HB 18-1001

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

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Prime Sponsors: Rep. Winter; Gray
Sen. Donovan; Fields

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Bill Status: Postponed Indefinitely
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Bill Topic: FAMLI FAMILY MEDICAL LEAVE INSURANCE PROGRAM

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☐ TABOR Refund
- ☒ Local Government
- ☒ Statutory Public Entity

This bill would have created a paid family leave program as an enterprise and a Type 2 Transfer under the Colorado Department of Labor and Employment. Colorado employees would have paid a monthly premium on their wages collected by employers through a payroll deduction; this premium would have funded a family medical leave benefit that could be taken concurrently with federal family leave. Eligible employees could have collected a benefit for up to 12 weeks to care for a family member or designated person. The bill would have increased state enterprise revenue and expenditures beginning in FY 2018-19, as well as state revenue from fines and state General Fund expenditures related to the tax benefit. The bill would have also increased workload for local governments, school districts, and statutory public entities.

Appropriation Summary: No appropriation was required.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 18-1001

		FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Revenue	General Fund	-	-	*Increase*	
	FAMLI Fund	*Increase*		$568–$1,705 million	$598–$1,795 million
	Fines Collection Cash Fund	-	-	-	$900,000
	Total			**$568–$1,705 million**	**$599–$1,796 million**
Expenditures	General Fund	-	-	-	$99,885
	FAMLI Fund	$30.9 million	$16.3 million	$216.4 million	$496.7 million
	Centrally Appropriated Costs	-	-	-	$45,078
	Total	**$30.9 million**	**$16.3 million**	**$216.4 million**	**$496.7 million**
	Total FTE	**25.2 FTE**	**60.2 FTE**	**210.2 FTE**	**211.1 FTE**
Transfers		**-**	**-**	**-**	**-**
TABOR Refund		**-**	**-**	**-**	*Not estimated*

Summary of Legislation

This bill requires the Colorado Department of Labor and Employment (CDLE) to begin implementing the Division of Family and Medical Leave Insurance (FAMLI division) as a state enterprise and a type 2 agency by July 1, 2019. The purpose of the division is to provide wage-replacement benefits for up to 12 weeks per year to eligible employees. Where available, paid leave must be taken concurrently with the unpaid, job-secured leave available through the federal Family and Medical Leave Act (FMLA). Table 2 shows the division's implementation schedule, as outlined in the bill.

Table 2
Implementation Schedule for HB 18-1001

Task	Date
Effective date	August 8, 2018
Program implementation begins	July 1, 2019
Outreach program in place	January 1, 2020
Employee premium payments begin	July 1, 2020
FAMLI benefit available; division may establish solvency surcharge	January 1, 2021
Division may adjust premiums based on prior year's claims	July 1, 2021
Annual reporting to General Assembly begins	September 1, 2021
Annual adjustment of maximum weekly benefit	January 1, 2022

Applicability and definitions. The bill requires a premium payment to be deducted from the wages of all public and private sector employees and agricultural workers, with the exception of federal employees. Sole proprietors may opt into the program. Family member is defined as a person who is related by blood, marriage, domestic partnership, civil union, or adoption, and up to one additional person designated annually by the employee. Qualifying events include an individual's serious health condition; caring for a newborn, an adopted child, or a child placed through foster care for the first year; caring for a family member with a serious health condition; events related to a family member's active military duty; or any other leave authorized by the FMLA.

Outreach. The FAMLI division must develop an outreach program by January 1, 2020, that explains the eligibility requirements, claims process, benefit amounts, notice and medical certification requirements, reinstatement and nondiscrimination rights, confidentiality of records, employment protection, and any other pertinent details, paid for by the FAMLI Fund. Employers must post program notice and inform employees upon hiring and upon learning of an employee experiencing a qualifying life event. An outside vendor may be used.

