TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

SB 1786 – HB 2024

March 8, 2020

SUMMARY OF BILL: Provides paid salary up to 12 weeks for eligible K-12 teachers and state employees. Eligible employee is any officer and employee of a state department or agency other than employees or officers of the General Assembly and is subject to the Family and Medical Leave Act (FMLA). Qualifying events include:

- The birth of a teacher's or employee's child;
- The placement of a minor child through adoption or foster care;
- The care of a spouse, son, daughter, or parent with a serious health condition;
- A serious health condition preventing the teacher or employee from performing his or her job duties;
- A qualifying urgent need or demand of a spouse, son, daughter, or parent on covered active duty or impending call to active duty in the armed forces; and
- To care for a servicemember with a serious injury or illness who is the spouse, son, daughter, or next of kin of the teacher or employee.

Effective July 1, 2020, and applies to any FMLA leave not taken in the previous 12 months for a qualifying event.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - $15,641,653/FY20-21 and Subsequent Years

Increase Local Expenditures – Exceeds $50,943,200*/FY20-21 and Subsequent Years

Other Fiscal Impact - The state's additional fiscal liability is estimated to be $58,129,300 for accumulated leave resulting from the proposed legislation but does not result in a direct annual budgetary impact. Currently, the agencies included within the proposed legislation realize average payroll savings of $265,409,165.

Assumptions:

State Impact

- According to the U.S. Department of Labor, 60 percent of all employees meet all criteria for coverage and eligibility under FMLA. Further, 13 percent of all employees reported taking leave for an FMLA qualifying reason in the previous 12 months. https://www.dol.gov/whd/fmla/survey/.

- Based on information provided by the Department of Human Resources (DHR), approximately 3,360 employees within executive branch agencies took some form of FMLA leave in FY18-19. Based on reports from non-executive branch employees, approximately 263 employees took some form of FMLA leave in FY18-19.

Overall Liability to the State:

- The *Family and Medical Leave Act in 2012: Final Report* with data last revised April, 2014 indicates that approximately 75 percent of current employees have an unmet need for leave and of those approximately 46.1 percent could not afford to go on unpaid leave.
- It is assumed current employees who currently cannot afford to take FMLA due to unpaid leave or do not have accumulated leave for the full 12 weeks will be able to take leave as a result of the proposed legislation; therefore, there will be an increase in FMLA leave taken by employees.

Branch	Average Salary	FMLA FY2019	Increase FMLA due to Paid Leave	Total FMLA Employees	Total for 12 weeks Paid Leave
Executive	$ 76,233	3,360	7,500	10,860	$ 191,051,626
Non-Executive	$ 111,714	263	1,081	1,344	$ 34,648,527
Totals		3,623	8,581	12,204	$ 225,700,153

- Based on information from DHR, approximately 70 percent of FMLA leave is taken as leave with pay by using annual, sick and compensatory leave. The provisions of the bill will result in leave days being used at a later time or accumulating throughout the employee’s tenure.
- Any accumulated annual or compensatory time leave at the time of an employee’s termination from state government is paid out based on the employee’s hourly rate at the time. While this will not result in a direct annual fiscal impact, it does create a fiscal liability for the state.
- For the leave taken in FY18-19, it is assumed this will result in approximately $12,594,331 in additional liability each year {[(3,360 x ($76,233/365) x 23 days) + (263 x ($112,098/365) x 23 days)] x 70%}.
- Based on information collected regarding accumulated leave by state employees, approximately 40 percent of all accumulated leave is annual or compensatory time. It is estimated the 8,581 employees who take FMLA as a result of the proposed legislation will accumulate approximately 24 days of leave (60 days FMLA x 40%) resulting in additional state liabilities of $44,817,767 [(7,500 x ($76,233/365) x 24 days) + (1,081 x ($111,714/365) x 24 days)].
- The total state liability for unused leave is estimated to be $58,129,257 ($12,163,661 + $45,534,926).

- This amount will continue to grow as people are able to use paid FMLA leave rather than accumulated annual, sick, or compensatory time leave.
- Based on information provided by the Department of Finance and Administration, the state experiences payroll savings on average of $265,409,165 annually for these departments and agencies.

	Payroll Savings	
Fiscal Year	Executive Branch	Non-Executive Branches
FY2014 - 2015	$ 222,421,504	$ 24,400,933
FY2015 - 2016	$ 232,773,484	$ 28,254,081
FY2016 - 2017	$ 263,997,442	$ 28,883,235
FY2017 - 2018	$ 242,403,131	$ 27,553,477
FY2018 - 2019	$ 230,254,304	$ 26,104,232
Average	$ 238,369,973	$ 27,039,192

Annual Savings Unrealized:

- Annual savings realized within executive branch agencies for employees going on leave without pay for FMLA events is estimated to be two percent of all payroll savings, or approximately $4,767,399 ($238,369,973 x 2.0%).
- Similarly, annual savings realized within the court and constitutional officer departments for employees going on leave without pay for FMLA events is estimated to be 4.5 percent of all payroll savings, or approximately $1,216,764 ($27,039,192 x 4.5%).
- For purposes of this analysis, it is estimated total annual savings that will no longer be realized and will no longer be available for future expenditures will exceed $5,984,200 ($4,767,400 + $1,216,800) in FY20-21 and subsequent years.

Additional Expenditures:

- Based on information provided by the DHR, approximately six percent of FMLA leave employees result in hiring temporary employees or overtime being paid to current employees and each FMLA leave employee takes on average 23 days.
- With the proposed legislation resulting in an increase in employees taking FMLA and also the amount of time each employee will take, it is estimated temporary employee days and overtime pay will increase.
- Further, due to current employees no longer having to use accumulated annual, sick, or compensatory time leave to meet FMLA leave needs, it is reasonable to assume an overall increase in temporary and overtime employee days of approximately 10 percent. The total increase in temporary and overtime employee day expenditures is estimated to be $9,657,453.

Branch	Current Temporary and Overtime Employee Days	Increased Temporary and Overtime Employee days	Average Daily Rate	Total Cost for Temporary Employees
Executive	4,637	52,459	$ 141	$ 7,373,141
Non-Executive	363	9,825	$ 233	$ 2,284,313
Totals	5,000	62,284	$ 373	$ 9,657,453

- The total recurring increase in state expenditures for FY20-21 and subsequent years is estimated to be $15,641,653 ($5,984,200 + $9,657,453).

Local Education Agencies

- It is estimated that teachers in local education agencies (LEAs) will have a similar impact as state employees; therefore, the methodology in calculating the state employee impact is used for the impact to LEAs.
- Based on the Comptroller of the Treasury's April 2019 report *Teacher Salaries in Tennessee, 2015 – 2018*, the number of instructional employees in the LEAs as 73,951 and the average salary in the state was $50,958.
- It is unknown current savings based on teachers going on unpaid leave. It is assumed any teachers going on FMLA will result in additional resources being needed; therefore, any savings are estimated to be minimal.
- Based on the increased usage of FMLA based on it being paid leave will increase costs for temporary and overtime expenditures.

Employees	Current Temporary and Overtime Employee Days	Increased Temporary and Overtime Employee days	Average Daily Rate	Total Cost for Temporary Employees
Instructional Staff	6,123	424,060	$ 80	$ 33,924,811

- The increase in mandatory local expenditures is estimated to exceed $50,943,211.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner

Krista Lee Carsner, Executive Director

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