Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 332 and 333 (as introduced 5-11-23)
Sponsor: Senator Erika Geiss
Committee: Housing and Human Services

Date Completed: 12-9-24

INTRODUCTION

The bills would enact the "Family Leave Optimal Coverage Act", which would allow eligible employees to take up to 15 weeks of paid family leave in a benefit year. The bills would require employees to receive up to 65% of the State's annual weekly wage while on family leave. Additionally, they would prescribe the reasons that an employee could take family leave, such as attending school events for an employee's child, to care for a family member's serious health condition, or during a public emergency. To receive benefits an individual would have to file a claim with the Department of Labor and Economic Opportunity (LEO) for family leave optimal coverage (FLOC) benefits in a certain period before or after taking family leave.

The bills would create the FLOC Benefits Fund and require the State Treasurer to deposit payroll contributions into the Fund to finance the payment of FLOC benefits. The bill would require the Legislature to appropriate sufficient funds to the Fund to pay for the cost of administering the Act before the collection of payroll contributions. Beginning January 1, 2025, for each employee, an employer would have to remit contributions to the State Treasurer for deposit into the Fund. The Director of LEO would set contribution rates. The bill would allow a self-employed individual to elect coverage under the Act for an initial period of at least three years upon submitting a notice of election to LEO and paying employee and employer contributions to the Fund. Finally, the bill would allow an employer to meet its obligations under the Act through a private plan if the private plan conferred all the same rights, protections, and benefits provided to employees under the Act and if approved by LEO.

BRIEF FISCAL IMPACT

The bill would increase State revenue because of contributions to the Fund but would decrease State revenue because employers would be able to deduct FLOC contributions from their taxable incomes. The bills appear to intend to exempt employee contributions and insurance benefits from taxation, which would reduce State revenue, while taxing benefits would increase State revenue. Exempt FLOC benefits would represent revenue forgone but not an actual loss of revenue not already included under other revenue impacts. The estimates of actual revenue changes from the bill would depend on many assumptions. The revenue estimate ranges likely border the maximum revenue changes under the bills, and those on tax deductibility also provide a likely minimum change. Across all assumptions, the bill would generate between $16.0 billion and $17.2 billion in contributions to the Fund and would reduce tax revenue from employers by between $409.2 million and $1,031.9 million. If employee contributions were exempt from taxation, it would reduce revenue by between zero and $365.5 million, depending on the share of contributions taken from employee wages. If benefits were taxed, it would generate between $421.2 million and $453.7 million per year under normal utilization and receipt of maximum benefits.

MCL 206.30 (S.B. 333)

Legislative Analyst: Eleni Lionas
Fiscal Analyst: Bruce R. Baker; Joe Carrasco, Jr; Cory Savino; Michael Siracuse; David Zin

CONTENT

Senate Bill 332 would enact the "Family Leave Optimal Coverage Act" to do the following:

- **Beginning January 1, 2026, allow a covered individual to take up to 15 weeks of family leave in a benefit year.**
- **Prescribe the reasons for which a covered individual could take family leave, including during certain life events and serious health conditions, a declared emergency, and exigency leave, among other reasons.**
- **Require employers to provide annually to employees written notice about family leave and FLOC benefits by January 31, and when an employee was hired, requested family leave, or when the employer learned that the employee's request for time off work could qualify for family leave.**
- **Require FLOC benefits to be paid within 14 days of the claim being approved, and every other week following that date.**
- **Specify that a covered individual could not be paid for fewer than eight hours of leave used in one week.**
- **Prescribe the formula for calculating FLOC payments.**
- **Establish the maximum weekly benefit rate payable to a covered individual as 65% of the State average weekly wage.**
- **Prescribe payroll contribution requirements for employers, employees, and LEO.**
- **Require an individual to certify family leave with LEO and include certain information based on the type of claim.**
- **Within a year of the bill's effective date, require LEO to establish procedures and prescribe forms for benefit claims.**
- **Require family leave that qualified under the Federal Family Medical Leave Act (FMLA) to run concurrently with benefits under the FMLA.**
- **Allow an employer to require FLOC benefits to be coordinated or paid concurrently with payments made or leave taken in accordance with a provision of the employer's collective bargaining agreement or paid family leave policy.**
- **Allow a self-employed individual to elect coverage under the Act for at least three years.**
- **Allow LEO to recover FLOC benefits paid to an individual under certain circumstances, including if the individual filed a false claim.**
- **Prescribe rights for employees, including the right to request a hearing with LEO if FLOC benefits were denied.**
- **Prohibit a person from preventing or discouraging an employee from exercising a right guaranteed under the Act.**
- **Allow an individual to file a complaint with LEO regarding a violation of the Act within three years of the violation and bring a civil action for civil damages, injunctive relief, or both.**
- **Require LEO to order employers who infringed on an employee's rights under the Act to remedy a violation or assess the employer a fine of up to $1,000.**
- **Establish the Family Leave Optimal Coverage Fund and prescribe which payments would have to be deposited or spent from the Fund**
- **Allow employers to fulfill the requirements of the Act through a private plan.**
- **Require a private plan to inform an individual who filed a claim that benefits would be subject to the Federal Income Tax if the United States Internal Revenue Service (IRS) determined such.**

-- Before September 30 of each year, require LEO to submit a report to the Secretary of the Senate and the Clerk of the House of representatives on the amount of FLOC benefits paid and used for each year and specified demographic information of individuals who made claims, among other things.

Senate Bill 333 would amend the Income Tax Act to include FLOC benefit deductions in the definition of "taxable income".

Each bill would take effect January 1, 2024. Senate Bill 333 is tie-barred to Senate Bill 332.

Senate Bill 332

General Definitions

"Employee" would mean an individual engaged in the business of the employer. The term would not include either of the following:

-- An individual employed by the United States government.
-- An employee as that term is defined in Section 351 of the Railroad Unemployment Insurance Act.[1]

"Employer" would mean a person that employs one or more employees. The term would not include the United States Government.

"Family member" would mean the following:

-- A child, regardless of the child's age.
-- A biological, adoptive, or foster parent of the covered individual or of the covered individual's spouse or domestic partner.
-- A stepparent or legal guardian of the covered individual or of the covered individual's spouse or domestic partner.
-- A person who stood in loco parentis to the covered individual when the covered individual was a minor child.
-- A person who stood in loco parentis to the covered individual's spouse or domestic partner when the covered individual's spouse or domestic partner was a minor child.
-- The covered individual's spouse.
-- The covered individual's domestic partner.
-- A biological, foster, or adoptive grandparent or step-grandparent of the covered individual or of the covered individual's spouse or domestic partner.
-- A biological, foster, or adoptive grandchild or step-grandchild of the covered individual or of the covered individual's spouse or domestic partner.
-- A biological, foster, or adoptive sibling or stepsibling of the covered individual or of the covered individual's spouse or domestic partner.
-- An individual to whom the covered individual is related by blood or whose relationship with the covered individual is the equivalent of a familial relationship.

"Child" would mean an individual who is any of the following:

[1] Generally, under Section 351 of Railroad Unemployment Act, employee means an individual who has provided or is providing services for one or more railroad carriers in exchange for compensation, including employee representatives and officers of employers. The term does not include individuals engaged in specific coal-related operations, and it also establishes criteria for considering individuals in an employer's service, regardless of their location, based on supervision, integration into operations, and compensation for services.

