



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # HB0228

Title: Establish family medical leave insurance

Primary Sponsor: Funk, Moffie

Status: As Introduced

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
	<u>Difference</u>	<u>Difference</u>	<u>Difference</u>	<u>Difference</u>	<u>Difference</u>
Expenditures:					
General Fund	\$0	\$1,354,734	\$2,750,109	\$2,750,109	\$2,791,361
State Special Revenue	\$0	\$1,082,489	\$2,197,453	\$2,197,453	\$2,230,415
Federal Special Revenue	\$0	\$636,177	\$1,291,440	\$1,291,440	\$1,310,812
Other	\$602,912	\$4,499,724	\$2,003,773	\$67,842,846	\$70,888,052
Revenue:					
General Fund	\$0	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0	\$0
Federal Special Revenue	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$43,569,630	\$87,139,260	\$89,317,742	\$91,550,685
Net Impact-General Fund Balance	<u>\$0</u>	<u>(\$1,354,734)</u>	<u>(\$2,750,109)</u>	<u>(\$2,750,109)</u>	<u>(\$2,791,361)</u>

Description of fiscal impact: HB 228 creates a Montana Family and Medical Leave Insurance (FAMLI) program, funded by equal contributions from employers and employees for deposit into to a new enterprise fund. Benefits will be paid from this fund to eligible covered individuals who take family-related leave from work for medical or other allowed reasons.

FAMLI will provide short-term partial wage replacement for covered individuals who miss work because they have a serious health condition; are caring for a new child or a family member with a serious health condition; have an exigent situation due to active or impending active duty of a family member; or who take any other leave from work authorized under the federal Family and Medical Leave Act of 1993. The bill assigns program administration to the Department of Labor & Industry.

FISCAL ANALYSIS

Assumptions:

Department of Labor and Industry

1. The FAMILI program will be placed in the Unemployment Insurance Division of the Department of Labor & Industry (DLI), under a new bureau specifically created for the program. The program’s operations, including payment of benefits, will be fully funded from the new enterprise fund comprised of equal contributions from employers and employees and contributions from self-employed individuals who elect FAMILI coverage.
2. DLI will develop and use software specifically written to administer FAMILI. These modules will integrate with the computer applications now supporting the UI tax and benefits programs, STAARS and MISTICS, respectively.
3. Program and IT development for FAMILI will start immediately after bill enactment to meet the January 1, 2022 effective date.
4. Starting June 1, 2021, the DLI will need one bureau chief to oversee the new FAMILI bureau to lead FAMILI IT project initiation and completion, program development, public outreach, and ongoing operations.
5. The DLI will need four subject matter experts (SMEs) to assist with program development, including research and drafting of proposed administrative rules, writing business processes and requirements, working with vendor and contract IT project staff, and testing FAMILI contributions and benefit IT components. The department will reassign two Management Analysts and two Tax Examiners currently working in UI program support and contribution bureaus as FAMILI SMEs. They will work from June 1, 2021, through June 30, 2022. Their regular positions will need to be backfilled during this time.
6. Table 1 shows the type and number of FTE needed for the FAMILI program and costs for FY 2021.

Fiscal Year	Months	Position	No. of FTE	Personal Services	DLI Cost Allocation	OTO Costs	Operating Costs	Total
2021	1	Bureau Chief	1	\$9,065	\$680	\$2,800		\$12,545
2021	1	Mgmt Analyst	2	\$11,917	\$894	\$5,600		\$18,411
2021	1	Tax Examiner	2	\$11,370	\$853	\$5,600		\$17,823
2021	1	Operating					\$13,533	\$13,533
2021	1	Technology					\$540,600	\$540,600
			Total	\$32,352	\$2,427	\$14,000	\$554,133	\$602,912

7. Starting January 1, 2022, the DLI will need three more FTE, a supervisor, an accountant, and a customer support specialist, for the contribution unit of the FAMILI bureau. These FTE will support and educate employers and employees as they become subject to FAMILI assessments on January 1, 2022. They will also perform duties associated with filing and payment of the first quarter FAMILI contributions in April 2022. The department assumes all FAMILI contribution payments will be electronic.

