees and contributions for specified others. Future years reflect annualization, termination of contractual employees, effects of minimum wage increases, one-time costs, inflation, and, beginning halfway through FY 2025, FAMLI benefits being paid.

(\$ in millions)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	\$0	\$561.2	\$778.6	\$809.4	\$841.8
FF Revenue	\$0	-	-	-	-
GF/SF Rev.	\$0	(-)	(-)	(-)	(-)
GF Expenditure	\$19.7	\$3.2	\$0	\$0	\$0
SF Expenditure	\$0	\$9.7	\$352.2	\$710.1	\$734.3
GF/SF/FF/NB/HE Exp	\$0	-	-	-	-
Net Effect	(\$-)	\$-	\$-	\$-	\$-

Note:(-) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** Beginning in FY 2024, local government expenditures increase significantly for employer contributions and local income tax revenues decrease; that decrease is partially offset beginning halfway through FY 2025 as a result of taxing FAMILI benefits. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** FAMILI is administered by the Maryland Department of Labor (MDL). The program generally provides up to 12 weeks of benefits to a covered individual who is taking leave from employment due to caring for specified family members, the individual's own serious health condition, or a qualifying exigency arising out of a family member's military deployment. The weekly benefit, which is based on an individual's average weekly wage, ranges from \$50 to a \$1,000 cap that is indexed to inflation.

Contributions to the fund, which are shared between employers and employees, are also based on employee wages. Generally, all employers who employ at least one employee must participate in the program, but only employers with 15 or more employees must contribute to the fund. A "covered employee" is an employee who has worked at least 680 hours over a 12-month period immediately preceding the date on which leave is to begin.

A self-employed individual may elect to participate in the program for an initial period of at least three years. After the initial period, a self-employed individual may renew participation in the program annually or withdraw from the program as specified in the bill. A self-employed individual participating in the program must pay the full required wage contribution.

The bill applies only prospectively and may not be interpreted to have any effect on or application to any collective bargaining agreement entered into before its June 1, 2022 effective date. The bill preempts the authority of a local jurisdiction to enact a law on or after June 1, 2022, that establishes a paid FAMILI program for employees of an employer other than the local jurisdiction.

### *Administration*

The Secretary of Labor may delegate powers to an employee of MDL that are necessary to administer the program. Generally, an MDL employee may not disclose information pertaining to an individual who has applied for or received FAMILI benefits. The Secretary, in consultation with other State agencies and relevant stakeholders, must:

- adopt regulations to implement the bill by June 1, 2023, that are consistent with the federal Family and Medical Leave Act (FMLA) and any relevant State laws;
- establish procedures and forms for filing claims for benefits;
- use information-sharing and integration technology to facilitate the disclosure of relevant information or records needed to administer the bill;
- carry out a public education program; and
- by December 1, 2025, and every two years thereafter, conduct a cost analysis of the program that is focused on the cost of maintaining solvency and paying benefits to covered individuals.

The Secretary must:

- establish standards in regulation for certifying benefit claims;
- establish standards for verifying the identity of a family member for benefit claims;
- establish procedures for an employer to provide evidence of suspected fraud to the Secretary;
- establish a system for appeals by covered individuals who are denied benefits;
- implement procedures to ensure specified information is confidential; and
- report by September 1 of each year to the Governor and General Assembly on the preceding year's administration and operation.

The bill specifies how the Secretary of Labor may enforce the FAMLI Program, which includes issuing subpoenas and bringing a civil action in the county where the violation allegedly occurred. The bill describes the process relating to subpoenas and prosecution. The Secretary and the State may be represented by the Attorney General or specified qualified attorneys in a civil action to enforce the bill.

The bill does not diminish an employer's obligation to comply with a collective bargaining agreement or an employer policy that allows an employee to take leave for longer than the employee would be able to receive FAMLI benefits. An employee's rights to FAMLI benefits may not be diminished by a collective bargaining agreement or an employer policy. An agreement to waive the employee's FAMLI rights is void.