-- A covered individual's biological, adopted, or foster child, stepchild, or legal ward.
-- A child of a covered individual's domestic partner.
-- A child to whom a covered individual stands in loco parentis.
-- An individual to whom a covered individual stood in loco parentis when the individual was a minor.

"Domestic partner" would mean an individual who is 18 years of age or older in a committed relationship with another individual who is 18 years of age or older, including both same-sex and different sex-relationships. "Committed relationship" would mean a relationship in which the domestic partners share responsibility for a significant measure of each other's common welfare, including any relationship that is granted legal recognition as marriage, civil union, or analogous relationship by the State, a political subdivision of the State, another state, or political subdivision of another state, or the District of Columbia.

"Healthcare provider" would mean any of the following:

-- An individual licensed or registered under Article 15 of the Public Health Code, including a doctor, nurse, or midwife.[2]
-- An individual authorized under Federal law, the laws of another state, or the laws of another country, including, a doctor, nurse, emergency room personnel, clinical social worker, licensed professional counselor, licensed midwife, or certified doula, if the individual provides services in accordance with the authorization and within the jurisdiction of the authorizing authority.

"Military member" would mean a member of the Armed Forces of the United States, a reserve branch of the Armed Forces of the United States, or the National Guard.

Types of Leave for Covered Individuals

Beginning January 1, 2026, a covered individual could take up to 15 weeks of family leave in a benefit year. "Benefit year" would mean a 12-month period that begins on the first day of the week in which an individual submits a claim for FLOC benefits.

"Covered individual" would include either of the following:

-- An individual who submitted a claim for FLOC benefits to LEO and 1) had made contributions to the Family Leave Optimal Coverage Fund described below during a 12-month period immediately preceding the date the individual submitted the individual's claim or 2) elected coverage as a self-employed individual.
-- An individual who was a former employee who had been separated from employment for up to 26 weeks at the start of the individual's family leave and satisfied the above conditions.

Under the bill, a covered individual could take family leave for any of the following reasons:

-- The birth or adoption of a child or placement of a child through foster care
-- An absence related to the adoption of a child or placement of a child through foster care, if necessary
-- To care for a child during the first year after the child's anticipated or actual birth, adoption, or placement through foster care.

[2] Article 15 of the Public Health Code specifies the licensure and regulation of various healthcare professions and occupations including physicians, nurses, dentists, pharmacists, optometrists, chiropractors, therapists, dietitians, trainers, and morticians, among others.

-- The covered individual or covered individual's family member's mental or physical illness, injury, or health condition.
-- To obtain a medical diagnosis, care, or treatment of the covered individual's or the covered individual's family member's mental or physical illness, injury, or health condition.
-- Preventative medical care for the covered individual or covered individual's family member.
-- A serious health condition or to care for a family member with such a condition.
-- To care for a military member who was the covered individual's family member.
-- Qualifying exigency leave.
-- Safe leave.
-- Bereavement leave taken within three months after the death of the covered individual's family member.
-- To attend a meeting at a school or place of care of a child who was related to the covered individual related to the family member's health, or disability, or any effects on the family member related to domestic violence or sexual assault.
-- Closure of the covered individual's primary workplace by order of a public official due to a public health emergency.
-- To care for a child related to the covered individual because the child's family member's school or place of care had been closed by order of a public official or by a school or place of care administrator because of a public health emergency, including if the school or place of care were closed, but the administrators provided instruction remotely.
-- If a local health department or the covered individual's health care provider determined that the covered individual's or a family member of the covered individual's presence in the community could jeopardize another individual's health because the covered individual or the family member was exposed to a communicable disease, even if the covered individual or family member did not contract the disease.

"Safe leave" would mean time off from work or the availability for employment because the covered individual or the covered individual's family member is a victim of an act of violence including domestic violence or sexual assault. Time off from work or the availability of employment would include the following:

-- Medical care for the covered individual's or family member's physical injury or disability.
-- Psychological or other counseling for the covered individual's or family member's psychological injury or disability.
-- To obtain services from a victim services organization.
-- To relocate from the covered individual's or family member's place of residence to a new place of residence.
-- To obtain legal services.
-- To participate.

"Domestic violence" would mean the occurrence of any of the following acts by a person that is not an act of self-defense:

-- Causing or attempting to cause physical or mental harm to a family or household member.
-- Placing a family or household member in fear of physical or mental harm.
-- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
-- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

Additionally, a covered individual could take family leave if the President of the United States, Governor, or a local official of the State declared an emergency, and the covered individual

could not work or work remotely during the emergency, or an extension of the emergency for the following reasons:

-- If the declared emergency were because of a natural disaster or public health crisis, the covered individual had to care for a family member because the family member's usual care professional was unavailable due to the emergency.
-- If the declared emergency were because of a public health crisis related to a communicable disease and the covered individual had close contact with another individual who had the communicable disease, was subject to an isolation order, or had a condition that could increase the likelihood of contracting the communicable disease.
-- Any other reason related to a declared emergency under the Act.

Additionally, a covered individual could take family leave for qualifying exigency leave.

"Qualifying exigency leave" would mean the time off from work or the availability for employment taken by a family member of a military member to do any of the following:

-- Child care and school activities allowed under 29 CFR 825.126.[3]
-- Parental care allowed under 29 CFR 825.126.[4]
-- Address any issue that arose because the military member was notified not more than seven days before the date of deployment of an impending call or order to active duty.
-- Attend an official ceremony, program, or event sponsored by the military that was related to the military member's active duty or call to active-duty status.
-- Attend family-support or assistance programs and informational briefings sponsored or promoted by the military, a military service organization, or the American Red Cross that were related to the military member's active duty or call to active-duty status.
-- Make or update financial or legal arrangements to address the military member's absence while the military member was on active duty or called to active-duty status.
-- Act as the military member's representative before a Federal, State, or local agency to obtain, arrange, or appeal military service benefit while the military member was on active duty or called to active-duty status or during the 90-day period immediately following the termination of the military member's active-duty status.
-- Spend time with the military member if the military member were on Rest and Recuperation leave during the military member's period of deployment.
-- Attend arrival ceremonies, reintegration briefings and events, or any other official ceremony or program sponsored by the military during the 90-day period immediately following the termination of the military member's active-duty status.
-- Address any issue that arose from the death of the military member while on active-duty status, including, but not limited to, meeting and recovering the military member's body, making funeral arrangements, and attending funeral services.
-- Address any other event that arose out of the military member's active duty or call to active-duty status if the family member and family member's employer agreed that the leave qualified as an exigency and agreed to the timing and duration of the leave.

[3] 29 CFR 825.126 allows for qualified exigency leave if a family member of a military member must 1) arrange for alternative childcare for a child of a military member; 2) provide care for the child on an urgent, immediate basis; 3) enroll a child in or transfer a child to a new school or day care facility when necessary; and 4) attend meetings with staff at a school or a daycare facility for a child of a military member.

[4] 29 CFR 825.126 allows for qualified exigency leave if the family member of a military member must 1) arrange for alternative care for a parent of the military member when the parent is incapable of self-care; 2) provide care for a parent of the military member on an urgent, immediate need basis; 3) admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated; and 4) attend meetings with staff at a care facility when necessary.