Premiums. Employee premium payments begin on July 1, 2020. The division must set the premium amount by rule based on an employee's annual covered wages. The premium amount is not to exceed 0.99 percent of annual covered wages in the program's first year. The FAMLI division must annually adjust premium rates, by rule, based on the prior year's claims as a portion of total annual covered wages. The division may also adjust the premium amount annually to ensure actuarial fund soundness and to avoid an excessive fund balance. If necessary, the FAMLI division may later establish a solvency surcharge by rule on or after January 1, 2021.

Benefits. The FAMLI division will pay benefits using employee premiums from the FAMLI Fund, which is created as a TABOR-exempt enterprise. Table 3 shows the benefit amount in relation to the individual's annual wages as a percentage of the annual mean wage for all occupations in Colorado, as determined by the Bureau of Labor Statistics pursuant to the bill. The maximum weekly benefit is $1,000 per week. The division must make the first benefit payment to a claimant within 2 weeks after the claim is filed, and bi-weekly thereafter, for up to 12 weeks. Starting January 1, 2022, the maximum weekly benefit amount must be annually adjusted each year based on the recent average change — based on six years — in Colorado personal income. If the eligible employee is able to continue working at a second job while taking family and medical leave, the FAMLI division may not consider the eligible employee's weekly wage earned from that second job when calculating his or her weekly benefit amount. The maximum number of weeks for which FAMLI benefits are payable to an eligible individual in any consecutive 52-week period is 12 weeks. The benefit can be received for any period over 8 consecutive hours.

Table 3
Benefit Structure Under HB 18-1001

Individual's Income Compared to Annual Mean Wage	Percentage of Weekly Wage Eligible for Benefit
not more than 20%	95%
20% to 30%	90%
30% to 50%	85%
50% or more	66%

Employee eligibility. An employee is eligible to participate in the program after working 680 hours, or 504 in the case of an airline flight crew member, during the employee's qualifying year, and at least 90 days for his or her current employer. The bill specifies procedures for self-employed individuals to elect coverage.

Employee fraud. An employee who commits FAMLI leave-related fraud commits an unclassified misdemeanor punished by a fine of $1,000. The FAMLI division may also develop a procedure for recovering erroneous benefit payments, and may exercise discretion to partially or wholly waive repayment amounts under certain circumstances.

Employer requirements. Employers must collect premiums through a payroll deduction and remit the funds to the FAMLI division. Employers can choose to establish a designated person selection process and allow employees to annually update their designated person; if no process is set up by the employer, the employee designates upon making a claim. Employers may not require employees to take any other form of leave during an employee's FAMLI leave. If an employer has a disability or family leave policy already in place, this leave can be taken concurrent to FAMLI leave. Employers must post program notices and notify new hires of the FAMLI benefit program. Employers must also inform employees about the program upon learning of an employee's qualifying life event.

Employer penalties. While an employee is on leave, an employer must maintain the employee's benefits and may not discriminate against the employee in response to the employee's actual or requested leave. The FAMLI division will, by rule, create a fine structure for employers who violate these requirements.

Employer assistance. The CDLE must determine the assistance rate to be provided to employers to offset initial and ongoing administrative costs of creating the payroll deduction from the FAMLI Fund, and provide employers assistance from the fund.

Claims. The division is required to notify an employer of their employee's FAMLI claim within 5 days. Claims must be paid to the employee within 2 weeks. The FAMLI division will set rules related to claim forms and the manner in which claims are filed; however, the bill makes several requirements related to claims, including that an employee prove eligibility, meet certain hourly thresholds of employment per year, disclose relevant medical records, and attest that his or her employer was notified in writing. The division may require additional attestations from employees.

An employee is eligible regardless of whether he or she is currently employed or working at an additional job while taking leave. Failure to file a claim, furnish notice to an employer, or submit certification from a health care provider does not invalidate a claim, but the FAMLI division is not required to pay benefits for a period of more than two weeks prior to the date when paperwork is submitted, unless the employee demonstrates that his or her paperwork was submitted as soon as it was possible.

