SENATE BILL REPORT
SB 5292

As of February 24, 2025

Title: An act relating to paid family and medical leave rates.

Brief Description: Concerning paid family and medical leave rates.

Sponsors: Senators Conway, Saldaña, Cortes, Nobles, Salomon and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 1/21/25, 2/18/25 [DPS-WM, DNP, w/oRec].
Ways & Means: 2/25/25.

Brief Summary of First Substitute Bill

- Requires the Employment Security Department Commissioner to set the paid family and medical leave program premium rate based on the Office of Actuarial Services annual report.
- Mandates the Office of Actuarial Services annual report to provide for a rate to close the rate collection year with a three-month reserve beginning in 2030, in addition to the current requirement to maintain a four-year solvency.
- Eliminates the statutory formula used to calculate the rate.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5292 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Saldaña, Chair; Conway, Vice Chair; Alvarado, Ramos and Stanford.

Minority Report: Do not pass.

Signed by Senator Schoesler.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.
Signed by Senator King, Ranking Member.

Staff: Susan Jones (786-7404)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Josh Hinman (786-7281)

Background: General. The Paid Family and Medical Leave program (PFML) provides partial wage replacement to employees on leave for specified family and medical reasons. The program is funded through premiums paid by employers and employees. The program is administered by the Employment Security Department (ESD).

Premium Rate Calculation. The total premium rate is calculated in three steps:

- step one— an amount that equals 140 percent of the prior fiscal year's expenses, including the benefits paid and the administrative costs is calculated;
- step two—the balance of the Family and Medical Leave Insurance Account (account) as of September 30th is subtracted from the amount determined in step one; and
- step three—the difference in step two is divided by the prior fiscal year's taxable wages.

If the calculated rate exceeds a rate necessary to maintain a three-month reserve at the end of the following rate collection year, the rate must be set at the minimum rate necessary to close the rate collection year with a three-month reserve. In addition, the rate must not exceed 1.2 percent. In the 2023 operating budget, $200 million was appropriated into the account. This reduced the 2024 rate.

Premiums. Premiums are assessed quarterly and remitted to ESD in conjunction with employer reporting in the month following the end of each quarter. The 2025 total PFML premium rate is 0.92 percent. Premiums are split between family leave and medical leave based on the percentage of paid claims for each type of claim. For 2025, the family premium is 48.22 percent and the medical premium is 51.78 percent of the total premium. Employers may withhold from employees up to 100 percent of the family leave premium and up to 45 percent of the medical leave premium. For 2025, this would allocate 71.52 percent of the premiums to employees and 28.48 percent of the premium to employers. Small employers—employers with 49 or fewer employees—are generally exempt from paying the employer portion of the premium.

Premiums are paid on wages up to the maximum wages subject to tax for social security (social security cap). For 2025, the social security cap is $176,100.

Eligibility and Benefits. Employees are eligible for benefits under PFML after working at least 820 hours in a qualifying period. A qualifying period is the first four of the last five full calendar quarters, or the last four full calendar quarters. The program generally allows for up to 12 weeks of paid family leave or paid medical leave for eligible workers. Under certain circumstances, up to 16 or 18 weeks of combined leave is allowed. Benefits are paid after a seven-day waiting period.

Benefits depend on the amount of the employee's average weekly wage and may provide up to 90 percent of the employee's weekly pay for each week of leave. The 2025 maximum weekly PFML benefit is $1,542 and the minimum is $100.

Office of Actuarial Services Report. In 2022, the Legislature created the Office of Actuarial Services (Office) within ESD. The Office is required to report annually to the PFML advisory committee on the experience and financial condition of the account, and the lowest future premium rates necessary to maintain solvency of the account in the next four years while limiting fluctuation in the premium rates. The 2024 report provides:

- the 2025 calculated premium rates reflect an expected material increase from 2024. Historically, claims outpaced premiums, which resulted in an account deficit in 2023. A $200 million cash injection in 2023 resolved the account deficit. The current regulatory premium rate calculation method only considers prior period experience and not forward-looking costs. The higher account balance that included the $200 million caused the 2024 calculated rate to be lower than the projected experience would indicate. Because of this, prior period claims continue to outpace premiums and a larger increase in 2025 was expected;
- claims experience has generally been higher than projected, which is reflected in larger rate increases in 2025 and 2026. Rates calculated in 2027 are projected to reach 1.2 percent, which is the maximum allowed premium rate in the statute. This is related to higher claims trends, as well as program changes; and
- ESD recommends further exploration of adopting actuarial premium rates and shifting to an actuarial rate setting approach. Over time, the actuarial model would provide greater account stability and better match premiums with program expenditures, while potentially leading to a lower tax burden for employers and employees.

Joint Legislative Audit and Review Committee Report. In 2022, the Legislature required the Joint Legislative Audit and Review Committee (JLARC), in consultation with ESD, to conduct a performance audit analyzing the implementation of the PFML program. For PFML rates, the JLARC report recommends the program:

- use a forward-looking rate-setting approach that is based on actuarial estimates of future revenues and benefit costs; and
- maintain a financial reserve to cover shortfalls.