If counseling for the military member, the military member's child, or the family member of the military member were necessary because of the military member's active duty or call to active-duty status, the family member could take family exigency leave to attend counseling.

A covered individual who took family leave for qualifying exigency leave could use the family and medical leave during the seven-day period that would begin on the date the military member was notified of an impending call to, or order to, active duty and during the 15-day period that would begin on the date the military member's Rest and Recuperation leave began. Benefits would be payable on the date a covered individual's family leave began.

("Military member" would mean a member of the Armed Forces of the United States, a reserve branch of the Armed Forces of the United States, or the National Guard.)

An employer would have to restore an employee who took family leave for any reason to one of the following job positions upon the employee's return:

-- The job position that the employee held before the employee took the family leave.
-- A different job position, if the different job position was equivalent to the job position the employee previously held in seniority, status, employment benefits, wage rate, and any other terms and conditions of employment.

If an employee took family leave, an employer would have to maintain any health care benefits that the employee had before the employee took the family leave, but only if the employee continued to pay the employee's costs for the health care benefits during the family leave. The health care benefits would have to be maintained for the duration of the employee's family leave.

Family Leave Optimal Coverage Fund

The Family Leave Optimal Coverage Fund would be created in the State Treasury. The State Treasurer would have to deposit money and other assets received from employer and employee contributions or from any other source into the Fund. The State Treasurer would direct the investment of money in the Fund and credit interest and earnings from the investments to the Fund. The bill would require LEO to serve as the administrator of the Fund for auditing purposes. The Department could spend money from the Fund, upon appropriation, only to implement the Act and pay FLOC benefits to covered individuals.

Employee Notice Requirements for Use of Family Leave

If a covered individual qualified for family leave and intended to take the leave, the individual would have to provide notice to the individual's employers as soon as possible. The employer could not require an employee to provide notice more than 30 days before the need to take the leave if the leave were foreseeable or provide notice to the employer by a specific time if need to take the leave were not foreseeable.

Employer Notice to Employees About Family Leave

The bill would require employers to provide written notice of the following information before January 31 of each year and to an employee when the employee was hired, requested family leave, or when the employer learned that the employee's request for time off work could qualify for family leave.

The bill would allow LEO to promulgate rules to establish additional requirements related to the manner in which the employer provided the written notice. The written notice would have to include all the following information:

-- The employee's right to FLOC benefits under the Act.
-- The terms under which family leave may be used.
-- The amount of FLOC benefits available to an employee.
-- The procedure to submit a claim for FLOC benefits to LEO.
-- The employee's right to job protection and continuation of health care benefits.
-- A statement that discrimination and retaliatory personnel action against a person's request or claim for or use of FLOC benefits would be prohibited.
-- The employee's right to request a hearing under the Act.

The bill would require an employer to display and maintain a poster that included this information at the employer's place of business in a conspicuous location that was accessible to employees. The information on the poster would have to be printed in English, Spanish, Arabic, French, Mandarin, Korean, Tagalog, and any other language that was requested by an employee.

An employer that violated these requirements would be subject to a civil fine of not more than $100 per day per employee for each violation. The Attorney General or the prosecutor of the county in which the violation occurred could bring an action to collect the fine. A fine collected would have to be deposited into the Fund.

Additionally, LEO would have to educate employers and employees about the Act and the availability of FLOC benefits. Educational material that the Department provided to the employers and employees would have to be available in English, Spanish, and any other language requested by an employee or employer. Each year, LEO could up to 5% of the funds in the Fund to fulfill these duties.

Maximum Allowable Amount of Leave

Under the bill, LEO would have to pay FLOC benefits to a covered individual who took family leave. The FLOC benefits would have to be payable to that individual for the time the individual took family leave, for a maximum of 15 weeks during the benefit year.

A covered individual could take up to 10 days of bereavement leave for each death of a family member during a benefit year subject to the 15-week maximum under the Act.

Benefit Compensation

The Department would have to issue the first payment of FLOC benefits to a covered individual not more than 14 days after the claim was approved. Following the first payment, all other payments would have to be made to the covered individual every other week. A covered individual could not be paid FLOC benefits for fewer than eight hours of family leave used in one work week.

A covered individual would have to be paid FLOC benefits equal to the sum of the following:

-- 90% of the portion of the covered individual's average weekly wage that was equal to or less than 50% of the State average weekly wage (in 2023, an estimated $608.09).[5]
-- 50% of the portion of the covered individual's average weekly wage that was more than 50% of the State average weekly wage.

"Average weekly wage" would mean 1/13 of the wages paid during the quarter of a covered individual's base period or alternative base period in which the total wages were highest. "Alternative base period" would mean the last four completed calendar quarters immediately preceding the first day of the individual's benefit year. "Base period" would mean the first four days of the last five completed calendar quarters immediately preceding the first day of a covered individual's benefit year; however, if the first quarter of the last five completed calendar quarter were included in the base period applicable to a covered individual's previous benefit year, the covered individual's base period would be the last four completed calendar quarters.

"State average weekly wage" would mean the State average weekly wage as determined by the Unemployment Insurance Agency. The *maximum* weekly benefit rate payable to a covered individual would be 65% of the State average weekly wage.[6]

If a covered individual taking family leave from a job continued working at an additional job or jobs during the individual's family leave, LEO could not consider the covered individual's average weekly wage earned from that job or jobs when calculating the covered individual's weekly benefit amount. A covered individual with multiple jobs could elect whether to take leave from one job or multiple jobs.

Payroll Contributions

Under the bill, payroll contributions would be authorized for the exclusive purpose of financing the payment of FLOC benefits and administering the FLOC program. Beginning January 1, 2025, for each employee, an employer would have to remit contributions to the State Treasurer for deposit into the Fund in the form and manner determined by LEO. An employer could deduct from an employee up to 50% of the contribution from the employee's wages and would have to remit 100% of the contribution to the Fund.

For the time period beginning on January 1, 2025, and ending on December 31, 2026, the contribution amount would be a percentage of wages per employee to be determined by the Director of LEO or the Director's designee as sufficient to fund the payments of FLOC benefits and to administer the provisions of the Act.

For the 2027 calendar year and each calendar year after, not later than October 31, the Director or the Director's designee would have to evaluate and determine the contribution rate for the immediately following calendar year based on a percent of employee wages and at the rate necessary to obtain a total amount of contributions equal to 135% of the benefits paid during the prior fiscal year plus an amount equal to 100% of the cost of administration of the payment of those benefits during the prior fiscal year, minus the amount of net assets remaining in the Fund as of June 30 of the current calendar year.

The bill would require the Legislature to appropriate sufficient funds to the Fund to pay for the cost of administering the Act before the collection of payroll contributions. If the

[5] 2024, 65% would be approximately $818.942 based on the "State Average Weekly Wage Chart", Workers' Disability Compensation Agency, Michigan Department of Labor and Economic Opportunity. Retrieved on 12-6-24.
[6] *Id.*

Legislature did not appropriate sufficient funds to fund the cost of administering the Act, the payroll contributions described above would have to be increased to fund the payment of FLOC benefits.

