



Subcommittees of the House and Senate Committees on Commerce and Labor

Paid Family and Medical Leave

October 21, 2019, at 10:00 a.m.

Pocahontas Building, House Committee Room

http://dls.virginia.gov/interim_studies_pfm.html

The Subcommittees of the House and Senate Committees on Commerce and Labor to Study Paid Family and Medical Leave (the Subcommittees) met jointly in Richmond with Delegate R. Lee Ware and Senator William M. Stanley, Jr., chairs, presiding.¹ Following introductions and opening remarks, Delegate Ware indicated that the Subcommittees would first hear from bill patrons followed by remarks from the opponents of legislation and perspectives from agencies. Delegate Ware noted that since the proponents were given ample time to present their viewpoints at the last meeting, the opponents would be afforded such time at this meeting.

Materials presented at the meeting are accessible through the [study's website](#).

Paid Family and Medical Leave

SB 1639 (Boysko) and HB 2120 (Carroll Foy)

Senator Jennifer B. Boysko stated that everyone can relate to the need to balance work life and family life, relating a personal experience following the birth of her daughter. She said her family was only able to cope because her husband was fortunate to have paid time off. Senator Boysko said taking unpaid time off to care for one's family members is not feasible for most working families. The federal Family and Medical Leave Act (FMLA) only provides unpaid time off and only applies to certain employers, which leaves lower-income families with few options. Senator Boysko said the profile of a working family has changed and her research shows that in 72 percent of households with children in Virginia, both parents are working outside the home. In addition, she said that one in five Virginians are 55 or older and the share of Virginians 65 or older will continue to rise. There are no support systems to care for these people. She said that other states have a track record of success with paid family and medical leave programs, and it is in the best interest of Virginia to have a plan for such support.

HB 2261 (Guzman)

Delegate Elizabeth R. Guzman stated that 41% of employees, or 1.2 million, in Virginia have no paid sick days, adding that employees face a crisis when they have to choose between taking a sick day and being paid. The Delegate stated that 85 percent of voters say employers should offer paid sick days. Delegate Guzman noted that the bill requires employees to pass a probationary period to be eligible for paid sick days and that the bill does not preclude an employer from

¹ **Members Present:** Senator William M. Stanley, Jr. (chair), Delegate R. Lee Ware (chair), Delegate Kathy J. Byron, Delegate Eileen Filler-Corn, Delegate Mark L. Keam, Senator L. Louise Lucas

Members Absent: Delegate Terry G. Kilgore, Senator Rosalyn R. Dance, Senator Richard H. Stuart, Senator Glen H. Sturtevant

providing a more generous benefit. She explained that the bill would be good for businesses by helping to prevent workplace injuries, lost productivity, and other adverse outcomes.

Opponents

Eric Terry, President, Virginia Restaurant, Lodging and Travel Association

Mr. Terry stated that his organization membership includes 15,000 restaurants and 400,000 employees. A paid family and medical leave program would have a significant impact on the restaurant industry and could cost up to \$36,000 per restaurant per year, he said, adding that while the restaurant industry is doing well in Virginia, profit margins are small and the market may not be able to bear the substantial cost. Delegate Ware asked Mr. Terry what the industry was doing to support employees who need paid time off. Mr. Terry responded by saying that companies should do what they see fit and that the market, not the government, should dictate compensation and benefits. Mr. Terry said the industry does a good job of taking care of its full-time employees but many restaurant employees are part time or seasonal. Additionally, many of the hotels Mr. Terry represents already offer paid leave programs and are concerned that this program would interfere with their existing benefits programs.

Keith Martin, Virginia Chamber of Commerce

Mr. Martin expressed concerns about how a paid family and medical leave program would affect existing benefits programs. He noted a study that while only 19 percent of employers offer paid family and medical leave benefits similar to the requirements of the bills discussed, over 71 percent of employers offered paid sick leave. Additionally, he reported that a nationwide trend is for employers to provide unrestricted paid time off without individual categories of leave. A paid family and leave program would restrict employers' ability to offer such flexible leave packages. Additionally, employers are concerned with the administrative burden of the legislation.