Claim denial and appeals process. The bill specifies the process by which the FAMLI division may deny a claim and the appeals process. An employee has 20 calendar days to submit an appeal.

Enterprise and type 2 agency designation. The FAMLI division is created as an enterprise which may issue revenue bonds and is limited to 10 percent of annual revenue from state and local governments. The division is also a type 2 agency, which means that it is directly under the control of the executive director of CDLE, including its statutory powers, duties, records, property, personnel, and functions of budgeting, purchasing, and planning.

FAMLI Fund. The FAMLI Fund is an enterprise fund within the State Treasury. The fund may be used only to repay revenue bonds issued to cover start-up costs; collect employee FAMLI premiums; pay FAMLI benefits to employees; and cover program administration and outreach costs. The fund may receive any gifts, grants, or donations received by the division to finance program set-up costs. The fund is continuously appropriated to the FAMLI division.

Rulemaking, reporting, and other division responsibilities. The FAMLI division must adopt rules establishing the form and manner of filing a claim, setting premium amounts, and establishing a fine structure for employers. The division must follow federal tax withholding policies and may establish any other rules as necessary to establish the program. The division must report to the General Assembly by September 1, 2021, and each year thereafter, on program participation, including demographics, as well as premium rates, fund balances, and outreach efforts.

Federal and state income tax deduction. The bill requires the division to inform individuals filing claims about IRS implications on benefits, requirements, and that tax can be deducted on the front end from benefit payments. Under the bill, FAMLI benefits are not subject to state income tax.

Background and Data

Federal Family and Medical Leave Act. The federal FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave for specified family and medical reasons, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Employees may use sick time, vacation time, or other accrued leave time along with FMLA leave in order to continue being paid. All public employers are subject to FMLA requirements. Private employers must have at least 50 employees within 75 miles of a worksite to be subject to FMLA requirements.

Paid family leave in other states. California, New Jersey, New York, and Rhode Island currently have paid family leave programs; California's began in 2004, New Jersey's in 2009, Rhode Island's in 2013, and New York's on January 1, 2018. Washington state passed a paid family leave program that will go into effect in 2019, and Washington D.C. passed a program that will go into effect in 2020. Some family leave programs operate in conjunction with the state's temporary disability insurance program. All are funded through employee contributions.

Colorado employment data. Table 4 shows the number of Colorado employees by employer type. As a point of reference, under current federal law, the only employee group currently covered under FMLA are those who work for a public employer or private employer that employs 50 or more individuals. The bill covers all but federal employees, and coverage is mandatory for all but sole proprietors, who may opt into the benefit program. These employment figures reflect the 2016 average; however, the fiscal note applies a growth rate to these figures for its estimates, as discussed in the State Revenue and State Expenditures sections.

Table 4
Colorado Employees by Category Covered Under HB 18-1001
as of 2016

Type of Employer	Number of Employees
Private employer employing ≥ 50 employees	1,067,685*
Private employer employing < 50 employees	1,035,536
State government	96,232
Local government	255,405
Total Employees	**2,454,858**

Source: Quarterly Census of Employment Wages, CDLE.
* *These are employees not currently covered under federal FMLA, but covered under the bill.*

Comparable crime. Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. The bill creates an unclassified misdemeanor for employees who commit FAMLI-related fraud. A similar offense exists for unemployment insurance (UI) fraud. In the past 4 years, there have been an average of about 5,000 fraud cases received by CDLE per year, for an average of 2.75 percent of all UI claims per year. No demographic information is available. The CDLE handles these cases through a district attorney's office, and cases are heard in district court. Based on this proxy, and because UI occurs after an employees' separation from employment, while FAMLI occurs during employment, the fiscal note assumes about 1.0 percent of FAMLI claims will be fraudulent, about 900 claims per year.