An employer that did not or refused to make contributions would have to be assessed a percentage of its total annual payroll equal to the percentage of payroll contributions required for each year the employer did not comply with these requirements, in addition to any amounts previously owed, or fraction thereof, in addition to the total amount of benefits paid to covered individuals for whom it did not make contributions. Assessments collected would have to be deposited into the FLOC Fund.

Submission of Claims and Certificates

Not more than one year after the bill's effective date, LEO would have to establish reasonable procedures and prescribe forms for submission of a claim for FLOC benefits that were not unduly burdensome to an individual who submitted a claim for benefits. An individual could file a claim not more than 60 days before the anticipated start date of family leave and not more than 90 days after the start date of family leave.

The certification requirements for taking family leave time are described below.

Taking leave due for the birth or adoption of a child, placement of a child through foster care, or to take care of a child during the first year after the child's birth, adoption, of placement: Certification for a covered individual would be sufficient if the covered individual provided any of the following, as applicable:

-- The child's birth certificate.
-- A document that stated the child's birth date or anticipated birth date issued by the health care provider of the child or the health care provider or the parent who gave birth.
-- A document issued by the health care provider of the child, an adoption agency involved in the adoption, or other individuals, as determined by LEO, that confirmed the adoption or anticipated adoption and the date of adoption or anticipated adoption.
-- A document issued by the health care provider of the child, a foster care agency involved in the placement, or other individuals, as determined by LEO, that confirmed the placement or anticipated placement and the date of placement or anticipated placement.

Taking leave due to a serious health condition: Certification for a covered individual would be sufficient if it stated the date on which the serious health condition commenced, the probable duration of the condition, and the appropriate medical facts within the knowledge of the health care provider, as required by LEO.

Taking leave to care for a family member with a serious condition: Certification for a covered individual would be sufficient if it stated the date on which the family member's serious health condition commenced, the probable duration of the condition, the appropriate medical facts within the knowledge of the health care provider, as required by LEO, a statement that the covered individual was needed to care for the family member, and an estimate of the amount of time that the covered individual was needed to care for the family member.

Taking leave to care for a military member related to the covered member: Certification for a covered individual would be sufficient if it included the previous requirements, as well as an attestation by the covered individual that the health condition was connected to the covered service member's military service.

Taking leave for qualified exigency leave: Certification for a covered individual would be sufficient if it included any of the following:

-- A copy of the family member's active-duty orders.
-- Other documentation issued by the Armed Forces.
-- Other documentation permitted by LEO.

Additionally, an individual may take safe leave. Under the bill, "safe leave" would mean time off from work or the availability for employment because the covered individual or the covered individual's family member is a victim of an act of violence, including domestic violence or sexual assault. Time off from work or the availability of employment would include medical care for the covered individual's or family member's physical injury or disability, psychological or other counseling, or to relocate from one place of residence to a new place of residence, among other things. Certification for a covered individual would be sufficient if it included any of the following:

-- A police report indicating that the covered individual or covered individual's family member was a victim of an act of violence.
-- A court document indicating that the covered individual or covered individual's family member was involved in legal action related to an act of violence.
-- A signed statement from an attorney, member of the clergy, victim and witness advocate, or medical or other professional affirming that the covered individual or covered individua's family member was a victim of an act of violence.
-- The covered individual's statement, which would not have to be notarized or in any particular form, affirming that the covered individual or the covered individual's family member was a victim of an act of violence and that the leave was taken for safe leave.

The Department could accept alternative certification for any leave that demonstrated the covered individual's need for leave for a purpose specified under the Act.

Not more than five business days after an individual submitted a claim for FLOC benefits, LEO would have to notify the individual's employer about the claim.

Information that an individual or another person submitted to LEO under the Act would be confidential and would not be subject to disclosure under the Freedom of Information Act. The Act would not require a covered individual to provide as certification any information from a health care provider that would result in a violation of the Social Security Act, which prohibits wrongful disclosure of individually identifiable health information, or the regulations promulgated under the Health Insurance Portability and Accountability Act, which, among other things, sets health information privacy standards.

Concurrent Leave

Family leave that also qualified as leave under the FMLA would have to run concurrently with leave taken under the latter.

An employer could require that FLOC benefits be coordinated or paid concurrently with payments made or leave taken in accordance with a provision of a collective bargaining agreement to which the employer was a party or a paid family leave policy of the employer. The employer would have to inform its employees of this requirement in writing.

The Act would not prohibit an employer from offering a family leave policy that was more generous than the leave required. The Act would not diminish or affect an individual's right,

privilege, or remedy related to leave or a benefit under a collective bargaining agreement or employment agreement, an employer's policy, or any other law.

If an employer or employee were a party to a collective bargaining agreement that met both of the following conditions, the Act would apply to the parties to the agreement beginning on the expiration date stated in the agreement or the effective date of a new collective bargaining agreement entered between the parties, whichever was earlier:

-- The agreement was in effect on the effective date of the Act.
-- The agreement conflicted with the Act.

An employee would not be required to use or exhaust any accrued vacation leave, sick leave, or other paid time off before or while receiving FLOC benefits under the Act; however, a covered individual could choose to use any accrued paid time off while receiving FLOC benefits, unless the aggregate amount the covered individual received would exceed the covered individual's average weekly earnings.

Coverage for Self-Employed Individuals

A self-employed individual, including an independent contractor, sole proprietor, individual who was a partner in a partnership, or individual in a joint venture could elect coverage under the Act for an initial period that was at least three years. To elect coverage, a self-employed individual would have to do the following:

-- Submit a notice of election in writing with LEO on a form and in the manner prescribed by the Department.
-- Pay both the employee and employer contributions to the Fund.

A self-employed individual who elected coverage could withdraw from coverage not more than 30 days after the end of the three-year period of coverage or at another time as provided for under the rules promulgated by LEO. The self-employed individual would have to submit a written notice of the withdrawal to LEO on a form and in the manner prescribed by the LEO. The withdrawal would have to take effect at least 30 days after the notice of withdrawal was submitted.

An individual who elected coverage and was no longer a self-employed individual would be excused from the individual's obligations, as LEO would prescribe by rule.

Fraud Protections

Not more than one year after the effective date of the bill, LEO would have to promulgate rules to implement the Act pursuant to the Administrative Procedures Act.

A covered individual who submitted a claim for FLOC benefits could not do any of the following for the purpose of obtaining family leave optimal coverage benefits:

-- Willfully make a false statement to LEO.
-- Willfully misrepresent a material fact to LEO.
-- Willfully fail to report a material fact to LEO.

If LEO determined that a covered individual violated this provision, LEO could refuse to pay the covered individual FLOC benefits for up to one year beginning on the date of LEO's determination and at its discretion.

The Department could recover, in whole or in part, FLOC benefits paid to an individual under the following circumstances:

-- The Department erroneously paid FLOC benefits to the covered individual.
-- The Department paid FLOC benefits to the covered individual because the covered individual violated the requirements described above.
-- The Department denied the covered individual's claim after it had already paid FLOC benefits to the covered individual.

The Department would have to waive the recovery of FLOC benefits if recovery would be against equity and good conscience.