8. Table 2 shows the type and number of FTE needed for the FAMLI program and costs for FY 2022.

Fiscal Year	Months	Position	No. of FTE	Personal Services	DLI Cost Allocation	OTO Costs	Operating Costs	Total
2022	12	Bureau Chief	1	\$109,402	\$8,205	\$0		\$117,607
2022	12	Mgmt Analyst	2	\$144,692	\$10,852	\$0		\$155,544
2022	12	Tax Examiner	2	\$138,047	\$10,354	\$0		\$148,401
2022	6	Supervisor	1	\$42,325	\$3,174	\$2,800		\$48,299
2022	6	Accountant	1	\$34,174	\$2,563	\$2,800		\$39,537
2022	6	Cust Serv Spec	1	\$22,146	\$1,661	\$2,800		\$26,607
2022	12	Operating					\$325,438	\$325,438
2022	12	Technology					\$3,284,200	\$3,284,200
			Total	\$490,786	\$36,809	\$8,400	\$3,609,638	\$4,145,633

9. Starting July 1, 2022, DLI will need three more FTE, two tax examiners for the contributions unit and one collection technician for the benefits unit of the FAMLI bureau. These tax examiners will replace the SME's.

10. Table 3 shows the type and number of FTE needed for the FAMLI program and costs for FY 2023.

Fiscal Year	Months	Position	No. of FTE	Personal Services	DLI Cost Allocation	OTO Costs	Operating Costs	Total
2023	12	Bureau Chief	1	\$109,091	\$8,182			\$117,273
2023	12	Supervisor	1	\$84,882	\$6,366			\$91,248
2023	12	Tax Examiner	2	\$128,983	\$9,674			\$138,657
2023	12	Accountant	1	\$68,529	\$5,140			\$73,669
2023	12	Collection Tech	1	\$55,551	\$4,166			\$59,717
2023	12	Cust Serv Spec	1	\$44,394	\$3,330			\$47,724
2023	12	Operating					\$262,303	\$262,303
2023	12	Technology					\$505,000	\$505,000
			Total	\$491,430	\$36,858	\$0	\$767,303	\$1,295,591

11. Starting July 1, 2023, DLI will need to hire the remaining benefit employees including, a half-time fraud investigator and a compliance technician, three claims examiner 3 and three claims examiner 4 to begin adjudicating and paying benefits.

12. Table 4 shows the type and number of FTE to fully staff the FAML I program and costs FY 2024.

Fiscal Year	Months	Position	No. of FTE	Personal Services	DLI Cost Allocation	OTO Costs	Operating Costs	Total
2024	12	Bureau Chief	1	\$109,091	\$8,182			\$117,273
2024	12	Supervisor	1	\$84,882	\$6,366			\$91,248
2024	12	Fraud Invest	0.5	\$45,062	\$3,380	\$1,400		\$49,842
2024	12	Compliance Spec	0.5	\$44,152	\$3,311	\$1,400		\$48,863
2024	12	Accountant	1	\$68,529	\$5,140			\$73,669
2024	12	Tax Examiner	2	\$128,983	\$9,674			\$138,657
2024	12	CLE5	3	\$170,613	\$12,796	\$8,400		\$191,809
2024	12	Collection Tech	1	\$55,551	\$4,166			\$59,717
2024	12	Cust Serv Spec	1	\$44,394	\$3,330			\$47,724
2024	12	CLE4	3	\$131,919	\$9,894	\$8,400		\$150,213
2024	12	Operating					\$300,846	\$300,846
2024	12	Technology					\$505,000	\$505,000
			Total	\$883,176	\$66,239	\$19,600	\$805,846	\$1,774,861

13. Table 5 shows the type and number of fully staffed FTE for the FAML I program and costs FY 2025.

Fiscal Year	Months	Position	No. of FTE	Personal Services	DLI Cost Allocation	OTO Costs	Operating Costs	Total
2025	12	Bureau Chief	1	\$109,091	\$8,182			\$117,273
2025	12	Supervisor	1	\$84,882	\$6,366			\$91,248
2025	12	Fraud Invest	0.5	\$45,062	\$3,380			\$48,442
2025	12	Compliance Spec	0.5	\$44,152	\$3,311			\$47,463
2025	12	Accountant	1	\$68,529	\$5,140			\$73,669
2025	12	Tax Examiner	2	\$128,983	\$9,674			\$138,657
2025	12	CLE5	3	\$170,613	\$12,796			\$183,409
2025	12	Collection Tech	1	\$55,551	\$4,166			\$59,717
2025	12	Cust Serv Spec	1	\$44,394	\$3,330			\$47,724
2025	12	CLE4	3	\$131,919	\$9,894			\$141,813
2025	12	Operating					\$300,846	\$300,846
2025	12	Technology					\$505,000	\$505,000
			Total	\$883,176	\$66,239	\$0	\$805,846	\$1,755,261

14. Total personal services costs for the above FTE will be \$32,352 for FY 2021, \$490,786 for FY 2022, \$491,430 for FY 2023, \$883,176 for FY 2024 and FY 2025.