MDL must report, by January 1, 2023, to the Senate Finance Committee and the House Economic Matters Committee on whether a covered employee using FAMLI benefits is also eligible for unemployment insurance benefits and the effect that dual eligibility has on employer ratings. MDL must conduct an actuarial study on the cost (1) of maintaining the solvency of the FAMLI Fund and (2) for the State to pay the required FAMLI contribution for community providers; those findings and recommendations must be reported by October 1, 2022, to the Senate Finance Committee and the House Economic Matters Committee.

The Department of Legislative Services (DLS) must contract with a consultant to study and make recommendations regarding the capability and capacity of MDL to implement and administer the FAMLI Program, including recommendations regarding additional resources needed by MDL to meet future demands of the program. DLS must report the consultant's findings and recommendations to the Governor and the General Assembly by October 1, 2022.

#### *Family and Medical Leave Insurance Fund*

The bill establishes the FAMLI Fund, which is a special, nonlapsing fund administered by the Secretary of Labor. The State Treasurer must hold the fund separately, and the Comptroller must account for the fund. The fund consists of employee, employer, and self-employed individual contributions; money paid to the fund for reimbursing the Secretary for erroneously paid benefits; interest earned in the fund; and money from any other source. Funds must be used to pay FAMLI benefits and may be used to pay for public education on the FAMLI Program and any other costs associated with the initial implementation and ongoing administration of the FAMLI Program. The State Treasurer is the custodian of the FAMLI Fund, and the bill specifies how the Treasurer must manage the fund. An employee does not have any prior claim or right to money that the employee pays into the fund.

#### *Contributions*

The bill establishes a process for determining the initial contribution rates of employers and employees as well as a process for reassessing them, generally, every two years.

*Initial Contributions:* By December 1, 2022, the Secretary, in consultation with other State agencies and relevant stakeholders, must (1) conduct a cost analysis of the program focused on the cost of maintaining solvency and paying benefits to covered individuals and (2) study and make recommendations on the total rate of contribution, the appropriate cost-sharing formula between employers and employees for making contributions, and the cost efficiency and benefits of MDL issuing a request for proposals (RFP) seeking the services of an outside contractor. The Secretary must report the findings and recommendations to the Senate Finance Committee, the House Economic Matters Committee, and the Joint Committee on Administrative, Executive, and Legislative Review (AELR). By June 1, 2023, the Secretary must set the total rate of contribution and percentage of the total contribution rate to be paid by employers with 15 or more employees and employees that will be in effect from October 1, 2023, through December 31, 2025, based on the 2022 study. Beginning October 1, 2023, each employee, each employer with 15 or more employees, and each participating self-employed individual must pay to the Secretary of Labor contributions on wages, which are established in regulation. The contribution percentages may not vary between employees or employers.

*Ongoing Assessment for Contributions in Later Years:* Every two years thereafter, beginning in 2025, the Secretary, in consultation with State agencies and relevant stakeholders, must again study and make recommendations on the total rate of contributions, the appropriate cost-sharing formula between employers and employees for making contributions, and the cost efficiency and benefits of MDL issuing an RFP seeking the services of an outside contractor. Each year that such a study is conducted, the Secretary must report, by April 1, the findings and recommendations to the Senate Finance Committee, the House Economic Matters Committee, and the AELR Committee. Within two months after that report (by June 1), the Secretary must set the total rate of contribution and the percentage of the total contribution rate to be paid by employers with 15 or more employees and employees that will be in effect for the 24-month period starting the following January 1. Additionally, by December 1, 2025, and every two years thereafter, the Secretary must, in consultation with State agencies and relevant stakeholders, conduct a cost analysis of the program focused on the cost of maintaining solvency and paying benefits to covered individuals. Given these timeframes, the cost analysis does not feed into the recommendations for the contribution rates that start the following January 1.

*Other Contribution Parameters:* A self-employed individual participating in the program must pay the total contribution rate. The total contribution rate must be applied to all wages up to and including the Social Security wage base.