Litigation and Anti-Retaliation

An individual could request a hearing before LEO regarding any determination related to the individual's claim for FLOC benefits, including the denial of benefits. An individual would have to request a hearing not later than 90 days after the individual received notice of the determination. If LEO received a request for a hearing, LEO would have to hold a hearing not later than 14 days after it received the request or, if LEO decided that a hearing was not necessary, notify the requester of the reasons for its decision within seven days after it received the request.

The bill would prohibit an individual or partnership, corporation, limited liability company, governmental entity, or other legal entity (person) from committing interference or restraining or denying the exercise of a right granted under the Act. A person could not take retaliatory personnel action or otherwise discriminate against another person because the person exercised, or attempted to exercise, a right granted under the Act. An employer's absence control policy could not treat family leave as an absence that could result in the discipline, discharge, demotion, suspension, or any other adverse action of an employee that used family leave or submitted a claim for FLOC benefits.

"Interference" would mean an action that may have the effect of preventing or discouraging an employee from exercising a right guaranteed under the Act, including the following:

-- Failing to comply with the provision of written notice requirements described under Private Plans.
-- Failing to provide an employee with complete and accurate information related to an application for family optimal leave coverage benefits as may be required from an employer.
-- Failing to accurately and timely complete and return the application for family leave optimal coverage benefits as may be required.
-- Providing LEO with inaccurate or incomplete information about an employee's wages or employment as it relates to the employee's eligibility for FLOC benefits.

An individual who believed that the individual's rights had been violated under the bill could file a complaint with LEO within three years after the violation occurred or the individual should reasonably have known that the violation occurred, whichever was later. Additionally, an individual could bring a civil action for damages, injunctive relief, or both. A court would have to award a plaintiff who prevailed not more than twice the amount of actual damages, injunctive relief, and costs, including reasonable attorney costs. An individual would not have to file a complaint with LEO before bringing a civil action.

If LEO determined that an employer infringed on an employee's rights under the bill, the bill would require LEO to do the following:

-- Order the employer to take action to remedy the violation, which may include providing the requested family leave, reinstating an employee, providing back pay accrued not more than three years before the complaint was filed, paying liquidated damages, paying reasonable actual attorney fees to the complainant, and any other relief LEO determined was appropriate.
-- Assess the employer an administrative fine of up to $1,000.

An administrative fine recovered would have to be deposited into the FLOC Fund.

Additionally, the bill would allow LEO to bring a civil action on behalf of every individual affected by the violation who had not brought a civil action.

A person that violated the Act would be subject to a civil fine of not more than $5,000. The Attorney General or the prosecutor of the county in which the violation occurred may bring an action to collect the fine. A fine collected would have to be deposited into the Fund.

Reporting

Before September 30 of each year, LEO would have to submit a report to the Secretary of the Senate and the Clerk of the House of Representatives that would have to include, among other things, the following:

-- The amount of FLOC benefits that LEO projected would be paid for the year and the *actual* amount of family leave paid for the year.
-- The amount of family leave that LEO projected would be used for the year and the *actual* amount of family leave used for the year.
-- The age, gender, race, ethnicity, primary language, residential zip code, average weekly wage, and occupation of each individual who was paid FLOC benefits.
-- Demographic information for each individual who submitted a claim.
-- The average weekly rate of FLOC benefits.
-- The average duration of family leave.
-- The contribution rates paid to the Fund for both employers and employees.
-- The amount of money in the Fund on September 1 of the year covered.
-- The average processing time for initial claims.

Private Plans

An employer could apply to LEO for approval to meet its obligations under the Act through a private plan. An employee covered by a private plan would retain all applicable rights. To be approved, a private plan would have to confer all the same rights, protections, and benefits provided to employees under the Act, including, but not limited to, all the following:

-- Allowing family leave to be taken for any of the purposes outlined in the Act.
-- Providing FLOC benefits to a covered individual for the maximum number of weeks (15) required in a benefit year.
-- Providing a wage replacement rate and a maximum weekly benefit for all FLOC benefits that was equal to or greater than the amount required by the Act.
-- Allowing a covered individual to take intermittent leave.
-- Imposing no additional conditions or restrictions on family leave or FLOC benefits beyond those explicitly authorized by the Act or the rules promulgated under it.
-- Allowing any employee covered under the private plan who was eligible for FLOC benefits under the Act to receive benefits and take family leave under the private plan.

To be approved as meeting an employer's obligations under the Act, a private plan would have to comply with the following provisions:

-- If the private plan were in the form of self-insurance, the employer would have to furnish a bond to the State, with a surety company authorized to transact business in the State, in the form, amount, and manner required by LEO.
-- The plan would have to provide coverage for all employees of the employer throughout their period of employment with that employer.
-- If the plan were in the form of a third party that provided for insurance, the forms of the policy would have to be issued by an insurer approved by the State.
-- The cost to employees covered by the plan could not be greater than the cost charged to employees under the State plan.

Additionally, employers would have to provide written notice to employees covered by the private plan that included the following information:

-- Information about FLOC benefits available under the approved plan that specifically stated that FLOC benefits required by the State were being administered for this employer under the private plan.
-- The process for filing a claim to receive FLOC benefits under the plan.
-- The process for employee contributions used to finance the costs of the plan, if any.
-- An employee's right to a hearing before LEO or a court regarding a contested determination or denial of FLOC benefits.
-- The right to job restoration and health care benefits continuation, if applicable, and that the employee had the right to a hearing before LEO and a court for any alleged violation.
-- A statement that discrimination and retaliatory personnel action against an individual's request or claim for or use of FLOC benefits would be prohibited.

The Department would have to withdraw approval for a private plan when a term or condition of the plan had been violated. Causes for plan termination would include, among other things, failure to pay benefits timely and in a manner consistent with the Act, failure to comply with the Act, misuse of private plan money, and more.

An employer or entity offering private plans that violated the Act would be assessed an administrative fine of not less than $100 per violation. The Director would have to deposit any fines collected into the Fund. The Director would have to establish a process for the assessment and appeal of fines.

Additionally, the Director would have to determine annually the total amount expended by LEO for costs arising out of the administration of private plans. Each entity offering a private plan would have to reimburse LEO for the costs arising out of the private plans in the amount, form, and manner determined by the Director. The Director would have to deposit payments received into the Fund.

Federal Income Tax

If the IRS determined that FLOC benefits were subject to Federal Income Tax, LEO or a private plan would have to inform an individual who submitted a new claim for FLOC benefits that benefits would be subject to Federal Income Tax and that some taxpayers would be required to make estimated tax payments.

Senate Bill 333

Taxable Income

The bill would modify the definition of "taxable income" under the Income Tax Act to include,

for tax years that began on and after January 1, 2024, FLOC deductions, to the extent included in adjusted gross income received in the tax year.

BACKGROUND

Currently, Michigan workers are protected by the FMLA. The Act allows workers to take up to 12 unpaid workweeks off in a 12-month period for the birth of a child and to care for a newborn child; the placement with an employee of an adopted or foster child and to care for that child; for a serious health condition or to take care of a family member with a serious health condition; or any qualifying exigency arising out of an employee's family member's active-duty service in the military. The Act also allows for 26 weeks of military caregiver leave. An employee who takes FMLA leave is job-protected and may keep healthcare benefits while on leave if the employee continues to pay for the health care benefits. An employee may take intermittent FMLA leave. Companies must adhere to the FMLA if they employed at least 50 workers for 20 weeks during the previous year. Employees are eligible for leave under the FMLA if they have worked for their employer for at least 1,250 hours over the past 12 months and work at a location where the company employs 50 or more employees within 75 miles.