15. The DLI cost allocation plan is applied at 7.5% of personal services for \$2,427 in FY 2021, \$36,809 in FY 2022, \$36,858 in FY 2023, \$66,239 in FY 2024 and FY 2025.
16. One-time-only costs for each new FTE include \$1,600 for office supplies/furniture and \$1,200 for computers, for \$14,000 for 5 FTE in FY 2021 and \$8,400 for 3 new FTE in FY 2022, \$0 in FY 2023 as new employees will use the SME's computers, \$19,600 for 7 new FTE in FY2024 and \$0 in FY 2025.
17. Technology service costs per FTE are estimated at \$242 per FTE per month and are included in operating expenses, \$1,210 in FY 2021, \$18,876 in FY 2022, \$20,328 in FY2023, \$43,560 in FY 2024 and FY 2025.
18. Based on typical expenditures, the department estimates a cost of 13% of personal services expenses for items such as telephone, copiers, scanners, utilities, minor equipment, supplies, etc. These expenditures are included in operating expenses and would total \$4,206 in FY 2021, \$63,802 in FY 2022, \$84,215 in FY 2023, \$155,470 in FY 2024 and FY 2025.
19. Rent is estimated at an annual cost of \$36,680 which is included in operating expenses. FY 2021 rent would be \$3,057 and \$36,680 for FY 2022 through FY 2025.
20. The DLI will work with the vendor for its UI tax system (STAARS) to execute a Statement of Work for development of the contributions component, comparable to a new tax type, of the FAMLI IT system. It estimates the IT costs for the contribution's component of FAMLI will be \$2,500,000. The department assumes the SOW will be executed in June 2021, with approximately 15% of the SOW cost of \$375,000 due in FY 2021 and the remaining \$2,125,000 due in FY 2022.
21. The department estimates the yearly licensing fee for STAARS at 15% of \$2,500,000. A yearly cost of \$375,000 is anticipated, beginning in FY 2023
22. Based upon experience with similar systems, DLI estimates the yearly maintenance for FAMLI IT system at approximately \$130,000 per year. A yearly cost of \$130,000 is included in FY 2023, FY 2024 and FY 2025.
23. DLI will work with contracted Technology Services Division (TSD) staff to develop the benefits component of the FAMLI IT system. DLI anticipates a total cost of \$1,159,200 for this expense. Work will start July 1, 2021.
24. Section 13 of HB 228 requires expenditures of 1% of each fiscal year's funds collected for family and medical leave insurance fund for public outreach. The department estimates \$50,000 in public outreach expenses in FY 2022 and \$15,000 in FY 2023, FY 2024 and FY 2025.
25. Legal Services:
 - One-time-only administrative rule-making costs estimated at \$5,060 are included in operational expenses for FY 2021.
 - With a new statewide program like FAMLI, the department estimates 1,040 hours of legal services will be required over the first two years of program operation for an expense of \$100,880 in FY 2022 and FY 2023 and half of that for \$50,440 for FY 2024 and FY 2025.
26. One-time actuarial costs are estimated at \$50,000 in FY 2022.
27. Because initial set-up expenses will be incurred before the department is able to collect revenue, the department anticipates needing a general fund loan to cover start-up expenses of the program.

Contribution (Revenue) Assumptions:

28. Employee and employer quarterly assessments will begin 1/1/2022 and will be due 30 days after each quarter ends.
29. Contributions will be assessed and collected on wages of covered individuals up to a maximum base wage of \$84,001 per year. This was derived from the maximum weekly benefit prescribed in section 7(2)(a)(b) of HB 228. If the first \$20,628 of base wage (50% of the current average annual wage in Montana) is assessed by 1.92%, equaling \$396.06, and that is subtracted from the maximum weekly benefit of \$1,000, .96% of wages above \$20,628 may not be greater than \$603.94. $\$603.94 / .0096 = \$62,910.67 + \$20,628 = \$83,538.67$.

30. Table 6 shows the estimated annual FAMILI contribution if employers and employees are assessed a rate of one-half percent (0.5%) on total wages, within various wage bands, starting in January 2022. Numbers within bands are based on employer- reported annual wages for UI covered employees.