If an employer elects to pay a portion of the employee's required contributions, the employer may deduct an amount that is less than 75% of the rate of contribution required from the wages of the employee. Otherwise, an employer must deduct the employee's required contribution from the wages of the employee.

An employer may not willfully fail or refuse to pay contributions to the fund or take deductions from an employee's wages to pay any portion of the employer contributions.

It is the General Assembly's intent that the State pay the required FAMI employer contribution for community providers that are funded by the Behavioral Health Administration (BHA), the Developmental Disabilities Administration (DDA), or the Medical Care Programs Administration to serve individuals with mental disorders, substance-related disorders, or a combination of those disorders or developmental disabilities. It is also the General Assembly's intent, through June 30, 2026, that the State pay the covered employee's required FAMI contribution if the employee earns an hourly wage of less than \$15.00 per hour.

### *Benefits*

Beginning January 1, 2025, to be eligible for benefits, a covered individual who is taking leave from employment may submit a claim for benefits to (1) care for a newborn child or

a child newly placed for adoption, foster care, or kinship care with the individual during the first year after the birth, adoption, or placement; (2) care for a family member with a serious health condition; (3) attend to a serious health condition that results in the individual being unable to perform the functions of the individual's position; (4) care for a next-of-kin service member; or (5) attend to a qualifying exigency arising out of the individual's family member's deployment, as defined by the bill. The bill specifies who is included as a family member and details the employer notification process for taking leave.

A covered individual may not receive more than 12 weeks of benefits in an application year, except under specified circumstances. A covered individual may take eligible leave on an intermittent leave schedule under specified conditions. If leave is taken on an intermittent leave schedule, an employer may not reduce the total amount of leave to which the covered individual is entitled beyond the amount of leave actually taken.

Leave taken under the bill must run concurrently with leave taken under FMLA. A covered individual must exhaust all employer-provided leave that is not required to be provided under law before receiving FAMLI benefits. This employer-provided leave must be treated the same as FAMLI leave, and it may not be construed to reduce any weeks of leave for which FAMLI benefits may be paid. An individual receiving unemployment insurance or workers' compensation benefits is not eligible to receive FAMLI benefits, though an individual receiving compensation for a permanent partial disability may be eligible for FAMLI benefits.

All weekly benefits paid under the program are dependent on how the individual's average weekly wage compares to the State average weekly wage and subject to minimum and maximum levels. Specifically, for an individual taking leave, the weekly benefit is 90% of the individual's average weekly wage if that wage is 65% or less than the State average weekly wage. If, however, the individual's average weekly wage is greater than 65% of the State average weekly wage, the weekly benefit is 90% of the portion of the individual's wage up to that threshold plus 50% of the portion of the wage above that threshold.

For an individual taking *partially paid* leave, the weekly benefit amount is the lesser of (1) the amount required to make up the difference between the wages paid to the individual while the individual is taking partially paid leave and the full wages normally paid to the individual or (2) if the individual's average weekly wage is greater than 65% of the State average weekly wage, 90% of the portion of the individual's wage up to that threshold plus 50% of the portion of the wage above that threshold.

The weekly benefit payable to a covered individual ranges from a minimum of \$50 to a maximum of \$1,000 for the 12-month period beginning January 1, 2025 (in fiscal 2025). Beginning January 1, 2026, the maximum weekly benefit must generally be increased by the annual percentage growth in the Consumer Price Index, and the bill specifies the

procedures to adjust the maximum weekly benefit, which includes having the Board of Public Works temporarily suspend an increase in the maximum weekly benefit if the board determines that the seasonally adjusted total employment is negative.

MDL must notify the employer of a covered individual within 5 business days after the covered individual files a claim for benefits and notify the covered individual and the employer within 10 business days after a claim is submitted regarding the approval or denial of the claim. MDL must pay benefits to a covered individual within 5 days after the claim is approved and make subsequent payments every 2 weeks until the benefit period ends. MDL must notify an individual filing a new claim for benefits of specified tax information, and if an individual elects to have federal income tax deducted and withheld, MDL must do so in a manner required by the Internal Revenue Service.