State Revenue

The bill is expected to increase state revenue to the FAMLI Fund from bond revenue and potentially gifts, grants, or donations in FY 2018-19 and FY 2019-20 — this amount has not been estimated, but must be enough to cover the costs described in the State Expenditures section in these years. The bill is also expected to increase state revenue from employee premiums by between $568 million and $1,705 million in FY 2020-21 and between $598 million and $1,795 million in FY 2021-22. As the FAMLI division is created as a state enterprise, these revenue sources are not subject to TABOR. Employee fines are estimated to generate up to $900,000 per year starting in FY 2021-22.

Assumptions. The fiscal note makes assumptions about the federal and state tax treatment of FAMLI premiums and benefits. Additionally, it makes some growth rate assumptions, as discussed below.

Tax treatment of FAMLI premium payments. The fiscal note assumes that FAMLI premium payments deducted from an employee's payroll will be considered a post-tax deduction and have no impact on the state General Fund.

Tax treatment of FAMLI benefit payments. Because the IRS has already determined that the family leave benefit is taxable in other states that have implemented similar programs, the fiscal note assumes that the payments will be included in federal taxable income, the starting point for calculating Colorado income taxes. The bill creates an exemption for FAMLI benefit payments on Colorado income taxes, offsetting the increase in federal taxable income. Any impact to the General Fund is expected to be minimal.

Covered wages and employment — growth rate. A covered employee is any employee covered by the unemployment insurance program. Based on the bill's use of the term covered employment, fiscal note estimates use the 2016 average of Quarterly Census of Employment and Wages Covered Employment data for Colorado, and apply the December 2017 Legislative Council Staff projected employment growth rate for the forecast period and 1.5 percent in future years.

Annual mean wage — growth rate. The annual mean wage, AMW, is the estimated total annual wages of all occupations in Colorado divided by the occupations' estimated employment, as determined by the Bureau of Labor Statistics. The fiscal note assumes that the annual mean wage will grow by 2.5 percent per year, based on the December 2017 Legislative Council Staff forecast.

Bonding and gifts, grants, and donations. In advance of premium collections, a combination of bonding and gifts, grants, and donations is required to cover start-up costs for the enterprise. The fiscal note assumes that a revenue bond will be issued by the FAMLI division to cover program start-up costs. It also assumes that the bond will be secured by future mandatory premium payments from every covered employee in the state. The amount of revenue from the bond to the division will depend on many factors that have not been estimated for this fiscal note, but at a minimum will need to cover the expenditures outlined in Table 9 for FY 2018-19 and FY 2019-20 before the employee premium collections begin in FY 2020-21. No source of gifts, grants, or donations has been identified at this time.

FAMLI Fund. The FAMLI division will begin collecting premiums on July 1, 2020, for deposit into the FAMLI Fund, which will increase cash fund revenue by at least $568 million per year beginning in FY 2020-21. The premium rate is to be set administratively by the FAMLI division, which will rely on the findings of an actuarial analysis before setting the rate. Under the bill, the maximum premium is 0.99 percent in the first year; the fiscal note shows a range of premium revenue between 0.33 percent and 0.99 percent in Table 5.

Table 5
FAMLI Premium Revenue Range Under HB 18-1001 in FY 2020-21 and FY 2021-22*

	Premium Rate Range		Total Estimated Covered Wages	Low Range of Premium Collection	Maximum Premium Collection
	Low	Max			
FY 20-21	0.33%**	0.99%	$172 billion	$568 million	$1,705 million
FY 21-22	0.33%**	TBD***	$181 billion	$598 million	$1,795 million***

* *This estimate applies the wage growth rate from the December 2017 LCS Economic and Revenue Forecast to the 2017 Colorado Total Covered Wages from the Bureau of Labor Statistics.*
** *The low range is not specified in this bill; however, based on the administrative costs and benefit payments estimated in this fiscal note, 0.33% is shown as the minimum premium adequate to cover costs.*
*** *In FY 2021-22, the bill directs the FAMLI division to set the premium based on prior year's claims as a portion of total annual covered wages. Maximum premium collection is shown as 0.99%.*

A minimal amount of fine revenue related to employer penalties is also expected beginning in FY 2019-20. The FAMLI division will set employer penalties by rule, so these amounts have not been determined. Employer penalties will be credited to the General Fund.