Additionally, the Paid Medical Leave Act requires employers who employ 50 or more individuals in Michigan to provide employees with one hour of paid medical leave for every 35 hours worked. An employer is not required to allow an employee to accrue more than 40 hours of paid medical leave per benefit year. Employees may take medical leave to seek a medical diagnosis or treatment for a physical or mental illness, injury, or health condition of the employee or the employee's family member; for preventative care; due to closure of the employee's primary workplace or closure of the employee's child's school or place of care because of a public health emergency; and due to an employee or employee's family member who was exposed to a potential harmful communicable disease. For domestic violence and sexual assault situations, employees may use paid medical leave to seek medical care or psychological or other counseling; to receive services from a victim services organization; for relocation, to obtain legal services; and participation in civil or criminal proceedings related to the domestic violence or assault.

The Paid Medical Leave Act began as a ballot initiative, which required small (under 10 employees) and large (over 50 employees) to provide paid sick leave. Additionally, the initiative required 72 hours of paid sick leave for large employers and 40 hours of paid leave and 32 hours of unpaid leave for small employers, with employees accruing one hour of sick leave for every 30 hours worked. It also prohibited retaliatory personnel action against employees. Upon its presentation to the Legislature, the Legislature enacted and then amended the ballot initiative within the same Legislative Session. This was challenged and, in July 2022, the Court of Claims held in *Mothering Justice v. Nessel* that this "adopt and amend" action was unconstitutional and ordered the reinstatement of the original law.[7] This decision was reversed by the Court of Appeals in *Mothering Justice v. Attorney General* (2023). In June 2023, the Michigan Supreme Court agreed to hear the matter.

[7] Petroski Emily M., et al., "Michigan Court Voids State's Minimum Wage and Paid Medical Leave Acts, Creating Compliance Limbo", *The National Law Review*, July 25, 2022.

FISCAL IMPACT

Summary of Revenue Implications Under different Assumptions (dollars in millions)			
		Number of Employees Assumption	
Source of Revenue Impact/Assumption	**Fund Affected**	**Current Population Survey**	**Current Employment Statistics**
State Revenue from contributions	FLOC	$17,199.0	$15,968.1
Maximum payable benefits at 20% utilization	---	11,861.4	11,012.5
Administrative costs (10% of maximum payable benefits)	---	1,186.1	1,101.2
Required buffer (35%)	---	4,151.5	3,854.4
Deduction of Employer Contributions			
Employers Pay 50%, All file under CIT	GF	(516.0)	(479.0)
Employers Pay 50%, 50% file under CIT & 50% file as flow-throughs.....	GF & SAF	(440.7)	(409.2)
Employers Pay 100%, All file under CIT	GF	(1,031.9)	(958.1)
Employers Pay 100%, 50% file under CIT & 50% file as flow-throughs.....	GF & SAF	(881.4)	(818.4)
If Employee Contributions are Exempted			
Employers Pay 50%, Employees pay 50%.....	GF & SAF	(365.5)	(339.3)
If Benefits are Taxed (Revenue forgone if benefits are exempt)	GF & SAF	$453.7	$421.2

Senate Bill 332

The bill would have a substantial fiscal impact on LEO, as LEO would have to promulgate rules, administer the Act, regulate employers and employees, and educate the public on the Act. These costs would include staff for administration of the program, staff to oversee and enforce the Act, costs to educate the public, and information technology costs. Education costs would be capped at 5% of the FLOC Fund balance each year. These costs could be offset to some degree by administrative or other fines that resulted from violations of the Act.

The bill would affect State revenue in two major ways: 1) it would increase State revenue from contributions to the FLOC Fund and 2) it would decrease State revenue because employers would be able to deduct FLOC contributions from their taxable income. The bill appears to intend to exempt employee contributions and insurance benefits from taxation, although the bill's language would not exempt employee contributions and would exempt benefits only under Senate Bill 333. Exempting employee contributions would reduce State revenue, while taxing benefits would increase State revenue. If benefits were exempt, the exemption would represent revenue forgone but not an actual loss of revenue not already included under other revenue impacts.

The bill's potential revenue changes depend on a wide variety of assumptions, which are detailed below and based on year-to-date through October 2024. As a result, the analysis presents ranges of potential impacts. These ranges likely border the maximum potential revenue changes under the bill, and those on tax deductibility also provide a likely minimum change. To summarize the range of revenue impacts across all assumptions, the bill would generate between $16.0 billion and $17.2 billion in contributions to the FLOC Fund and reduce tax revenue from employers by between $409.2 million and $1,031.9 million. If employee contributions were exempted, it would reduce revenue by between zero and $365.5 million, depending on the share of contributions taken from employee wages. If benefits were taxed, it would generate between $421.2 million and $453.7 million per year under normal utilization and receipt of maximum benefits.

Background and Summary Information Relevant to the Fiscal Impact

The bill would restrict benefits to covered individuals, which would be defined as those who have made contributions to the FLOC Fund within the last 12 months and specified self-employed individuals. Employers would have to make contributions to the FLOC Fund for every employee. The bill would provide employers the option to take 50% of contributions from an employee's pay. The bill would not indicate how individuals, if their employers did not elect to take FLOC contributions from wages, would demonstrate they have contributed to the FLOC Fund and were thus a covered individual—regardless of whether the employer remitted contributions. The bill would not require an enrollment process for employees (other than qualified self-employed individuals who elected to obtain coverage), and it is unclear if the bill's requirement in Section 11 that "payroll contributions must be authorized for the exclusive purpose of financing the payment of...the program" would be sufficient to create a link between employees and employer contributions.

The bill would affect all employers and all employees. No exceptions would be provided based on firm size or number of employees. Contributions would be required for all employees regardless of their status as temporary employees, limited-term employees, or the number of hours worked.

Covered individuals would be eligible for benefit payments for a maximum of 15 weeks per year. Benefit payments could not exceed 65% of the State average weekly wage. Subject to that limit, benefit payments would equal 90% of the portion of the individual's wage less than or equal to 50% of the State average plus 50% of the individual's wage that was greater than the State average. As a result, if an individual made $1,500/week and the State's average wage was $1,200 per week, then the benefit for that individual would compare:

90%*(50%*1,200) = 90%*600 = **$540**

Plus

50%*(1,500-(50%*1,200)) = 50%*(1,500-600) = 50%*900 = **$450**

which equals $540 + $450 **= $990**, to 65% of the State average (65%*$1,200 = **$780**).

In this example, the benefit would total $780 because the calculated benefit of $990 exceeds 65% of the State's average weekly wage.

In determining contributions to the program, the required contributions essentially would be what the State deemed was necessary to fund the benefits and administer the program. As a result, it is difficult to estimate the impact of the bill on employers, employees, and State revenue. The results below depend on the validity of the assumptions used to develop the estimates.

