Paid Family and Medical Leave Program

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PROPOSED FINAL REPORT | JANUARY 2025

Legislative Auditor's conclusion:

Paid Family and Medical Leave program expenses are likely to continue exceeding revenues in future years. Changes to the rate formula could make the program more stable and promote financial sustainability.

Key points

- The Employment Security Department (ESD) has collected $4.5 billion in premiums and paid $4.2 billion in benefits on more than 700,000 claims through December 2023.
- The premium rate formula in statute does not produce enough revenue to cover program expenses.
- ESD forecasts the program will have a negative balance for portions of 2025 and 2026.
- JLARC's consulting actuary recommends using a forward-looking rate-setting approach and maintaining a financial reserve.
- ESD has implemented essential parts of the program. However, it needs to address project prioritization, employer audits, and customer service timeliness to meet best practices.

Executive summary

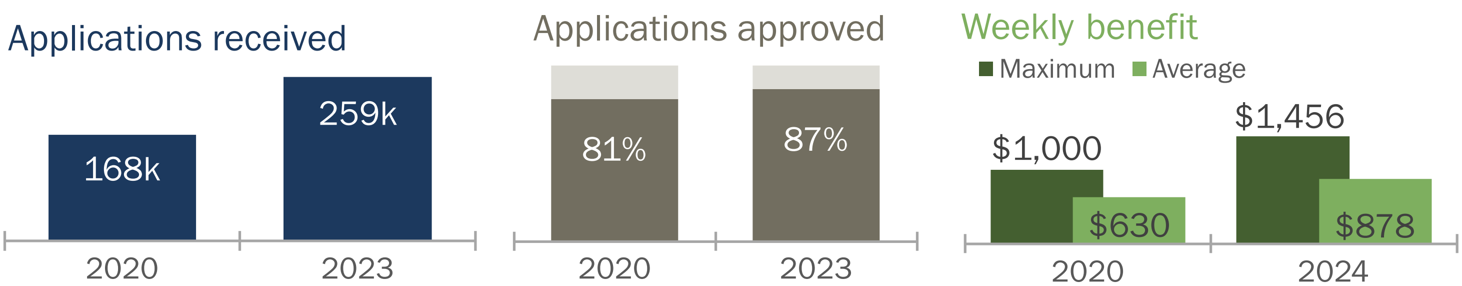
The 2017 Legislature created the Paid Family and Medical Leave (PFML) program (Title 50A RCW). The Employment Security Department (ESD) administers the program.

Washington's Paid Family and Medical Leave program offers paid time off to public and private employees

Employees can use leave when a serious health condition prevents them from working, to care for a family member, to bond with a new baby or child, or for certain military-related events. Leave is available to employees in Washington who have worked at least 820 hours in the past year.

- Eligible employees may claim up to 12 weeks of paid family or medical leave. Additional leave up to a maximum of 18 weeks may be available for employees who have more than one qualifying event in the same claim year.
- Benefit applications increased by an average of 15% each year, rising from 168,000 in 2020 to 259,000 in 2023. The percent of approved applications rose from 81% to 87%.
- Benefit payments are based on employee wages and the state's average weekly wage. The maximum weekly benefit for 2024 was $1,456 and the average was $878.
- ESD has paid $4.2 billion in benefits on over 700,000 approved applications.

Figure 1: Applications received, applications approved, and weekly benefits have increased



Source: JLARC staff analysis of ESD data.

PFML premiums are calculated based on a formula set in statute. Employees and employers pay premiums to fund the leave benefits. Employers apply the premium rate to each employee's gross wages, up to the Social Security cap ($168,600 in 2024). In 2024, for every $100 of gross wages, employees paid 53 cents in premiums, and employers paid 21 cents. Since 2019, ESD has collected $4.5 billion in premiums.

In October, ESD announced that the premium rate in 2025 will be 0.92%. The current rate is 0.74%.

The premium rate formula in statute does not produce enough revenue to cover program expenses

Since the program began paying benefits in 2020, annual expenses have exceeded premium collections in two out of four years. JLARC's consulting actuary, Spring Consulting Group (Spring Consulting) projects that expenses are likely to exceed revenues in three of the next five years (i.e., negative net income).

Figure 2: JLARC's consulting actuary projects PFML program expenses are likely to exceed revenue in three of the next five years

dollars in millions

						forecast			
	2020	2021	2022	2023	2024	2025	2026	2027	2028
Revenue	$678	$701	$1,109	$1,635	$1,750	$2,318	$2,348	$2,398	$2,560
Expenses	($665)	($959)	($1,258)	($1,538)	($1,846)	($2,014)	($2,203)	($2,408)	($2,629)
Net income	$13	($258)	($149)	$97	($96)	$304	$145	($10)	($69)

Source: JLARC staff analysis of state accounting data and Spring Consulting.