If a covered individual is receiving FAML I benefits or is taking leave, the employer must continue any employment health benefits in the same manner as required under the maintenance of health benefits in the federal FMLA for the time that the covered individual is absent from work or receiving FAML I benefits. Additionally, the employer generally must restore the individual to an equivalent position of employment. Generally, an employer may only terminate an employee on FAML I leave for cause and may only deny restoration of a covered individual's position in specified circumstances.

#### *Private Employer Plan*

An employer may satisfy the bill's requirements through a private employer plan consisting of employer provided benefits, insurance, or a combination of both if the plan is offered to all eligible employees and at least meets the rights, protections, and benefits provided to a covered employee. A private employer plan must be filed with MDL for approval. An employer that provides covered employees with a private employer plan and those covered employees are exempt from the bill's required contributions.

#### *Notice to Employees*

An employer must provide written notice to each employee of the employee's rights and duties under the bill at the time of hire and annually thereafter. When an employee requests leave under the bill or when an employer knows that an employee's leave may be for a FAML I reason, the employer must notify the employee of the employee's eligibility to take leave for which FAML I benefits may be paid within five business days. MDL must develop standard notices for an employer to use. The notices required under the bill must be provided in accordance with regulations adopted by the Secretary.

### *Prohibited Acts and Penalties*

An individual is disqualified from receiving benefits for one year if the individual willfully makes a false statement or misrepresentation regarding a material fact or willfully fails to report a material fact to obtain benefits. An employer is subject to a civil penalty of up to \$1,000 for each occurrence if the employer willfully makes or causes to be made a false statement or willfully fails to report a material fact regarding an employee's claim for benefits.

MDL may seek repayment of benefits from an individual who received benefits in error or as a result of willful misrepresentation or if a claim for benefits is rejected after the benefits were paid. The Secretary may waive the repayment of benefits if the error was not due to a false statement or misrepresentation, or if repayment would be against equity and good conscience or administrative efficiency.

A person may not discharge, demote, discriminate, or take adverse action against a covered individual for specified actions.

If an employer fails to pay contributions due to the fund, the Secretary may assess the amount of contributions and interest due, make an additional assessment of up to two times the contributions withheld as a penalty, and order an audit of the employer for the immediately following fiscal year to investigate and determine compliance with the bill and other labor laws.

If an employee believes that an employer has violated the bill, the employee may file a written complaint with the Secretary. The bill specifies how the Secretary must investigate and enforce the bill, which includes mediation, issuing orders, assessing a civil penalty of up to \$1,000 for each employee for whom the employer is not in compliance, and asking the Attorney General to bring an action on behalf of the employee. Within three years after the date of an order, an employee may bring a civil action to enforce an order. If an employee prevails in an action, the bill specifies what the court may award.

**Current Law:** A variety of federal and State laws require employers to provide a range of paid and unpaid leave benefits; some of the major programs are described below. Paid leave benefits are distinct from the FAMLI benefits made available under the bill. FAMLI benefits are similarly structured to unemployment insurance benefits – weekly cash payments based on an employees' earnings, as opposed to continued payment of existing wages.



### *Federal Family and Medical Leave Act of 1993*

The FMLA Act of 1993 requires covered employers to provide eligible employees with up to 12 work weeks of unpaid leave during any 12-month period under the following conditions:

- the birth and care of an employee’s newborn child;
- the adoption or placement of a child with an employee for foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;
- medical leave when the employee is unable to work due to a serious health condition; or
- any qualifying circumstance arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty.”

Generally, an FMLA-covered employer is an entity engaged in commerce that employs at least 50 employees. Public agencies and public or private elementary or secondary schools are considered to be covered employers regardless of the number of individuals they employ.

An eligible employee is an individual employed by a covered employer who has been employed for at least 12 months; however, these may be nonconsecutive months. Among other criteria, the individual must have been employed for at least 1,250 hours of service during the 12-month period.