Equal contribution by employers and employees, representing one-half percent (1/2%) of total wages.				
Employee Earns Annual Wages Totaling	Employee’s Annual Contribution	Employer’s Annual Contribution	Estimated Number of Employees	Estimated Annual Contributions for FAMILI
\$10,000 or less	\$50	\$50	171,689	\$17,168,900
\$10,000 - \$20,000	\$75	\$75	89,254	\$13,388,100
\$20,000 - \$30,000	\$125	\$125	74,661	\$18,665,250
\$30,000 - \$40,000	\$175	\$175	60,883	\$21,309,050
\$40,000 - \$50,000	\$225	\$225	43,909	\$19,759,050
\$50,000 - \$60,000	\$275	\$275	31,485	\$17,316,750
\$60,000-\$70,000	\$325	\$325	21,544	\$14,003,600
\$70,000-\$84,000	\$375	\$375	20,148	\$15,111,000
Above \$84,000	\$420	\$420	31,095	\$26,119,800
Grand Total				\$162,841,500

31. Table 7 shows the estimated contributions for sole proprietors and self-employed individuals based on ranges of annual wages provided by the DLI’s Research and Analysis Bureau. A participation rate of 20% is estimated for this group.

Employees and employer’s equal contributions representing one-half percent (1/2%) of total wages.			
Employee Earns Annual Wages Totaling	Contribution	Estimated Number of Employees	Estimated Annual Contributions for FAMILI
\$10,000 or less	\$50.00	10,024	\$100,240
\$10,000 - \$20,000	\$75.00	5,222	\$78,330
\$20,000 - \$30,000	\$125.00	4,478	\$111,950
\$30,000 - \$40,000	\$175.00	3,821	\$133,735
\$40,000 - \$50,000	\$225.00	2,797	\$125,865
\$50,000 - \$60,000	\$275.00	2,052	\$112,860
\$60,000-\$70,000	\$325.00	1,433	\$93,145
\$70,000-\$84,000	\$375.00	1,369	\$102,675
Above \$84,000	\$420.00	2,151	\$180,684
Grand Total			\$1,039,484

32. Table 8 shows the estimated contributions for agriculture individuals based on ranges of annual wages for that sector provided by the DLI’s Research and Analysis Bureau. A participation rate of 20% is estimated for this group.

Employees and employer’s equal contributions representing one-half percent (1/2%) of total wages.			
Employee Earns Annual Wages Totaling	Contribution	Estimated Number of Employees	Estimated Annual Contributions for FAMILI
\$10,000 or less	\$50.00	1,593	\$15,930
\$10,000 - \$20,000	\$75.00	830	\$12,450
\$20,000 - \$30,000	\$125.00	712	\$17,800
\$30,000 - \$40,000	\$175.00	607	\$21,245
\$40,000 - \$50,000	\$225.00	445	\$20,025
\$50,000 - \$60,000	\$275.00	326	\$17,930
\$60,000-\$70,000	\$325.00	228	\$14,820
\$70,000-\$84,000	\$375.00	218	\$16,350
Above \$84,000	\$420.00	342	\$28,728
Grand Total			\$165,278

33. The only contribution payments the department would receive in FY 2022 would be those reported by employers for quarter ending 3/31/2022. The department assumes \$43,569,630, which is 25% of the estimated total annual contribution of 87,139,260, will be collected in state fiscal year 2022. $[(86,550,668 + 500,449 + 88,143) \times .25 = \$21,784,815]$.

34. An annual growth factor of 2.5% for the two highest wage brackets is applied in succeeding state fiscal years.

Benefit Assumptions:

35. The department will begin paying benefits to eligible covered individuals and employees whose work leave meets the requirements of the act and occurs on or after October 1, 2023. The department believes the commissioner will be able to declare the FAMILI fund solvent by August 31, 2023.

36. Using vital record numbers for births and deaths, the department estimates 60% of those vital events will result in a covered individual seeking and receiving FAMILI benefits. $(22,176 \times 60\% = 13,306)$.

37. Using an average benefit duration of 9 weeks and an average weekly benefit of \$521.00, table 11 shows the estimated benefit totals for FY 2026 and FY 2027, using a 2.65% growth factor for the weekly benefit amount and a 2% growth factor for participation for FY 2027.

38. Table 9 shows the estimated FAMILI Benefits Paid

Estimated FAMILI Benefits Paid				
State Fiscal Year	FAMILI Eligible Participants	Average Duration in Weeks	Average Weekly Benefit Amount	Estimated Benefit Amount
2024	13,572	9	\$535	\$65,349,180
2025	13,844	9	\$549	\$68,403,204

Department of Administration

39. The state would be required to pay up to 1% of an eligible state employees’ monthly wages to the family and medical leave insurance fund.

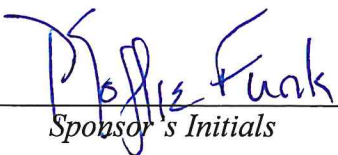
40. The total cost each year will vary depending on the number of eligible and participating state employees and any statutory increases in pay.

