MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Abby Magnus JBC Staff (303-866-2149)
DATE	March 17, 2023
SUBJECT	JBC Bill Draft – Changes to FAMLI Prepay (State Employee Insurance Premiums)

FY 2022-23 LONG BILL AND HOUSE BILL 22-1133

In November 2021, all agency budget requests included a common policy line item for Family and Medical Leave Insurance to cover the estimated six months of premiums from January 2023 through June 2023. The FY 2022-23 Long Bill was passed with these estimated amounts included as part of the common policy compensation decision.

After the passage of the Long Bill, the General Assembly approved H.B. 22-1133 (Family and Medical Leave Insurance Fund). This legislation transferred $57.0 million from the Revenue Loss Restoration Cash Fund to the FAMLI Fund to prepay state employer premium accounts. The prepay was utilized in order to ensure the Department could meet the implementation deadlines in statute. It created a one-time transfer in FY 2021-22, that was estimated to reduce centrally appropriated costs for agencies by the same amount over approximately six years. The advance payment of the State's share of premiums resulted in a reduction in state expenditures of $4.9 million in FY 2022-23 (half-year impact) and an estimated $9.8 million in FY 2023-24, with ongoing reductions until the $57.0 million prepayment, plus interest earnings, is drawn down. Based on expected interest earnings, assumption of the prepay covering just the employer portion of the premiums, and holding premium payments constant, the prepayment was estimated to fund about six years of premium payments.

PREMIUM COVERAGE IN FY 2022-23

The Executive Branch announced that for FY 2022-23, the State as an employer would cover the entirety of the premium rather than just the employer portion. This doubles the estimated cost of the prepay from $4.9 million to $9.8 million in FY 2022-23. In consultation with the Office of Legislative Legal Services, staff believes the prepay is able to be used for this purpose because:

- In H.B. 22-1133, the transfer is described as an advance payment of premiums for state employee coverage that the State is required to pay.
- In Section 8-13-507 C.R.S., the premium an employer must pay for FAMLI is defined as nine-tenths of one percent of wages per employee. While statute dictates that the employer must cover half of the premium and may cover the entire premium, the premium itself is the amount that is owed by the employer and is defined as 0.90 percent of employee wages.
- In Section 24-50-609 C.R.S., it states that the Director of DPA shall determine the State contribution for group benefit plans.
- The money in the FAMLI fund is continuously appropriated to the Division, so once the $57.0 million was transferred into the fund, as long as it is used for the payment of state premiums, that money can be used at the discretion of the DPA director.

In the fall, the Committee discussed reducing the applicability of the pre-pay to just the General Fund portion of the FAMLI premiums owed by the State. Currently, the prepay is covering the entirety of the State premiums, however the table below highlights what those fund sources would otherwise be.

PROPORTION OF FUNDING SOURCES THAT WOULD OTHERWISE BE USED TO COVER STATE FAMLI PREMIUMS W/OUT THE PREPAY			
GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS
53%	24%	11%	12%

In consultation with the JBC analyst for total compensation, staff did not recommend pursuing this change due to complications with calculating the actual costs to agencies for compensation in a timely manner.

Staff noted the following concerns leading to a recommendation to end the use of the prepay after FY 2023-24:

- Staff cannot identify a path moving forward for having the prepay apply solely to General Fund, so the prepay will continue to apply to all fund sources for State FAMLI premiums.
- From a budgeting perspective, having a prepay that is limited by an amount rather than time will cause problems in future budgeting processes. This is because while DPA can provide estimates of when the prepay will run out, budgeting staff will not know when the prepay runs out until actuals have been calculated which may be after the budget has been set for the next fiscal year.
- Currently, it appears that the decision for the State as an employer to cover the entirety of the FAMLI premium lies with DPA. Because the prepay can be used for one hundred percent of the required premium, as long as the prepay is in effect, the General Assembly currently does not have legislative oversight of when this occurs. Without a prepay, this decision is subject to the General Assembly.

The Committee approved a bill draft to limit the use of the FAMLI prepay in H.B. 22-1133 (Family and Medical Leave Insurance Fund) and transfer the unexpended amounts back to the Revenue Loss Restoration Cash Fund. This bill draft currently:

- Ends the use of the prepay after FY 2023-24; and
- Transfers $35.0 million of the initial $57.0 million transfer for the prepay from the FAMLI fund back to the Revenue Loss Restoration Cash Fund, which is the estimated unexpended amount. This is based on DPA's projections and is shown in the table below.

CALCULATIONS FOR ADJUSTMENTS TO FAMLI PREPAY: State covers Employee and Employer portion of premium from January 2023-June 2023		
FISCAL YEAR	STATE FAMLI EXPENDITURES	COMMENT
2022-23	$9,816,933	6 month impact for 100% of premium
2023-24	$10,394,939	1 year impact for 50% of premium
TOTAL	**$20,211,871**	
LEGISLATION W/ TRANSFERS	TRANSFER	COMMENT
H.B. 22-1133 (FAMLI Fund)	$57,000,000	FAMLI prepay of State premiums w/out time limit
LLS 23-0906 (JBC Bill Draft)	($35,000,000)	Unexpended amount of prepay based on DPA estimates for FY22-23 and FY23-24, with $1.8 million buffer
PREPAY REMAINING IN FAMLI FUND	**$22,000,000**	**Remainder will be transferred to RLRCF once accounting for FY 2023-24 is complete**

The Department of Personnel has noted concerns with ending the use of the prepay to cover both the employer and employee portion of the FAMLI premium after FY 2022-23. This requires employee deductions beginning in July 2023, which the Department notes will cause strain on the payroll system. The Department is prepared to implement employee deductions beginning in January of 2024. If the Committee wants to accommodate these concerns, the Committee can approve State coverage of the employer and the employee portion of FAMLI premiums by the State through December 2023. This would increase use of the prepay by an estimated $5.0 million in FY 2023-24. These calculations are shown in the table below.

CALCULATIONS FOR ADJUSTMENTS TO FAMLI PREPAY: State covers Employee and Employer portion of premium from January 2023-December 2023		
FISCAL YEAR	STATE FAMLI EXPENDITURES	COMMENT
2022-23	$9,816,933	6 month impact for 100% of premium
2023-24	$15,592,408	6 month impact for 100% of premium 6 month impact for %50 of premium
Total	**$25,409,340**	
LEGISLATION W/ TRANSFERS	TRANSFER	COMMENT
H.B. 22-1133 (FAMLI Fund)	$57,000,000	FAMLI prepay of State premiums w/out time limit
LLS 23-0906 (JBC Bill Draft)	($30,000,000)	Unexpended amount of prepay based on DPA estimates for FY22-23 and FY23-24, with $1.6 million buffer
PREPAY REMAINING IN FAMLI FUND	**$27,000,000**	**Remainder will be transferred to RLRCF once accounting for FY 2023-24 has been completed**