### *Maryland Healthy Working Families Act*

Generally, the Maryland Healthy Working Families Act requires an employer with 15 or more employees to have a sick and safe leave policy under which an employee earns at least 1 hour of paid sick and safe leave, at the same rate as the employee normally earns, for every 30 hours an employee works. An employer with 14 or fewer employees, based on the average monthly number of employees during the preceding year, must at least have a sick and safe leave policy that provides an employee with at least 1 hour of unpaid sick and safe leave for every 30 hours an employee works.

An employer is not required to allow an employee to earn or carry over more than 40 hours of earned sick and safe leave in a year, use more than 64 hours of earned leave in a year, accrue more than 64 hours at any time, or use earned sick and safe leave during the first 106 calendar days the employee works for the employer. An employer is not required to carry over unused earned sick and safe leave if the leave is awarded at the beginning of each year.

The Act does not apply to in specified circumstances, such as employees who regularly work less than 12 hours a week, specified independent contractors, and individuals younger than age 18.

#### *Maryland Flexible Leave Act*

In Maryland, a private-sector employer who provides paid leave to its employees must allow an employee to use earned paid leave for bereavement leave or to care for immediate family members, including a child, spouse, or parent, with an illness. An employer is prohibited from taking action against an employee who exercises the rights granted or against an employee who files a complaint, testifies against, or assists in an action brought against the employer for a violation of these provisions.

An employer is considered a person that employs 15 or more individuals and is engaged in a business, industry, profession, trade, or other enterprise in the State, including a person who acts directly or indirectly in the interest of another employer. State and local governments are not included.

Employees who earn more than one type of paid leave from their employers may elect the type and amount of paid leave to be used for bereavement leave or in caring for their immediate family members.

#### *Maryland Parental Leave Act*

In Maryland, firms with 15 to 49 employees are required to provide employees with unpaid parental leave benefits. An eligible employee may take unpaid parental leave up to a total of six weeks in a 12-month period for the birth, adoption, or foster placement of a child. During parental leave, the employer must maintain existing coverage for a group health plan and, in specified circumstances, may recover the premium if the employee fails to return to work. State and local governments are not included. To be eligible for the unpaid parental leave, an employee must have worked for the employer for at least one year and for 1,250 hours in the previous 12 months.

#### *Parental Leave for State Employees in the Executive Branch*

Chapter 752 of 2018 provides up to 60 days of paid parental leave to an employee in the Executive Branch of State government who is the primary caregiver responsible for the care and nurturing of a child to care for the child immediately following either the child's birth or the adoption of a child who is younger than age six. An employee entitled to parental leave may use available accrued annual leave and personal leave. If that leave is less than 60 days, the State agency that employs the employee must provide the employee with additional paid leave to attain 60 days of parental leave.

## *Unemployment Insurance*

Unemployment insurance provides temporary, partial wage replacement benefits to individuals who are unemployed through no fault of their own and who are willing to work, able to work, and actively seeking employment. Both the federal and state governments have responsibilities for unemployment insurance programs. Funding for the program is provided by employers through unemployment insurance taxes paid to both the federal government for administrative and other expenses and to the states for deposit in their unemployment insurance trust funds. Using federal tax revenues, the unemployment insurance program is administered pursuant to state law by state employees. Each state law prescribes the tax structure, qualifying requirements, benefit levels, and disqualification provisions. These laws must, however, conform to broad federal guidelines.

### **State Revenues:**

#### *Family and Medical Leave Insurance Fund Revenues*

The contribution rate and percentage paid by employers with 15 or more employees and employees will be based on a study required by the bill, calculated on an employee's wages up to and including the Social Security wage base (\$147,000 in 2022). The contribution rate should be sufficient to ultimately cover employees' benefits (including those for whom no employer contribution is required) and administrative costs. Thus, special fund revenues increase by at least \$561.2 million in fiscal 2024, which reflects contributions beginning October 1, 2023, and increasing to at least \$841.8 million by fiscal 2027, as a result of MDL collecting employer and employee contributions from employees' wages. Although no benefits are paid in fiscal 2024, the revenues are needed to pay administrative expenses and build up a fund balance to begin paying benefits in fiscal 2025. This estimate assumes a minimum contribution rate of approximately 0.35% needed to keep the program solvent and is based on the Board of Revenue Estimates' projection of wage and salary growth and Social Security Administration data of taxable earnings in Maryland. It also assumes that no self-employed individuals opt to participate in the plan. The actual contribution rate set by MDL could vary significantly depending on the results of the study.