Fee impact on individuals. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The FAMLI premium fee is an amount assessed on each covered employee as a payroll deduction from his or her wages. This group includes all employees in the state except for federal employees; sole proprietors may opt into the program, and are not reflected in this fiscal analysis. The premium will be collected by employers and transmitted to the FAMLI Fund. In FY 2020-21, the first year of the premium assessment, the fee may not exceed 0.99% of covered wages. From FY 2021-22, the FAMLI division is required to, by rule, set the premium based on the prior year's claims, and may adjust premium amounts, by rule, to ensure actuarial soundness of the fund and avoid an excessive fund balance. A solvency surcharge may also be applied. Table 6 below identifies the estimated annual payroll deduction under this bill.

Table 6
FAMLI Premium Fee Impact on Individuals in FY 2020-21

Individual's Annual Wage	**Low Range** (0.33%)	**High Range** (0.99%)
up to $12,000	up to $40 per year	up to $119 per year
$12,001 to $20,000	between $40 and $66 per year	between $119 and $198 per year
$20,001 to $40,000	between $66 and $132 per year	between $198 and $396 per year
$40,001 to $60,000	between $132 and $198 per year	between $396 and $594 per year
$60,001 to $80,000	between $198 and $264 per year	between $594 and $792 per year
$80,001 to $100,000	between $264 and $330 per year	between $792 and $990 per year

Fine revenue. Beginning in FY 2021-22, assuming that 1.0 percent of individuals commit and are fined for FAMLI fraud per year, fine revenue from the unclassified misdemeanor will increase by up to $900,000 per year to the Fines Collection Cash Fund in the Judicial Department. Restitution payments will also increase, but have not been estimated for this fiscal note.

TABOR Refund

The bill increases state fine revenue subject to TABOR by up to $900,000 per year beginning in FY 2021-22, which is outside the forecast period. If there are refunds in future years when the state next collects a TABOR surplus, these refunds will be increased by this amount in those years.

State Expenditures

The bill will increase state expenditures by approximately $31 million in FY 2018-19, $16 million in FY 2019-20, $216 million in FY 2020-21, and $497 million in FY 2022-23. Expenditures include:

- FAMLI benefit payments;
- implementation and operation of the FAMLI division in CDLE;
- legal services from the Department of Law;
- technology implementation by the Office of Information Technology (OIT); and
- state income tax deduction management from the Department of Revenue (DOR).

Benefit information is shown in Tables 7 and 8. Department costs are shown in Table 9. Expenditures are to be paid primarily from the FAMLI Fund, with an exception for the Department of Revenue's expenditures, which will be paid by the General Fund.

The bill also increases workload for all state agencies, and specifically the Department of Personnel and Administration (DPA) and the Judicial Department. These impacts are discussed below.

FAMLI benefits. Beginning January 1, 2020, this bill will increase expenditures for FAMLI benefit payments. Table 7 estimates the maximum individual weekly benefit based for FY 2021-22, the first full implementation year of the benefit program.

Benefit utilization assumptions. The fiscal note assumes 3.0 percent utilization in FY 2020-21 and 3.5 percent utilization in FY 2021-22. In other states that have a paid family leave benefit, utilization has varied between 1.2 percent and 10 percent. The fiscal note also assumes that utilization will grow as the program becomes more widely known, but that it will also fluctuate.

