

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1053 Parental Leave  
**SPONSOR(S):** Government Operations Subcommittee, Aloupis  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N, As CS	Landry	Toliver
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Helpling	Topp
3) State Affairs Committee			

### SUMMARY ANALYSIS

The Family and Medical Leave Act of 1993 (FMLA) requires public and private sector employers to provide employees with job-protected unpaid leave for up to 12 weeks for qualified medical and family reasons. The FMLA also requires employers to maintain employees' health benefits during leave, as well as restoring employees to the same or equivalent job after leave. The FMLA protects employees from interference or retaliation for exercising their FMLA rights.

It is the policy of the state to support employees in balancing their personal needs and work responsibilities, this includes allowing for flexible work schedules, telework, part-time employment, and leaves of absence with or without pay. Section 110.221, F.S., provides protections similar to FMLA for state employees and allows for unpaid parental or family medical leave. State employees may take unpaid parental or family medical leave for up to six months.

Each department or agency of the state has the authority to adopt rules governing a plan for allowing employees to participate in a paid sick leave pool. Participating employees may use sick leave from the pool only after they have exhausted all personally accrued sick, annual, and compensatory leave. Pooled sick leave may only be used for an employees' personal illness, accident, or injury.

The bill requires departments or agencies to adopt rules governing a plan for allowing employees to participate in a paid sick leave pool. The bill authorizes employees participating in the sick leave pool to use pooled leave for paid parental leave. The bill defines parental leave as leave for a mother or father of a child who is born or adopted by that parent. Employees may use leave from the pool for paid parental leave for up to four consecutive weeks. Parental leave may only be used within the first 12 weeks of the birth or adoption of the child. The bill provides that parental leave runs concurrently with the Family Medical Leave Act.

The bill may have an indeterminate, negative fiscal impact on the state. See Fiscal Analysis & Economic Impact Statement.

The bill takes effect upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### The Family and Medical Leave Act

The Family and Medical Leave Act of 1993 (FMLA) requires employers to provide employees with job-protected unpaid leave for qualified medical and family reasons.<sup>1</sup> The FMLA applies to both public and private-sector employers.<sup>2</sup> Employees may take up to 12 weeks of leave in a 12-month period for one or more of the following reasons:

- The birth, adoption, or foster placement of a child;
- To care for a spouse, child, or parent with a serious health condition, including incapacity due to pregnancy or prenatal medical care;
- For a serious health condition causing the employee to be unable to perform essential job functions, including incapacity due to pregnancy or prenatal medical care; and
- For any qualifying exigency arising from a spouse, child, or parent who is a member of the military on covered active duty or call to covered active duty status.<sup>3</sup>

The FMLA also requires employers to maintain employees' health benefits during leave, as well as restoring employees to the same or equivalent job after leave.<sup>4</sup> The FMLA protects employees from interference or retaliation for exercising their FMLA rights.<sup>5</sup> In most instances, employees have the right to file a private lawsuit under the FMLA in any federal or state court of competent jurisdiction.<sup>6</sup>

##### Leave Policies of the State

###### *General Leave Policies*

It is the policy of the state to support employees in balancing their personal needs and work responsibilities, this includes allowing for flexible work schedules, telework, part-time employment, and leaves of absence with or without pay.<sup>7</sup> A state employee's leave of absence, with or without pay, must be requested in writing and approved by the agency head.<sup>8</sup> Each state agency must maintain an accurate record of all hours of work performed by employees, as well as a complete record of authorized leave.<sup>9</sup> The Department of Management Services (DMS) must adopt rules in coordination with agencies for implementing the provisions in s. 110.219, F.S.<sup>10</sup>

###### *Parental and Family Medical Leave*

Section 110.221, F.S., provides protections similar to the FMLA for state career service employees<sup>11</sup> and allows for unpaid parental or family medical leave. Specifically, s.110.221, F.S., prohibits the state from:

- Terminating a career service employee due to an employee or employee's spouse's pregnancy or adoption of a child;

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<sup>1</sup> 29 U.S.C. § 2601

<sup>2</sup> *Id.*

<sup>3</sup> See, The Employer's Guide to The Family and Medical Leave Act, United States Department of Labor, available at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employerguide.pdf> (last visited January 14, 2022).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Section 110.105(2)(b), F.S.

<sup>8</sup> Section 110.219(3), F.S.

<sup>9</sup> Section 110.219(4), F.S.

<sup>10</sup> Section 110.219(5)(a), F.S.