Additionally, FAMLFI Fund revenues increase to the extent that self-employed individuals elect to participate in the program and from interest earned on money in the fund and from any repayments of benefits paid in error. If employers elect to participate in private employer plans, then the minimum contribution rate needed to keep the program solvent likely increases (but total revenues are not materially affected).

#### *Income Tax Revenues*

State income tax revenues initially decrease in fiscal 2024 due to increased payroll expenses generating less tax revenue. However, the revenue decrease is offset partially

beginning midway through fiscal 2025 as a result of taxing FAMLI benefits. DLS assumes that benefits paid as a result of the employee's serious health condition are nontaxable while all other benefits (*e.g.*, family leave) are taxable.

### *Federal Fund Revenues*

Federal fund revenues may increase beginning in fiscal 2024 to offset the employer's contribution on wages for certain State employees like senior citizen aides. The actual increase will depend on the total contribution rate and the percentage paid by employers.

### **State Expenditures:**

#### *Initial Implementation and Administration*

The fiscal 2023 budget, as enacted, includes \$10.0 million in general funds to establish the FAMLI Program, contingent on the enactment of this bill or Senate Bill 275 of 2022. The fiscal 2023 budget, as enacted, also includes \$750,000 in general funds for DLS for the costs and consultant fees associated with supporting the Commission on the Establishment of a Family Medical Leave and Insurance Program, contingent on the enactment of this bill. To implement the FAMLI Program, MDL must create a new program using general funds until special funding from the FAMLI Fund becomes available. MDL must develop a tax structure, payment structure, complaint and investigative structure, and require the imposition of an employee contribution. FAMLI covers more employees and employers than unemployment insurance; however, based on the number of claims in states with FAMLI programs, there will likely be fewer claims under the FAMLI Program. Therefore, DLS assumes – and the estimate below reflects – that MDL can implement the FAMLI Program for less than the cost of implementing unemployment insurance.

MDL employees are needed to set up the program beginning January 1, 2023, which reflects the effective date of the program, and more MDL employees will be needed in fiscal 2025 to process and investigate claims. Contractual MDL employees are needed to assist with the implementation of the program and to answer inquiries on the program. Additional legal staff will be necessary for assistant Attorneys General to enforce civil actions and for the Judiciary to handle increased caseloads once covered employees start claiming benefits in fiscal 2025. Additionally, the Treasurer's Office may need additional resources to manage the FAMLI Fund, and additional human resource staff potentially may be needed to administer the FAMLI Program in various State agencies, like the University System of Maryland and the Maryland Transit Administration. Appeals on orders issued by MDL may be referred to the Office of Administrative Hearings (OAH). The number of cases referred to OAH annually as a result of the bill cannot be reliably estimated; OAH advises that 140 additional cases would require an additional administrative law judge to adjudicate the increased caseload.

DLS assumes off-the-shelf software can be acquired for approximately \$3.5 million, plus additional software customization costs of \$2.7 million annually. DLS estimates \$3.3 million in regular salaries and benefits for approximately 85 regular employees, \$0.5 million in contractual salaries and benefits for 20 contractual employees, and \$7.7 million for other operating expenses in fiscal 2023. DLS also estimates \$1.0 million in vendor costs every two years beginning in fiscal 2023 to conduct various studies and submit required reports; this assumes that the costs for the required cost analysis are incurred in the fiscal year before the analysis must be completed (*i.e.*, a vendor must be hired in fiscal 2025 to complete the cost analysis due December 1, 2025, the following fiscal year). Ongoing costs will be offset with revenues from the employee contributions; however, general fund expenditures increase in fiscal 2023 for program expenses incurred before contributions commence on October 1, 2023, after which special funds cover all costs of administration. Thus, general fund expenditures for MDL increase by \$18.8 million in fiscal 2023. Once the program is fully operational and paying out benefits, DLS estimates 110 additional employees are needed to process and investigate claims. Over time, it is anticipated that employer and employee familiarity with the bill's provisions increase, thereby reducing the need for the contractual employees halfway through fiscal 2027.