Negative net income reduces the PFML account's fund balance. Spring Consulting found that the PFML account fund balance has been low relative to expenses and actuarial best practices. In 2022 and 2023, the account fluctuated between negative and positive fund balances. In 2023, the Legislature transferred $200 million into the PFML account. This led to a positive balance and reduced the 2024 premium rate to 0.74%. The rate would have been 0.82% without the transfer. The lower rate contributes to ESD's current forecast that the fund balance will be negative beginning in March 2025. ESD expects negative balances will continue through much of 2025 and 2026.

JLARC's consulting actuary recommends a forward-looking rate-setting approach and maintaining a financial reserve

The current statutory rate formula relies solely on financial information from the previous year to set rates for the next year. The rates cannot reflect anticipated changes in program use or benefit payments. Actuarial best practices recommend incorporating trends in claim experience, potential future economic shifts, and demographic changes.

The current formula also includes a three-month reserve maximum (cap). This means that if the rate is likely to yield an account balance that is more than three months of expenses, ESD must reduce the rate. The cap can only adjust rates down. The formula does not have a reserve minimum (floor) or target. Without a reserve floor or target, there is no mechanism to increase rates to ensure a sufficient reserve.

In a November 2023 report, ESD recommended adopting an actuarial rate-setting approach. JLARC's actuarial consultant, Spring Consulting, concurs and makes two suggestions to improve the long-term stability of the PFML program:

1. Use a forward-looking rate-setting approach that is based on actuarial estimates of future revenues and benefit costs.
    - This approach can reduce rate volatility and incorporate long-term financial projections. Seven of nine state paid family and medical leave programs reviewed by JLARC staff use forward-looking approaches.
2. Maintain a financial reserve sufficient to cover shortfalls.
    - A reserve target or floor allows rates to move up or down to maintain the targeted balance. Washington is the only state to use a reserve cap for its paid family and medical leave program reserves.

ESD has yet to fully implement the PFML program. Its process for selecting projects should be more transparent.

After the Legislature established the program, ESD prioritized creating the technology and operational processes required to collect premiums and pay benefits. ESD successfully developed the core functions.

However, it has not implemented nine statutory requirements, including some that would automate processes and protect the state from overpaying benefits. The Legislature appropriated funds for additional staff and resources with the expectation that ESD will complete the remaining components by April 2026.

ESD has a formal process for prioritizing these and other technology projects. While it uses best practices such as monthly reviews, certain areas lack documented procedures and criteria. As a result, it is unclear how projects are prioritized and ranked for implementation.

ESD does not follow best practices for employer compliance audits

ESD audits employers to determine if they are properly reporting premiums and maintaining accurate records. In 2023, ESD completed 169 audits. Of these, 163 (96%) led to corrections: $283,000 in underpayments and $48,000 in overpayments.

The scale of inaccurate wage reporting and its overall impact on the program's financial health is unknown. ESD has completed 201 of the 801 audits it assigned staff since 2021. Contrary to best practice, it does not have procedures for selecting which employers to audit or for determining how many employers will be audited each year.

ESD has not provided timely customer service

ESD's customer service representatives process applications and claims and answer the phones in the call center.

- **Application and claim processing**: ESD aims to approve an employee's first benefit payment within three weeks of their application. Between January 2022 and June 2024, ESD met that target in 16 of 30 months.
- **Call center**: The number of calls to ESD's call center increased each year. Calls are placed in queues based on the reason for the call. When call volume is high, the system automatically disconnects calls if queues are full.
    - In 2022, ESD received an average of 47,000 calls about PFML per month. It answered 60%.
    - As of June 2024, it received an average of 78,000 calls per month. ESD answered 23% of calls between January and June 2024.

While ESD tracks metrics such as call hold times, it does not have any formal performance measures to help it manage or evaluate application processing or call center performance. Measures could help the agency determine and address the factors that contribute to long wait times for applications and call center response.

Legislative Auditor's recommendations

1. The Legislature should implement a forward-looking rate-setting approach that maintains a sufficient financial reserve for the PFML program.

2. ESD should adopt criteria for its compliance audit program.
3. ESD should adopt quantifiable customer-oriented performance measures for claims processing and call center management.
4. ESD should develop a documented and transparent process for prioritizing projects.

ESD concurs with these recommendations. You can find additional information in the **Recommendations section**.

Part 1.
PFML program

The 2017 Legislature created the Paid Family and Medical Leave (PFML) program (Title 50A RCW). The program is administered by the Leave and Care Division (LCD) of the Employment Security Department (ESD).

The program offers paid time off to public and private employees who have worked at least 820 hours in Washington in the past year. In 2023, there were three million eligible workers.

Eligible employees may claim up to 12 weeks of paid family or medical leave. Additional leave is available for those who have multiple qualifying events in the same year. The maximum is a total of 18 weeks leave per year. In 2023, the average leave length was eight weeks.

Employees can take medical or family leave for qualifying events, as listed in Figure 3.

Figure 3: Employees can take medical or family leave for qualifying events

Leave type	Qualifying events when employees can use leave
Family	• Bond with a new baby or child. • Care for a family member. • Spend time with family member prior to an overseas military deployment.
Medical	• Address a serious health condition that prevents them from working. • Pregnancy and childbirth.