Ashley MacLeay, Director of External Relations for the Independent Women's Forum

Ms. MacLeay noted that she just came back from maternity leave and while she understands the struggles families face, the proposed bills are misguided and not the right policy solution. Ms. MacLeay stated that 94 percent of employees in the United States already have access to some form of time off. The bills present a danger of replacing existing benefits programs, and additional paid leave may no longer be offered, she said. Many employers currently offer benefits more generous than those required under the proposed bills, she stated, saying that there are no one-size-fits-all programs. Ms. MacLeay stated that women should be concerned about discrimination if the bills pass and that the program would take a woman's ability to negotiate paid family and medical leave in exchange for another benefit like higher compensation. Additionally, Ms. MacLeay said that other countries with paid family and medical leave have larger gender wage gaps. A paid family and medical leave program may benefit upper-income women but will harm those with a low income. Ms. MacLeay's organization has pushed for other policy options, including tax-free savings accounts and state and federal tax credits.

Kate Baker, Virginia Retail Federation

Ms. Baker stated that her organization opposes the proposals. She notes that a large number of retailers cannot afford to offer paid family and medical leave. The employers operate on tight margins and an increase in benefits costs could cause layoffs and closures. Retailers strive to provide the benefits that they can afford without being mandated to do so, she said. Delegate



Ware asked Ms. Baker to relate the practice of retailers when they face the kind of circumstances that require paid family and medical leave. Ms. Baker responded that many retailers address this on a case-by-case basis and often employees are considered to be family, for which the employers do what is necessary to keep their employees happy.

Nicole Riley, National Federation of Independent Businesses

Ms. Riley stated that her organization represents hundreds of thousands of small business owners across all sectors with 6,000 dues paying members in Virginia. She said her organization is opposed to the proposals. Ms. Riley explained that small business owners understand the need for a flexible workplace and that 73 percent of small business owners already offer paid time off and 67 percent offer more than two weeks of paid time off. She said small businesses offer the best benefits packages they can afford, and one study indicated that enactment of a similar bill in Colorado would have resulted in the loss of 14,000 jobs. Ms. Riley said businesses just can't afford to offer what is required under the proposed bills and that her organization is focused on keeping Virginia the best state in which to do business.

Additional Questions

Following opponents' remarks, Delegate Ware opened the floor for further questions from members of the Subcommittees. Delegate Mark L. Keam stated that generally it is best to let the marketplace find a solution but the market hasn't or can't find a solution to the problems addressed by these proposed bills. Delegate Keam asked opponents how they could find common ground between employers who were providing adequate benefits and those who are not able to and whether the Commonwealth should have a minimum benefit or the best should be chosen and made the standard. Ms. MacLeay responded by saying that those with low incomes still couldn't take leave under a paid family and medical leave program as proposed because 70 percent of pay is not enough. Even if the money were adequate, she said, it does not get to a lower-paid employee fast enough for it to help. Mr. Terry responded that the program would create disparities among industries. While the banking industry may only require one employee per \$1 million in sales, the restaurant industry requires 25 employees to generate the same amount in sales. A paid family and medical leave program could also create regional disparities, he said, adding that proposals need to look at each industry and each region of the Commonwealth. Mr. Martin responded that employment is currently a seller's market and many firms are offering generous leave packages to attract top talent. Employers who offer unrestricted paid time off are concerned that a mandated paid family and medical leave program will affect their ability to attract talent by offering such flexible benefits.

Delegate Kathy J. Byron said she is concerned not just about the funding of a paid family and medical leave program but that, like other forms of mandated insurance, many don't need or don't want these benefits. Additionally, Delegate Byron said many economists have stated that the costs of mandated benefits are greater for women than it is for men because it would result in fewer opportunities and lower pay.