The Central Payroll Bureau (CPB) must create new programs, processes, and procedures to calculate the State's portion of the FAMLI contribution for State employees. General fund expenditures increase by \$178,200 for CPB to calculate and send the employee portions to the Secretary of Labor.

DLS must contract with a consultant to study and make recommendations regarding the capability and capacity of MDL to implement and administer the FAMLI Program, so general fund expenditures increase by \$750,000 in fiscal 2023 for DLS to procure a consultant, which is included in the fiscal 2023 budget, as enacted.

Regular Positions	85.0
Contractual Positions	20.0
Regular Salaries and Fringe Benefits	\$3,340,569
Contractual Salaries and Fringe Benefits	544,883
Information Technology Costs	6,200,000
Mandated Biennial Studies	1,000,000
Other Operating Expenses	7,723,690
<b>MDL FY 2023 Expenditures</b>	<b>\$18,809,142</b>
<b>DLS FY 2023 Expenditures</b>	<b>\$750,000</b>
<b>Comptroller FY 2023 Expenditures</b>	<b>\$178,200</b>
<b>Total FY 2023 Expenditures</b>	<b>\$19,737,342</b>

Future year expenditures reflect the elimination of contractual positions and full salaries with annual increases and employee turnover, additional staff beginning halfway through fiscal 2025 once benefits start, and annual increases in ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

#### *Employer Contributions for State Employees*

The contribution rate and the percent paid by employers is to be determined by a study, so it is unknown by how much expenditures (all funds and higher education) increase for the State to make employer contributions, although the increase will likely be at least several million dollars.

#### *Contribution Expenses for Community Service Providers and Low-wage Workers*

It is the General Assembly's intent that the State pay the required FAMI employer contribution for community providers that are funded by BHA, DDA, or the Medical Care Programs Administration to serve individuals with mental disorders, substance-related disorders, or a combination of those disorders or developmental disabilities. MDL must conduct an actuarial study on this cost and report its findings and recommendations by October 1, 2022. Until the actuarial study is completed, it is unknown by how much State expenditures will increase, but there are approximately 2,600 community providers funded by BHA, and approximately 200 community providers funded by DDA. Thus, general fund expenditures increase significantly beginning October 1, 2023, to pay the employer contribution for community service providers.

It is also the General Assembly's intent that the State pay the covered employees' required FAMI contribution through June 30, 2026, for employees who earn an hourly wage of less than \$15.00 per hour. Thus, State expenditures increase significantly in fiscal 2024 through 2026. The increase in expenditures declines in fiscal 2025 and 2026 since current law has the State minimum wage rate increasing to \$15.00 halfway through fiscal 2025 for employers with 15 or more employees. Thus, the State stops paying for the employee portion of FAMI contributions for these employees on January 1, 2025. The State minimum wage rate increases to \$15.00 per hour for employers with fewer than 15 employees on July 1, 2026, at which point it is the General Assembly's intent that the State is no longer responsible for paying the employees' contributions.

### *Family and Medical Leave Insurance Fund Expenses for Benefits*

Beginning January 1, 2025, MDL must make benefit payments to eligible covered employees. DLS estimates the FAMLFI Fund pays employees \$333.1 million in fiscal 2025 and at least \$685.1 million annually thereafter, based on the following assumptions:

- 95% of employees paying Social Security tax are eligible for benefits;
- self-employed individuals do not opt into the program;
- employers do not opt for private plans;
- 2.5% of eligible employees claim the benefits;
- benefits are claimed for an average of 10.7 weeks; and
- weekly benefits average \$800.