The report provided the following additional comments. A forward-looking rate-setting approach can reduce volatility and incorporate long-term financial projections. Seven of nine state PFML programs reviewed by JLARC staff use forward-looking approaches. A reserve target or floor allows rates to move up or down to maintain a targeted balance.

Washington is the only state to use a reserve cap for its PFML program reserve.

Summary of Bill (First Substitute): The ESD Commissioner must set the PFML premium rate based on the Office of Actuarial Services annual report. The total premium rate must still not exceed 1.2 percent. The Office of Actuarial Services report must provide for a rate to close the rate collection year with a three-month reserve in 2030, in addition to the current requirement to maintain a four-year solvency. The statutory formula used to calculate the rate is eliminated.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Reinstates the 1.2 percent cap for the Paid Family and Medical Leave premium rate.
- Requires the three-month reserve for the Office of Actuarial Services report on the lowest future premium rate to maintain solvency to begin by the end of the rate collection for 2030.
- Modifies the definition of three-month reserve to mean the average monthly expenses, including the total amount of benefits paid and the department's administrative costs, using actuarial projection for the following calendar year, multiplied by three, rather than in the prior 12 calendar months from the date of the calculation multiplied by three.
- Makes the act effective January 1, 2027.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2027.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: Business, labor, Republicans, and Democrats came together to create the state's family and medical leave program. The parties settled on a method for setting rates that did not meet the needs of the program, and in 2023 came together again to set a new rate formula. The rates have been somewhat volatile.

The JLARC report and ESD recommend that the program adopt actuarial rate setting to ensure that the revenue meets the needs of the program. This bill simply implements the JLARC recommendations. By deferring to financial experts in setting rates, we hope to ensure the predictability of these premiums and the solvency of this important program. This will benefit the workers and employers alike.

CON: We are opposed to the bill because of the removal of the 1.2 percent cap. When the program was designed, the rate was 0.4 percent. Tripling the original rate is a good place to set that cap. If we do need to move beyond that 1.2 percent cap, that should come back to the Legislature and we should do some problem solving. JLARC staff is more qualified to talk about the rate setting process.

We've seen some volatility in the rates from 2024 to 2025. The rate went from 0.74 to 0.92 percent. This is nearly an 8 percent increase in premiums that employers are paying just from one year to the next. We share the goals of predictable and fiscally sound rates for the program.

The other challenge is the requirement to have a three-month reserve. While this is fiscally prudent, this will put additional stress on those rates to go up quickly. The 1.2 percent cap should remain; or alternatively, have some language that a smaller amount of a rate increase could be done administratively, but a larger increase should have to come back to the Legislature.

We are concerned about the future of this program. As potential new benefits are added to the program, costs could increase quickly if the cap is removed.

OTHER: We have a big concern about the removal of the cap. Since the program started in 2019, the rate has increased by 130 percent, far exceeding the rate of inflation. Workers and employers cannot afford to keep moving forward if we are to change the rate setting to actual year setting. You should consider considering stabilizing the program and not trying to change the programs because that will further destabilize the financial stability.

Instead of the current mechanism of using a formula that relies on data from the previous year to set the rate for the following year, JLARC's recommendation to the Legislature was to use a forward looking or actuarial rate setting process that tries to incorporate the most current information to set the rate. That is the best fit for what is expected to happen in the next year. JLARC did not make a recommendation around the cap. JLARC's understanding is that having a cap is compatible with an actuarial rate, though there is the chance that the actual rate that the actuaries come up with could exceed that, but JLARC did not address that in the recommendation or report.

The Legislature should end the state's paid leave program as it cannot pay its way. Instead, this bill considers a way to tax workers, and even to work for a benefit that many will never see instead of putting more of their wages into their current life needs. The tax is $0.92 on every $100 a worker earns. That's more than twice the amount when the tax began in 2019. JLARC says that administrative cost and benefits for the program exceeded revenue in two of its first four years. A state consultant says the program is likely to see negative net income again in three of the next five years.

Worse than not paying its way, the program requires low-income wage earners to supplement the life needs and wants of upper wage earners. Research shows that middle and upper income people use paid leave more than those with lower incomes. People making $60 or more an hour use the fund nearly twice as much as the lowest wage earners in the fiscal year 2024. This paid leave program is no public safety net. Full-time workers of all income levels lose hundreds of dollars to this tax each year.

While some supporters say that thousands have been helped, they failed to mention that millions of workers have not. For some of those workers, making ends meet is far more difficult because of it. Please don't decrease their take home pay again next year. Federal law already offers workers 12 weeks of job protected unpaid family leave. It doesn't pay people not to work while taxing those who do work.

Persons Testifying (Labor & Commerce): PRO: Senator Steve Conway, Prime Sponsor; Christoph Mair, Washington State Labor Council, AFL-CIO.

CON: Julia Gorton, Washington Hospitality Association; Lindsey Hueer, Association of Washington Business; Tammie Hetrick, Washington Food Industry Association; Katie Beeson, WFIA.

OTHER: Rose Gundersen, WA Retail Association; Elizabeth New, Washington Policy Center; Zack Freeman, JLARC.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.