The Act would not exempt benefit payments from the income tax or calculation of household resources, although it would require employers to inform individuals filing a claim that the benefits would be taxed at the Federal level if the Internal Revenue Service determines the benefits are subject to Federal income tax; however, employers likely would be able to deduct contributions from taxable income under the corporate income tax (CIT) and other business taxes. The bill does not indicate if contributions assessed against employee pay would be exempt from tax and/or would be taken on a pre-tax or post-tax basis.

Data indicate that during a year, approximately 15 to 17% of employees take leave for a FMLA-qualifying reason. Furthermore, one-third of those individuals take intermittent leave under FMLA.

Determining Relevant Population Counts and Total Contributions

The bill would appear to make public employees eligible for benefits (they would not be excluded by the bill unless they were employed by the United States government or covered by the Railroad Unemployment Insurance Act) and to require public employers to make contributions. Presumably, the bill also would require coverage of temporary employees, as well as agricultural and migrant workers. As a result of the bill's ambiguity, it is unclear what total represents the most appropriate estimate of covered individuals, especially given the different surveys and data sources used to collect data on the number of employed individuals.

For example, data from the Current Population Survey (CPS) produces data used to estimate the unemployment rate. The CPS data counts individuals (not jobs), so if an individual has two jobs, the individual will appear as employed, but it will undercount the number of jobs that would be relevant under the bill. Similarly, the CPS data count all self-employed individuals, regardless of whether they would qualify under the bill. The methodology of the CPS data means that migrant workers are not likely to be counted at all, that individuals who are Michigan residents but work out-of-State will be counted, while out-of-State residents who work in Michigan will not be counted.

In contrast, the Current Employment Statistics (CES) data counts payroll positions. The CES data resolve certain issues with the CPS data, such as those related to employee residency or multiple jobholders; however, the data exclude self-employed workers and farm and agricultural workers. The Quarterly Census of Employment and Wages (QCEW) generally is regarded as being a more thorough and accurate data source because, instead of relying on samples, it uses data for all workers covered by State unemployment insurance laws and thus covers about 95% of all jobs; however, there are substantial lags in data availability; as of the date of this fiscal note, preliminary October 2024 data were available from the CPS and preliminary October 2024 data were available from the CES, the latest data available from the QCEW was through preliminary June 2024. Furthermore, while agricultural workers are included in the QCEW, the data only include those covered by State unemployment insurance laws and will omit self-employed individuals and some farm workers, especially if they are not covered by unemployment insurance laws.

As a result, the analysis is based on the following totals for the number of Michigan employees:

-- Total employment (including self-employed): 4,827,935 (CPS).
-- Total nonfarm payroll employment: 4,482,410 (CES).
-- Total private nonfarm payroll employment: 3,678,100 (CES).
-- Total agriculture/forestry/fishing/hunting workers: 33,787 (QCEW, based on year-to-date average through January-June 2024).

According to the data from LEO, the statewide average weekly wage totaled $1,259.91 in 2024. The analysis below is based on the 2024 LEO data for the average wage and uses the estimated year-to-date 2024 employee counts. No adjustments are made to reflect changes in employment or wages over time. To the extent that employment or wages increase, the revenue impacts would be greater in magnitude.

Assuming that the Director of LEO set contributions to cover 20% of employees at the maximum compensation rate for the maximum duration of 15 weeks, the *contributions for benefits* would have to equal:

Using total employment from the CPS: (20%*4,827,935)*(65%*1,259.91)*15 = **$11.86 billion**

Using total payroll employment CES: (20%*4,482,410)*(65%*1,259.91)*15 = **$11.01 billion**

Total contributions would need to exceed these totals because contributions would have to cover 100% of administrative costs and 135% of benefits (providing a 35% buffer). For the purposes of this analysis, administrative costs are assumed to equal 10% of the benefits estimate. As a result, total contributions would total between $17.2 billion (using the CPS employee count) and $16.0 billion (using the CES employee count). As mentioned earlier, the analysis does not adjust for any estimated increase in the average weekly wage for calendar year 2025 or later years, nor any changes in total employment.

Fiscal implications

Fiscal impacts from the bill can come from five paths:

-- Revenue from contributions.
-- Employers deducting contributions from their business taxes.
-- Exempting employee contributions from taxation.
-- Exempting benefit payments from taxation (Senate Bill 333).
-- Department administrative costs.

Revenue from contributions: The bill would require that for calendar year 2027, contributions would need to total 135% of the benefits paid in the previous fiscal year (not calendar year) plus 100% of the administrative costs paid in the previous fiscal year. For calendar year 2025 and 2026, the bill specifies contributions would total an amount deemed by the Director of LEO as sufficient to cover benefits and administrative costs. The bill presents a timing issue for determining contributions and a contribution rate in that it would not provide for calculating a contribution rate during calendar year 2027; Section 11(4) would not require a contribution rate for the following calendar year to be developed until 2027. The intent appears to be that the contribution rate for calendar year 2027 would be determined by October 31, 2026.

Based on the employee counts discussed above, and the assumption that administrative costs equal 10% of the maximum benefit costs, the bill would require contributions of between $16.0 billion and $17.2 billion per year. Revenue from contributions would be deposited into the FLOC Fund.

Employers deducting contributions from their business taxes*:* For the second path, the fiscal impact depends on how many employees are employed by a business that files a CIT return compared to the number of employees who are employed by businesses taxed under different taxes, such as the Michigan Business Tax (MBT) or the Flow-Through Entity Tax, or

business that are not required to file a tax return. Similarly, to the extent a firm already had a zero liability under existing law, additional deductions would not have a fiscal impact. It is unknown what percentage of employees work for firms that file under the CIT or the MBT, or firms that file as flow-through entities, or that are not required to file a return, or that exhibit a zero liability under existing law. Each tax applies a different tax rate to items deductible from income.

Based on the aggregate earnings data from the Bureau of Economic Analysis, aggregate contributions would represent approximately 5.4% to 5.8% of total wage and salary income. Given the distribution of wages, and assuming that employers would attempt to assess the full 50% of the required contribution against employees, the majority of workers would experience something in the range of a 2.7-2.9% drop in aggregate wage and salary income.

Under the assumption that all employers took 50% of the total contribution from employee pay and thus would not be able to deduct 50% of the contribution, the worst-case revenue reduction under the first path can be estimated. Assuming that all employers file under the CIT, then the applicable tax rate is 6% and the employer share of contributions would reduce General Fund (GF) revenue by between $479.0 million and $516.0 million, depending on which employment total (CES or CPS) is used.

To illustrate the degree of variability possible in the estimate, if 50% of employees work for firms assumed to file as flow-through entities (which are taxed at a 4.25% rate) and 50% of employees work for firms taxed under the CIT rate, the range would fall to $409.2 million to $440.7 million. Under this set of assumptions, a portion of the loss attributable to flow-through entities also would reduce School Aid Fund (SAF) revenue, with the SAF reduction representing between $40.8 million and $44.0 million of the total revenue reduction (using the SAF earmark share for Fiscal Year 2024-25, which increases each year through Fiscal Year 2026-27).