The actual benefit payments could vary significantly because they depend on the number of employers opting to have private plans, the number of employees claiming FAMLFI benefits, the wages of those employees, and the number of days for which employees take leave. The program's fund balance will be assessed every two years as part of the required cost analysis, which will focus on solvency and ensuring that benefits can be paid to covered individuals.

### *Leave*

The bill expands current leave benefits established under the State Personnel Management System (SPMS) and exceeds the conditions, benefits, and eligibility requirements established under SPMS and FMLA. As a result of the expanded applicability and circumstances to use FAMLFI leave for employees, expenditures may increase significantly to provide coverage for those employees.

### *Public Assistance*

A survey commissioned by the U.S. Department of Labor (DOL) found that 18% of employees who lost earnings while on specified family and medical leave went on public assistance in states without paid family and medical leave, compared to 8% of employees in paid family and medical leave states. To the extent that fewer individuals go on public assistance as a result of receiving FAMLFI benefits, public assistance expenditures may decrease beginning halfway through fiscal 2025.

**Local Revenues:** Local income tax revenues initially decrease in fiscal 2024 due to increased payroll expenses generating less tax revenue. However, the revenue decrease is offset partially beginning halfway through fiscal 2025 as a result of taxing FAMLFI benefits paid at a rate of approximately 3%.

**Local Expenditures:** Local jurisdictions incur significant costs as a result of employers paying their share of the FAMLII contribution rate. The actual costs depend on the contribution rate and the percentage paid by the employer as determined by the initial study and subsequent studies every two years. Additionally, local jurisdictions may incur programming costs to update their payroll systems.

Furthermore, to the extent that local government employees take more leave, the FAMLII Program may create additional personnel expenses for overtime costs for local jurisdictions, especially for law enforcement and other agencies that provide 24/7 coverage.

**Small Business Effect:** The bill has a significant impact on small businesses with at least 15 employees, which must pay for the employer's portion of contributions and establish a mechanism to add the contributions to their payroll systems. While businesses with fewer than 15 employees do not have to pay for the employer's portion of contributions, they still must provide their employees with the FAMLII leave.

A survey commissioned by DOL found that more than half of employees (56%) who lost earnings for taking specified family or medical leave report they would have taken additional time for leave if additional pay had been available. By establishing FAMLII, more employees may take leave and take leave for longer periods of time. The same survey found more than half (58%) of worksites report they most commonly cover the work of an employee on leave for a week or longer (whether FMLA-designated leave or not) by temporarily assigning work to other employees.

The District of Columbia's Office of the Budget Director undertook a review in 2016 of more than 170 peer-reviewed studies and government reports on FAMLII's impact on the health and well-being of individuals, households, the labor market, and businesses. It found that, while the effects of providing FAMLII may vary across different firms and employees, most managers surveyed reported that public FAMLII programs had either negligible or positive effects on their business.

Massachusetts recently implemented a paid family and medical leave insurance program and found that applicants for paid leave came from a wide variety of industries. The top three sectors who received paid leave benefits in Massachusetts were office employees and administrative support, management, and health care practitioners.

**Additional Comments:** This analysis assumes that, despite this bill no longer including a Commission on the Establishment of a Family Medical Leave and Insurance Program, the contingent appropriation of \$750,000 for DLS is available to cover the required consultant costs under this bill.



## **Additional Information**

**Prior Introductions:** Similar bills, SB 211 of 2021 and SB 539 of 2020, each received a hearing from the Senate Finance Committee, but no further action was taken. The cross files, HB 375 of 2021 and HB 839 of 2020, each received a hearing from the House Economic Matters Committee, but no further action was taken.

**Designated Cross File:** None.

**Information Source(s):** Frederick and Montgomery counties; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Board of Public Works; Maryland State Treasurer's Office; Comptroller's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Labor; Office of Administrative Hearings; Maryland Department of Health; Maryland Department of Transportation; Massachusetts Department of Family and Medical Leave; District of Columbia's Office of the Budget Director; U.S. Department of Labor; Department of Legislative Services

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