<sup>11</sup> Florida has a civil service system for public employees not deemed to be executive or managerial. The State Constitution mandates such a system be created by the Legislature and authorizes a system for the collective bargaining of wages, hours, and terms or conditions of employment by public employees with their public employer. See Art. III, s. 14, FLA. CONST. Part II of chapter 110, F.S., establishes the Career Service System.

- Denying career service employees from using annual leave or accrued sick leave for parental leave, family medical leave, or for any reason deemed necessary by a physician; and
- Requiring career service employees to take a mandatory parental or family medical leave.

Additionally, the state must also allow for a career service employee to take unpaid parental or family medical leave for up to six months.<sup>12</sup> Upon returning from unpaid parental or family medical leave, the employee must be reinstated to the same job or to an equivalent position with equivalent pay.<sup>13</sup>

### *Sick Leave Pool*

Each department or agency of the state has the authority to adopt rules governing the accumulation and use of sick leave for employees, as well as a plan for allowing employees to participate in a sick leave pool.<sup>14</sup> DMS must establish guidelines governing sick leave pools for state agencies.<sup>15</sup> A sick leave pool provides paid leave to participating employees who have exhausted all personally accrued sick, annual, and compensatory leave.<sup>16</sup> Rules governing a sick leave pool shall:

- Allow employees to be eligible for participation in the pool after one year of employment;
- Allow participation in the pool to be voluntary;
- Provide that any sick leave contributed to the pool shall be removed from the personally accumulated sick leave balance of the employee contributing such leave;
- Provide that any pooled sick leave shall only be used for the employee's personal illness, accident, or injury;
- Require participating employees to exhaust all personally accumulated sick, annual, and compensatory leave before being eligible to use pooled sick leave;
- Provide a maximum number of days any one employee may use pooled sick leave;
- Not require employees using pooled sick leave to re-contribute sick leave to the pool;
- Not allow employees who cancel their membership to the sick leave pool to withdraw contributed sick leave from the pool;
- Allow employees transferring from one state government position to another to transfer from one pool to another;
- Require alleged abuses of the sick leave pool to be investigated and upon finding of any wrongdoing, require employee to repay misused sick leave credits; and
- Provide that sick leave credits may be drawn down from the sick leave pool by a part-time employee on a pro-rata basis.<sup>17</sup>

### **Effect of the Bill**

The bill requires departments or agencies to adopt rules governing a plan for allowing employees to participate in a paid sick leave pool. The bill authorizes employees participating in the sick leave pool to use pooled sick leave for parental leave. The bill defines parental leave as leave for a mother or father of a child who is born or adopted by that parent. Employees may use leave from the pool for paid parental leave for up to four consecutive weeks. Parental leave may only be used within the first 12 weeks of the birth or adoption of the child. The bill provides that parental leave runs concurrently with the Family Medical Leave Act.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 110.121, F.S., relating to the sick leave pool for state employees.

Section 2 provides an effective date of upon becoming a law.

<sup>12</sup> Section 110.221(2)(b), F.S.

<sup>13</sup> Section 110.221(3), F.S. Employees must also be reinstated with the same seniority, retirement, fringe benefits, and other service credits accumulated prior to the leave period. If any portion of the parental or family medical leave is paid leave, the employee shall be entitled to accumulate all benefits granted under paid leave status.

<sup>14</sup> Section 110.121, F.S.

<sup>15</sup> See Rule 60L-34.0042, F.A.C.

<sup>16</sup> Section 110.121, F.S.

<sup>17</sup> *Id.*

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill will expand the use of paid sick leave by requiring all agencies to have a paid sick leave pool. In addition, the bill specifies that employees may use the paid sick leave pool for four weeks of paid parental leave. There may be an indeterminate, negative fiscal impact, to state agencies that require additional temporary resources for workload while employees are on leave.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not confer, nor require rulemaking authority but may require DMS to revise its current rule establishing a plan for allowing employees to pool sick leave. DMS has adequate rulemaking authority to accomplish any necessary rulemaking.<sup>18</sup>

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>18</sup> See ss. 110.201 and 110.219, F.S.  
STORAGE NAME: h1053b.SAT  
DATE: 2/3/2022

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 20, 2022, the Government Operations Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from HB 1053 in that it provides that parental leave from the sick leave pool must be used under the same conditions as pooled sick leave used currently for an illness, accident, or injury, except for certain time limitations applicable to parental leave.