These estimates assume contributions are based on all covered individuals receiving benefits at the maximum rate. Although an unknown number of covered individuals would receive benefits at a lower rate, in the initial years of the program, these estimates likely would be relatively valid; the program would have no actuarial experience with actual claims and likely would seek to avoid a situation in which claims exceeded the available revenue to pay them. Over time, much like with the unemployment insurance system, the program would gain experience with utilization rates and average benefit levels and could lower the total for required contributions. One facet of the bill should be noted; unlike unemployment insurance, through which individual employers may face different contribution rates based on their histories, the bill would not provide for contributions rates to differ by employer, employer group, economic sector, or any other factor. All employers would have to pay at the same rate.

The revenue loss from this path could be considerably larger if employers opted to pay the entire contribution and did not deduct a portion of the contribution from actual wages. One reason employers could choose to pay all the contribution reflects the idea that the bill would not exempt the portion of contributions funded by employees (although as this section discusses, contributions would be deductible from employer taxes). As a result, one potential outcome is that employers could reduce wage rates (as opposed to deducting the employee share of the contribution) by the amount of the contribution (given the estimates above, the magnitude likely would be akin to lowering a cost-of-living increase for existing employees) and then would pay the entire contribution. Employees would favor this shift because it would lower their tax burdens relative to having to pay taxes on their shares of contributions (e.g., if an employee contribution were $100, because it is subject to tax, the employee's net income would be reduced by $104.25), and the shift would allow employers to deduct a greater amount when computing the firm's taxes (e.g., if the employee and employer share were each $100, the employer would now be able to deduct $200 and reduce its liability by $12

instead of $6, and the employer would be indifferent between $100 in lower wages in exchange for $100 in additional contributions because both the wages and the contributions are deductible).

In this scenario, the offset by reducing (as opposed to deducting from) employee wages would effectively allow employers to "make money" from "paying" employee contributions: for every dollar an employer reduced wages to fund the contribution, the employee would be no worse off (actually, slightly better off, as illustrated in the example), but the employer cost would be reduced by the tax rate on the portion of contributions that otherwise would have been borne by the employee. If all employers pursued this option, the revenue loss under this path would rise to between $958.1 million and $1,031.9 million if all firms were taxed under the CIT and between $818.4 million and $881.4 million (including a SAF reduction of between $81.7 million and $88.0 million, using the fiscal year 2024-25 earmark share) if employees were split equally between firms filing the CIT and as flow-through entities.

The ability for employers to opt to pursue a private leave insurance plan would not affect the potential revenue loss under this path because contributions would be deductible regardless of whether they were paid to the State or to a private plan administrator; however, the variability of the revenue loss due to issues associated with the number of employees, the share of contributions covered by employers, and the relevant business tax under which any deductions would be taken would still exist if a portion of employers utilized a private plan.

Exempting employee contributions from taxation: For the third path by which the bill could affect State revenue, the language of the bill would need be changed because it would not exempt from tax the portion of contributions made by employees. Under the bill's current language, employee contributions would be subject to tax regardless of whether an employer chose to use a private plan or the State plan provided under the bill. If the portion of contributions employers took from employees were exempted from tax, the bill would reduce Individual Income Tax (IIT) withholding by between $339.3 million and $365.5 million, of which between $81.7 million and $88.0 million would represent a loss to the SAF (using the Fiscal Year 2024-25 earmark share), and the remainder a loss to the GF. The total revenue loss to the State would combine this revenue loss with the loss from employers under the scenario in which employers paid up to 50% of the contributions.

Exempting benefit payments from taxation: For the fourth path by which revenue could be affected, it should be noted the bill would not explicitly exempt benefits from the IIT, although the benefits would be exempted under Senate Bill 333 (which is not tie-barred to the bill). Furthermore, the bill would require notification to employees only if the Federal government determined that benefits were subject to Federal income taxes, rather than under all circumstances. Presumably the bill assumes if the Federal government did not tax the benefits, the benefits would not be included in Federal adjusted gross income (AGI) and thus would not be included in the Michigan tax base; however, absent adoption of Senate Bill 333, it is unclear if individuals receiving benefits would have to add the contributions to their Federal AGI even if the Federal government determined benefits were not subject to Federal income taxes. For example, Section 30(1)(b) of the IIT requires taxpayers to add taxes on or measured by income to the extent they have been deducted in calculating Federal AGI. While this provision would not specify that individuals would have to add the benefits to the Federal AGI, it appears that it could require individuals to add their employee contributions absent adoption of Senate Bill 333.

Senate Bill 333 would exempt benefits from the IIT; however, it is unknown what portion of contributions would be distributed each year as benefits. Because contributions would have to cover benefits, administrative expenses, and the 35% buffer, contributions always would be structured to exceed distributions. Assuming distributions were exempt from tax and

totaled 100% of contributions after subtracting administrative costs and the 35% buffer, the State would forgo receiving between $421.2 million and $453.7 million per year in IIT (of which between $100.3 million and $108.0 million would represent forgone SAF revenue, using the Fiscal Year 2024-25 earmark share).

If benefits were taxable (a potential outcome if Senate Bill 333 were not adopted), the State would receive between $421.2 million and $453.7 million per year in IIT (of which between $101.4 million and $109.2 million would be directed to the SAF revenue, using the fiscal year 2024-25 earmark share); however, even if benefits were taxable, the program still would result in a net revenue loss to the State because of two factors:

1) Contributions would exceed benefits to cover the administrative costs of the program, and those would be deductible but never subject to tax; similarly, the portion of contributions that provided the 35% buffer also would be deductible but never subject to tax.
2) The portion paid by the employer would reduce revenue at a 6.0% rate (at least for employees who work for firms filing under the CIT), while the maximum rate at which benefits would be taxed would be 4.25%; as a result, even if benefits were taxable, the minimum revenue loss attributable to the program would equal about one-third of the CIT cost (and to reduce the loss to that level would require insurance benefits and employee contributions be subject to tax).

Departmental administrative costs: The bill would add significant administrative costs to LEO for the promulgation of rules and to administer the Act, regulate employers, and educate the public on the Act. The costs would include staff for administration of the program, staff to oversee and enforce the Act, costs to educate the public, and information technology costs (including costs of setting up the program). The additional costs to LEO would be significant. The size of a new office likely would be comparable to the Unemployment Insurance Agency (the program would likely process nearly one million claims per year) with the amount of potential utilization and amount of funding contributed to a related fund.

Currently, the Unemployment Insurance Agency appropriation is just over $303.1 million; before the pandemic, it was around $150.0 million. The Legislature would have the final determination on the amount of funds appropriated from the FLOC Fund to LEO to cover administrative costs; however, this would be independent of the amount assessed to employers by the Director for those costs. The amount that LEO could use each year to educate employers and employees and to develop and provide educational materials would be capped at 5% of the amount of funds in the FLOC Fund. With the current estimate of annual contributions to the FLOC Fund being between $16.0 billion to $17.2 billion, that would be a cap of between $798.4 million and $860.0 million; however, that range is an estimate based on total annual contributions. A reasonable estimate for a minimum FLOC Fund balance would be the 35% buffer discussed above, which would imply a cap of between $192.7 million to $207.6 million. It is unclear in the bill how the FLOC Fund balance would be calculated given that the balance would vary during the fiscal year. Any administrative costs could be offset by fines collected by LEO and administrative costs accessed on private plans as determined by LEO.

SAS\S2324\s332sa