Table 7
Estimated FAMLI Benefit Paid to Individuals in FY 2021-22

Annual Income Compared to AMW	Benefit Based on Income to AMW Ratio	Estimated 2021 AMW	Annual Income Range *(rounded)*	Weekly Income Range	Weekly Benefit Range	12-week Maximum Benefit
up to 20%	95%	$59,637	up to $12,000	up to $218	up to $218	$2,615
20% to 30%	90%		$12,001 to $18,000	$229 to $344	$218 to $310	$3,716
30% to 50%	85%		$18,001 to $30,000	$344 to $573	$310 to $487	$5,849
50% or more	66%		$30,000 or more	$573 or more	$487 to $1,000	$12,000

Table 8 shows the total estimated benefit expected in FY 2020-21 and FY 2021-22. In FY 2020-21, the fiscal note assumes a 3.0 percent utilization rate. Because the benefit payments begin in January 2021, the half-year claim estimate assumes a population of 39,432. In FY 2021-22, the first full implementation year, the fiscal note assumes a 3.5 percent program utilization, which amounts to 93,388 estimated claims per year.

Table 8
Estimated Total FAMLI Benefits Paid from FAMLI Fund in FY 2020-21 and FY 2021-22

	Estimated Number of Beneficiaries/ Utilization Rate*	Annual Income Level Compared to AMW in HB 18-1001	Estimated Benefit Share by Income Level**	Assuming 12-week Maximum Benefit Paid***	Total FAMLI Benefits Paid by Income Level
FY 2020-21 *(half-year)*	2.63 million employees x 3.0% utilization for a half-year = 39,432 claims	up to 20%	18.1%	$2,615	$18,171,593
		20% to 30%	11.7%	$3,716	$66,401,460
		30% to 50%	24.4%	$5,849	$47,905,375
		50% or more	45.8%	$12,000	$67,161,273
				FY 2020-21 TOTAL	**$199,639,701**
FY 2021-22	2.67 million employees x 3.5% utilization = 93,388 claims	up to 20%	18.1%	$2,615	$44,112,299
		20% to 30%	11.7%	$3,716	$161,192,312
		30% to 50%	24.4%	$5,849	$116,292,293
		50% or more	45.8%	$12,000	$159,060,281
				FY 2021-22 TOTAL	**$480,657,185**

* *Covered employees, Bureau of Labor Statistics, 1.5% growth rate; utilization rate is an assumption.*
** *Based on income-specific utilization data from California's Balancing Worklife and Family Report.*
*** *Annual Mean Wage, Bureau of Labor Statistics, 2.5% growth rate.*

Division of Family and Medical Leave Insurance — CDLE. The newly created FAMLI division will work on bonding, general programmatic structure, and provide input to the OIT in FY 2018-19 (year one); ramp up staff during the program implementation year in FY 2019-20 (year two); bring on the remaining staff in FY 2020-21, when employee collections begin that July and employee premium payments begin that January (year three); and continue this staffing level in future years.

Proxy. Colorado's UI division is used as a proxy for this fiscal note. The UI division processes approximately double the claims expected under FAMLI, with some essential differences. UI occurs after an employees separation from employment, while FAMLI occurs during employment. There are also differences in revenue streams, beneficiary's reporting requirements, division reporting requirements, and likelihood of fraud. As a result, the fiscal note has estimated that the FAMLI division will require approximately 40 percent of the resources allocated to the UI division, which currently employs 458 FTE.

Annual budget process. While this fiscal note attempts to right-size program staff to the job, experience will determine actual workload increases and the appropriate level of funding. It is expected that these issues will be addressed during the annual budget process.

FAMLI Division staff. Staffing will occur in phases as the program ramps up, as follows:

- *FY 2018-19.* A program director, deputy director, director's assistant, and eight management-level staff in FY 2018-19. 11 FTE.
- *FY 2019-20.* Initial eligibility and claims clerks; appeals clerks and research analysts; employer payment clerks; outreach support staff; auditors; administrative assistants; and file clerks. 50 FTE.
- *FY 2020-21 and ongoing.* Full staff, including a hearings division. 200 FTE.

