LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 2, 2019

TO: Honorable Dustin Burrows, Chair, House Committee on Ways & Means

FROM: John McGeady, Assistant Director   Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB3823** by Sherman, Sr. (Relating to a paid family care leave incentive for certain employers.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3823, As Introduced: a negative impact of ($3,738,030,000) through the biennium ending August 31, 2021.

Additionally, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of ($2,172,049,000) for the 2020-21 biennium.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	($1,537,667,000)
2021	($2,200,363,000)
2022	($2,235,404,000)
2023	($2,274,159,000)
2024	($2,307,729,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from *General Revenue Fund* 1	Probable Revenue (Loss) from *Property Tax Relief Fund* 304
2020	($1,537,667,000)	($1,038,529,000)
2021	($2,200,363,000)	($1,133,520,000)
2022	($2,235,404,000)	($1,197,078,000)
2023	($2,274,159,000)	($1,265,388,000)
2024	($2,307,729,000)	($1,340,854,000)

Fiscal Analysis

The bill would add Chapter 83 to the Labor Code and add Section 171.089 to Chapter 171, Tax Code to exempt certain employers from the franchise tax if the employer offers certain paid family leave benefits to an employee.

To qualify for the franchise tax exemption, an employer would have to adopt a family care leave policy under which an employee is entitled to at least: four weeks of paid leave following giving birth to a child; two weeks of paid leave following the birth of the employee's child, if the employee did not give birth to the child; and two weeks of paid leave following the adoption of a child by the employee or placement of a foster child with the employee.

The bill would take effect January 1, 2020, and would only apply to a report originally due on or after that date.

Methodology

The estimated fiscal impact of this bill is based on franchise tax return data, survey data regarding family care leave policies at major employers, paid family leave requirements in other states, and the likely costs to taxpayers to adopt a qualifying policy under the bill.

The bill does not stipulate the percent of average weekly wages paid that would be necessary to qualify as paid family care leave. The estimated fiscal impact of this bill relies on the assumption that a policy that entitles an employee to any level of pay while on family care leave for the durations specified in the bill would qualify.

The bill does not specify what portion of employees that are not independent contractors must be included under the employer's policy. Review of a sample of taxpayers found examples of taxpayers that offer widely varying levels of paid family care leave policies depending on whether the employee is salaried or hourly, management or front-line. The estimated fiscal impact of this bill is based on the assumption that any taxable entity with at least one employee subject to a qualifying policy would be exempt from the franchise tax.

The bill does not require the employee be based out of or work in Texas, nor does it require the employer be the entity that pays the wages while the employee is on leave. As a result, the estimated fiscal impact relies on the assumption that any taxable entity would be exempt if it also operates in states with mandatory paid family leave policies that meet the bill's requirements. These states would include California and New York, among others.

As most franchise tax revenue is from comparatively capital-intensive firms for which the cost of provision of paid family leave would be significantly less than the value of exemption from franchise tax, it is expected that most of the taxpayers responsible for the preponderance of franchise tax revenue would adopt a family leave policy sufficient to establish exemption from tax. Firms with a policy in place before the effective date of the bill could adopt a revised policy after the effective date in order to establish exemption.

Exemption would be from the date of adoption of a qualifying leave policy. Depending on the length of time elapsed between the end of a taxpayer's previous activity period and adoption of a qualifying policy, taxable entities would be subject to an additional tax under Section 171.0011 applicable to a taxable entity that for any reason becomes no longer subject to franchise tax. Some liabilities for additional tax in the first year after the effective date would mitigate the extent of reduced revenue collections in fiscal 2020.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 320 Texas Workforce Commission
LBB Staff: WP, KK