Virginia Employment Commission

Valerie Braxton-Williams, Confidential Assistant for Policy and Legislation, Virginia Employment Commission (the Commission)

Ms. Braxton-Williams, presented the perspective of the Commission on HB 2120. She noted that the administration did not have a position on the bill. The Commission estimates that the paid family and medical leave program under the bill would require a one percent contribution rate of taxable wages. This would amount to \$1.73 billion through the first year that would cover the estimated startup and administrative costs of \$73.5 million and \$33.5 million, respectively, in addition to benefits payments. Administration of the program could require up to 250 additional FTE positions. The Commission estimates a utilization rate of 2.73 percent and an average benefit of \$765 per week. Members of the Subcommittees had concerns regarding the moneys in the fund being used for other purposes. Ms. Braxton-Williams confirmed that the bill does not prohibit the funds from being diverted for other purposes.

Ms. Braxton-Williams pointed out that the Commission is fully federally funded to administer the unemployment insurance program. The Commission is not authorized to use such federal funds for other programs. The agency would need a state appropriation to administer any new paid family and medical leave program. She also noted that, under the bill, administrative and benefits funds are comingled and the bill does not specify the ratio of administrative costs to benefits payments. Additionally, there is no mechanism for taxation of benefits in the bill if it is determined that the IRS requires such taxation, and there are no enforcement provisions in the bill.

Department of Labor and Industry

Robert Feild, Senior Attorney, Department of Labor and Industry (the Department)

Mr. Feild said the Department agreed with the testimony from the Virginia Employment Commission regarding the bills dealing with a paid family and medical leave program. The Department does not currently run any benefits programs, and enforcing labor laws is the closest thing they currently do to running a benefits program, he said. The Department has no position on HB 2261 by Delegate Guzman, but under the legislation, the Department would enforce the mandated sick leave. Mr. Feild stated that the Department looked at other states to assess the requirements of enforcing such a measure and it estimates that it would receive 145 to 190 contacts that would require a response from the Department. This would require two FTE positions to respond to the contacts. Mr. Feild noted that the Department would also need regulatory authority to work out details not addressed in the bill.

Public Comment

Vicky Shabo, of New America, stated that the paid family and medical leave program proposed by the bills is an insurance program with low-cost premiums and benefits for when an individual needs it. Very few employees have access to paid family and medical leave, and in the jurisdictions that do have such a program, employers have found that the program is less onerous than predicated and that there is less employee turnover, she said. Clayton Merrick, of the Northern Virginia Chamber of Commerce, commented that a state-mandated paid family and medical leave program limits an employer's ability to attract talent with more flexible leave programs and that it would raise the cost of doing business in Virginia.



Conclusion

Following public comment, Delegate Ware invited the patrons to give final remarks before moving on to discussion among the members of the Subcommittees. Senator Boysko stated that the bills address a very complex issue and the Commonwealth needs to find a solution that is fiscally responsible. The average contribution in other states has been about \$5 per employee per pay period. Any startup costs would be reimbursed to the state through the contributions. Senator Boysko said the program helps to retain jobs and employers will reap the benefits of lower turnover. Delegate Guzman explained that her bill does not apply to employers with fewer than 15 employees and allows an employer that already meets the requirements of the bill to maintain its current sick leave program.

Senator Stanley noted that because the Senate Subcommittee did not have a quorum it could not take formal action. He thinks that a paid family and medical leave program is a costly solution but thinks that Delegate Guzman's bill is a good starting point for a necessary conversation. Senator L. Louise Lucas stated that she also likes Delegate Guzman's bill and she is open to Senator Boysko's bill, adding that she would like to do something consequential and wants to see what is possible. Senator Stanley explained that, as chairman of the Senate subcommittee, he would send a report with the subcommittee's findings but without any formal recommendations.

Delegate Ware reminded the Subcommittees that the House subcommittee could take formal action if it chose to do so. Delegate Byron is still concerned about the bills and is not ready to make a decision on the legislation, saying that they could have a negative impact on women and could result in job loss and business closures. Delegate Eileen Filler-Corn said life circumstances affect us all and that not having a paid family and medical leave program is costing billions of dollars. While it is important to create a good environment for business, the Commonwealth must do better with regard to employee rights. Delegate Filler-Corn stated that not having this program has a negative impact on women. Delegate Keam expressed the need for both sides to continue the conversation and that the House subcommittee should study the issue more in the next interim.

For more information, see the [study's website](#) or contact the Division of Legislative Services staff:

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