Other FAMLI division costs. Other costs to implement the FAMLI division are as follows:

- *IT solution.* Modeled after the UI system, the Electronic Benefits Management System will cost OIT $28 million in year one and $9 million in year two.
- *Content management.* To facilitate documentation exchange with all Colorado employers, the CDLE will employ an electronic content management system, which will cost $1 million to build and $250,000 annually to maintain.
- *Phone system.* The fiscal note assumes that leased space restrictions limit CDLE's ability to share call center space with another program, therefore the CDLE will require a system, which will cost $650,000 initially and $215,000 annually to maintain.
- *Banking interface*. Software that allows a banking and accounting interface between employers and the FAMLI Fund will cost $104,000 to implement and $31,000 annually to maintain.
- *Statistical and actuarial expertise.* The division will contract for statistical and actuarial studies to assist in estimating revenues for the bond and in promulgating rules on premium rates and solvency surcharges, at the rate of $180,000 per year.
- *Outreach and mailings.* In FY 2019-20, approximately four outreach staff will travel the state to provide information about the program to employers at a cost of about $7,000. In this same year, mailings will be sent to every employer in the state at a cost of $150,000.
- *Legal services*. Estimated at about $35,000 per year, this cost represents 325 legal hours at the rate of $106.56 per hour, and requires an allocation of 0.2 FTE.
- *CDLE leased space.* Leased space is required to house FAMLI division employees, at the rate of $21 per square foot and 250 square feet per employee.

Table 9
Expenditures Under HB 18-1001

Cost Components	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
FAMLI Benefit Payments *(see also Table 8)*			*(half-year)*	*(full-year)*
Estimated Leave Benefits Paid	-	-	$199,639,701	$480,657,186
FAMLI Subtotal			**$199,639,701**	**$480,657,186**
Department of Labor and Employment				
Personal Services	$785,202	$2,968,816	$10,545,265	$10,545,265
Operating and Capital Outlay Costs	$62,183	$230,917	$895,450	$190,000
Premium and Benefit System	$28,000,000	$9,000,000	-	-
Electronic Content Management System	-	$1,000,000	$250,000	$250,000
Phone Center	-	$650,000	$215,000	$215,000
Mailings	-	$150,000	-	-
Statistical and Actuarial Contractors	$180,000	$180,000	$180,000	$180,000
Banking Interface	-	$104,000	$31,000	$31,000
Legal Services	$34,632	$34,632	$34,632	$34,632
Travel	-	$7,266	-	-
Indirect Costs	$214,308	$918,596	$3,551,345	$3,551,345
FTE – Personal Services	11.0 FTE	50.0 FTE	200.0 FTE	200.0 FTE
FTE – Legal Services	0.2 FTE	0.2 FTE	0.2 FTE	0.2 FTE
CDLE Subtotal	**$29,276,325**	**$15,244,227**	**$15,702,692**	**$14,997,242**
Office of Information Technology				
Personal Services *(mid-range)*	$1,268,076	$894,707	$894,707	$755,590
Operating Expenses and Capital Outlay Costs	$79,142	$9,500	$9,500	$8,550
Indirect Costs	$233,008	$165,424	$165,424	$144,348
FTE – Personal Services	14.0 FTE	10.0 FTE	10.0 FTE	9.0 FTE
OIT Subtotal	**$1,580,226**	**$1,069,631**	**$1,069,631**	**$908,488**
Department of Revenue*				
Personal Services	-	-	-	$84,349
Operating Expenses and Capital Outlay Costs	-	-	-	$11,211
Computer Programming and Form Changes	-	-	-	$3,325
Centrally Appropriated Costs	-	-	-	$45,078
FTE – Personal Services	-	-	-	1.9 FTE
DOR Subtotal	**-**	**-**	**-**	**$143,963**
TOTAL	**$30,856,551**	**$16,313,858**	**$216,412,024**	**$496,706,879**
TOTAL FTE	**25.2 FTE**	**60.2 FTE**	**210.2 FTE**	**211.1 FTE**

* *DOR costs are funded with General Fund. The remainder of the costs will be funded through revenue bond proceeds and the employee premium paid from the FAMLI Fund.*

Office of Information Technology. OIT requires 13.8 FTE in FY 2018-19, including a project manager, data specialist, technician, planner, and IT professionals. In FY 2019-20 and FY 2020-21, OIT's FTE requirement is 10 FTE. Beginning in FY 2021-22 and outyears, 9 FTE.

