

DEPARTMENT OF TAXATION

2019 Fiscal Impact Statement

1. **Patron** Barbara A. Favola

2. **Bill Number** SB 1376

3. **Committee** Senate Finance

House of Origin:

 x **Introduced**

 Substitute

 Engrossed

4. **Title** Individual Income Tax and Corporate Income
Tax; Small Business Parental Leave Tax
Credit

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide an individual and corporate income tax credit for a portion of the salary or wages paid by a small business to a full-time employee while on parental leave for the birth or adoption of a child. The credit would be equal to 65 percent of the first \$8,333 in salary and wages paid by the small business to an employee for parental leave. The credit would not be permitted for salary and wages paid after the first 12 workweeks of parental leave. The credit would be subject to an annual credit cap of \$5.5 million per fiscal year.

This bill would be effective only for taxable years beginning on and after January 1, 2021, but before January 1, 2022.

This is an Executive Bill.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact in Fiscal Year 2022. Because the credit would be subject to a \$5.5 million annual credit cap, the impact would be limited to the extent of such cap. No budget amendment would be necessary for this bill because any resulting revenue impact would be outside of the current biennium.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Federal Tax Incentive for Paid Family and Medical Leave

For federal income tax purposes, an employer may claim a credit for providing up to 12 weeks of paid family and medical leave to their employees. To be eligible for this credit, an employer must have a written policy in place to provide full-time employees at least two weeks of paid family and medical leave annually in an amount not less than 50 percent of an employee's normal wages. The amount of this credit is equal to a percentage of the amount of wages paid to qualifying employees while on family and medical leave. The minimum percentage is 12.5 percent of paid wages and is increased by 0.25 percent for each percentage point by which the amount paid to a qualifying employee exceeds 50 percent of the employee's wages. The maximum percentage is 25 percent of paid wages.

Employers are currently permitted to claim this credit for wages paid in taxable years beginning on or after January 1, 2018, but before January 1, 2020.

Proposed Legislation

This bill would provide an individual and corporate income tax credit for a portion of the salary or wages paid by a small business to a full-time employee while on parental leave for the birth or adoption of a child. The credit would be equal to 65 percent of the first \$8,333 in salary and wages paid by the small business to an employee for parental leave.

To be eligible for the credit, a small business would be required to allow full-time employees to take at least eight workweeks of parental leave per occurrence of birth of a child or placement of a child with the employee for adoption and pay the employee for each workweek of parental leave taken at an amount not less than 80 percent of the employee's weekly salary or wages payable or paid to the employee immediately prior to the employee taking parental leave. As an additional condition of eligibility, the small business would be required to:

- Allow full-time employees on parental leave to enroll in or continue health insurance coverage, including family coverage, offered or otherwise made available by the business on the same terms as if such employee continued to work; and
- Award such employees with sick, vacation, and other work leave for the parental leave period on the same terms as if such employees continued to work.

"Full-time employee" would be defined as an employee in a job of an indefinite duration requiring a minimum of 35 hours of an employee's time per week for the entire normal year of the employer's operation, or a minimum of 1,680 hours per year. "Normal year"

would be required to consist of at least 48 weeks. "Full-time employee" would not include any employee in a seasonal or temporary position.

"Parental leave" would be defined as absence or leave from work taken by a parent for the birth of his or her child or the placement of a child with the parent for adoption or to care for such child. "Parental leave" would not include any leave taken after 12 months following the date of birth of the child or the date of placement with the parent for adoption, or leave taken for a child who is 19 years of age or older on the date of placement with the parent for adoption. "Parental leave" would not include any paid vacation, sick, or other paid leave.

"Small business" would be defined as a business that:

- Has been operating for at least two fiscal years immediately prior to the relevant taxable year;
- At the time of parental leave is at least 51 percent independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens;
- Has, together with affiliates, fewer than 50 full-time employees for the relevant taxable year; and
- Has one or more of its individual owners in control of both the management and daily business operations of the small business.

The credit would not be permitted for any leave taken for which the full-time employee used vacation, sick, or other paid leave that is not solely parental leave. No credit would be allowed for salary or wages paid after the first 12 weeks of parental leave. In any case in which both parents are full-time employees of the small business and take parental leave, the credit would be limited to 65 percent of the first \$8,333 in salary and wages paid in aggregate for parental leave, and no credit would be allowed for salary and wages paid after the first 12 workweeks of aggregate parental leave.

The credit would not be allowed for parental leave taken by a full-time employee who holds more than a 0.50 percent ownership interest in any class of stock or other security, debt, or other obligation, capital, or other ownership of the small business.

The Department would be required to administer this credit. A small businesses seeking to claim the credit would be required to apply to the Department on forms prescribed by the Department. A small business would only be permitted to claim credits upon approval of the application and issuance of credits by the Department.

The Department would be required to review complete applications on a first-come, first-serve basis and issue credits accordingly. The credit would be subject to an annual credit cap of \$5.5 million per fiscal year.

If the amount of credits exceeds the taxpayer's tax liability for the taxable year, the taxpayer would be allowed to carry over the excess for credit against income taxes for the next seven years or until the total amount of the tax credit has been taken, whichever occurs first.

The amount of any credit attributable to a partnership, electing small business corporation, or limited liability company would be allocated to the individual partners, shareholders, or members in proportion to their ownership or interest in such business entities.

The Department would be required to develop and publish guidelines, exempt from the Administrative Process Act, for the administration of the credit. Such guidelines would be required to include eligibility guidelines and procedural guidelines for applying for the credit.

This bill would be effective for taxable years beginning on and after January 1, 2021, but before January 1, 2022.

Similar Legislation

House Bill 2533 is identical to this bill.

House Bill 1672 would provide a credit equal to 35 percent of an employer's expenses in providing paid leave to an employee for purposes of making an organ donation.

cc : Secretary of Finance

Date: 1/21/2019 JLOF
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