41. The cost to the state can be decreased by electing to assess a portion of the contribution cost to the participating employees. However, the department cannot determine what the employee’s proportional contribution would be.
42. If all eligible current state employees participate in the family and medical leave insurance program and if the state pays the full 1% of eligible wages to the family and medical leave insurance fund, then the cost for FY 2023 would be approximately \$6,854,983. Since the effective date for this bill is January 1st, 2022, the fiscal impact for FY 2022 would be \$3,427,491, or half of the FY 2023 estimate. This calculation is based off a report from the State Accounting, Budgeting, and Human Resources System (SABHRS) for FY 2020 total employee wages of \$685,498,271.
43. This calculation does not include the Montana University System.
44. An inflation rate of 1.5% has been applied to FY 2024 and FY 2025.

	<u>FY 2021</u> <u>Difference</u>	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<u>Fiscal Impact:</u>					
FTE	5.00	8.00	7.00	14.00	14.00
<u>Expenditures:</u>					
Personal Services	\$34,779	\$3,955,086	\$7,383,271	\$7,907,222	\$8,011,590
Operating Expenses	\$568,133	\$3,618,038	\$767,303	\$825,446	\$805,846
Benefits	\$0	\$0	\$0	\$65,349,180	\$68,403,204
TOTAL Expenditures	<u>\$602,912</u>	<u>\$7,573,124</u>	<u>\$8,150,574</u>	<u>\$74,081,848</u>	<u>\$77,220,640</u>
<u>Funding of Expenditures:</u>					
General Fund (01)	\$0	\$1,354,734	\$2,709,467	\$2,750,109	\$2,791,361
State Special Revenue (02)	\$0	\$1,082,489	\$2,164,979	\$2,197,453	\$2,230,415
Federal Special Revenue (03)	\$0	\$636,177	\$1,272,355	\$1,291,440	\$1,310,812
Other	\$602,912	\$7,927,215	\$8,858,756	\$74,800,653	\$77,950,227
TOTAL Funding of Exp.	<u>\$602,912</u>	<u>\$11,000,615</u>	<u>\$15,005,557</u>	<u>\$81,039,656</u>	<u>\$84,282,815</u>
<u>Revenues:</u>					
General Fund (01)	\$0	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$0	\$0	\$0	\$0.00	\$0
Other	\$0	\$43,569,630	\$87,139,260	\$87,139,260	\$87,139,260
TOTAL Revenues	<u>\$0</u>	<u>\$43,569,630</u>	<u>\$87,139,260</u>	<u>\$87,139,260</u>	<u>\$87,139,260</u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>					
General Fund (01)	\$0	(\$1,354,734)	(\$2,709,467)	(\$2,750,109)	(\$2,791,361)
State Special Revenue (02)	\$0	(\$1,082,489)	(\$2,164,979)	(\$2,197,453)	(\$2,230,415)
Federal Special Revenue (03)	\$0	(\$636,177)	(\$1,272,355)	(\$1,291,440)	(\$1,310,812)
Other	(\$602,912)	\$35,642,415	\$78,280,504	\$12,338,607	\$9,189,033

Technical Notes:

1. Upon passage and approval of HB 228, the department will require appropriation authority and a general fund loan to fund expenses.
2. The fine provided in Section 10 (3)(a) does not specify a maximum amount and appears to give unlimited discretion to the department in the amount of the fine. That unlimited discretion may constitute an improper delegation of legislative authority.
3. Section 12 (1)(a)(v) references retaliatory “elections”. The probable intended term is “actions.”
4. Section 14 appears to require the Department of Revenue to withhold state income taxes from benefits provided under Section 6, but payment of tax withholdings to the Department of Revenue is not expressly authorized, as it is in Section 14 (3) for federal taxes withheld.
5. As written, it is unclear if the proposed bill would have a revenue impact to the state. Section 14(4) of the bill states that the benefits received from the family and medical leave insurance benefits are part of gross income under the state’s individual income tax. However, the inclusion of the benefits in gross income does not determine if the income is taxable. For example, the benefits received by the taxpayer may be covered under workers’ compensation laws, which would exclude this income from taxation unless explicitly stated otherwise.
6. The proposed bill also includes contributions from employers and employees, but the bill does not directly address the taxability of these contributions from either party. For employees and the self-employed it is assumed that contributions would not be deductible, while employer contributions would be. However, the bill is unclear.



 Sponsor's Initials

2/4/21

 Date



 Budget Director's Initials

2/2/21

 Date