Department of Revenue. Beginning in FY 2021-22, DOR's taxpayer services division will require 1.9 FTE to handle refund approvals, inventory management, protest correspondence, and increased call center volume. Computer programming is also required at the rate of $250 per hour for 8.5 hours to update the GenTax system. Finally, imaging costs estimated at $1,200 will be reappropriated to the Department of Personnel and Administration to update one tax form change. The fiscal note assumes that CDLE will provide DOR with electronic 1099-G forms.

Indirect costs to CDLE and OIT. Certain costs associated with this bill are typically addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. However, because the bill will be funded by the FAMLI Fund, which is an enterprise, CDLE and OIT costs are shown as indirect costs in Table 9. Leased space is included to show the impact of additional FTE at CDLE, and calculated at CDLE's rate of 250 square feet per FTE at a rate of $21 per square foot.

Centrally appropriated costs for DOR. Pursuant to a Joint Budget Committee policy, certain costs are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. Leased space for DOR is included to show the incremental impact of the additional FTE, and calculated at DOR's rate of 200 square feet per FTE at a rate of $27 per square foot.

All state agencies. Workload will increase in all state agencies to perform employee outreach and to track and administer time, leave, and short-term disability (STD) claims. Tracking of the FMLA, STD, workers' compensation, and Public Employees' Retirement Association (PERA) STD can be administratively complex.

Increased utilization of leave. Additionally, the bill allows employees who have worked for at least 680 hours during their qualifying year to receive benefits. This is a lower threshold than the state's current eligibility requirements that require permanent state employees to perform one year of service before utilizing family and medical leave, and temporary state employees to have worked for at least 1250 hours in the qualifying year. This may have a significant fiscal and operational impact to departments that hire temporary employees, especially in round-the-clock departments such as the Departments of Corrections, Human Services, and Public Safety. To the extent additional resources are required related to these two issues, these will be requested during the annual budget process beginning in FY 2020-21.

Department of Personnel and Administration. The Department of Personnel and Administration (DPA) will set up the new deduction for the state agencies it serves. It will also perform outreach to the state personnel system and update rules, technical guidance, and existing documentation to include information about the FAMLI benefit program. These workload increases can be accomplished within existing appropriations.

Short-term disability benefits. The bill may result in a reduction in the amount of STD benefits paid to employees, which may result in a cost savings through a reduction of the STD premium. If this occurs, this adjustment will be addressed through the total compensation analysis included in the annual budget process.

Judicial Department. Beginning in FY 2021-22, district courts are expected to see an increase in employee FAMLI fraud cases, and trial courts may see a minimal increase in discrimination cases against employers for violating the employment protection provisions of the bill. To the extent that these workload increases require additional appropriations, these will be requested during the annual budget process.

Agencies providing representation to indigent persons. Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel will increase under the bill. To the extent this occurs, this analysis assumes the affected offices may request an increase in appropriations through the annual budget process.

Local Government, School District, and Statutory Public Entity Impact

Like the state, local governments, school districts, and statutory public entities will be required to implement payroll deductions for employees and coordinate sick leave, FMLA, STD, and PERA STD benefits when an employee applies for family and medical leave.

District attorneys. Costs and workload will increase for district attorneys to prosecute FAMLI-related fraud cases under the bill.

Denver County Court. The bill results in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try misdemeanor cases under the bill where FAMLI-related fraud occurs.

Effective Date

The bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on April 30, 2018.

State and Local Government Contacts

Information Technology	Judicial	Labor
Law	Municipalities	Personnel
Regulatory Agencies	Revenue	Treasury