Source: RCW 50A.05.010.

Employees and employers pay premiums to fund paid leave benefits

Each year, ESD calculates PFML premiums. There are two main steps:

1. Calculate the overall premium rate according to a statutory formula.
2. Split the overall rate into a family rate and a medical rate. The split is based on the percentage of claims in each category in the last fiscal year.

Statute requires employees to pay 100% of the family rate. The medical rate is split: employees pay 45% and employers pay 55%. Employers apply the rates to each employee's gross wages, up to the Social Security cap ($168,600 in 2024).

EXAMPLE CALCULATIONS FOR 2024

1. The overall rate was 0.74%.
2. Family leave claims made up 48% of applications, so the family leave rate was 0.36%. Medical leave made up 52% of claims, so its rate was 0.38%.

Of the 0.74% rate:

- Employees paid 0.53%. This is all of the family leave rate plus 45% of the medical leave rate.
- Employers paid 0.21%. This is 55% of the medical leave rate.

This means that for every $100 of gross wages, employees paid 53 cents in premiums, and employers paid 21 cents.

Small employers are not required to pay premiums. An employer with a comparable plan can apply to opt out.

By law, employers with fewer than 50 employees are not required to pay the employer share of premiums. Employer size does not affect employee eligibility. Small employers must remit premiums on behalf of their employees. Among states with paid family and medical leave programs, Washington's small employer exemption is the largest based on employer size. Other state exemptions include employers with 10-30 employees.

Employers that offer comparable paid leave to their employees can opt out of the PFML program. They must send an application to ESD. If approved, the employers and their employees do not contribute to the program and are ineligible for benefits.

Employees must apply to ESD for paid leave benefits

To receive benefit payments, employees must complete ESD's online application or ask for a paper application, which is available in other languages. Paper applications account for less than 1% of all applications. Employees must submit the application after the qualifying event has occurred. They also must notify their employer in writing that they are, or will be, taking leave.

ESD tells employees if their application is approved or denied. Reasons for denial include insufficient hours worked, inability to verify identify, and missing application information.

Benefit payments are based on employee wages and the state's average weekly wage

Once ESD approves the benefit application, the employee must file a weekly claim to receive benefits. Employees can file up to four claims at once, but a separate claim is required for each week of leave. If an employee used a paper benefit application, they must file weekly claims by phone. ESD provides translation services for phone calls.

The amount an employee receives depends on how their average weekly pay compares to 50% of the state average.

A. If the employee earns 50% or less than the state average, they receive 90% of their weekly wage. Employees receive at least $100.

B. If the employee earns more than 50%, they receive 90% of half the state average plus 50% of their average weekly wage, adjusted for the state average. Beginning in 2021, weekly benefit payments are capped at 90% of the state's average weekly wage.

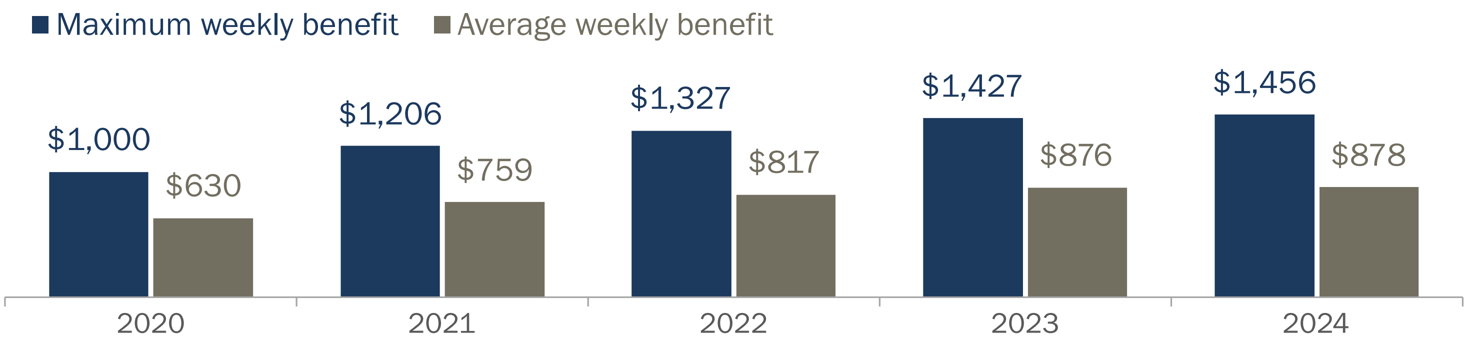
EXAMPLE CALCULATIONS FOR 2024

State average weekly wage	50%
$1,618	$809

Employee	A	B
Weekly wage	$650	$1,250
Calculation	0.9*$650	$(0.9*$809) + (.5*($1,250-$809)
Amount	$585	$948

In 2020, the Legislature set the maximum weekly payment at $1,000. Since then, it has grown to $1,456 in 2024. The average weekly payment grew from $630 to $878 but remained between 60% and 63% of the maximum.

Figure 4: The maximum and average weekly benefits have increased annually since 2020



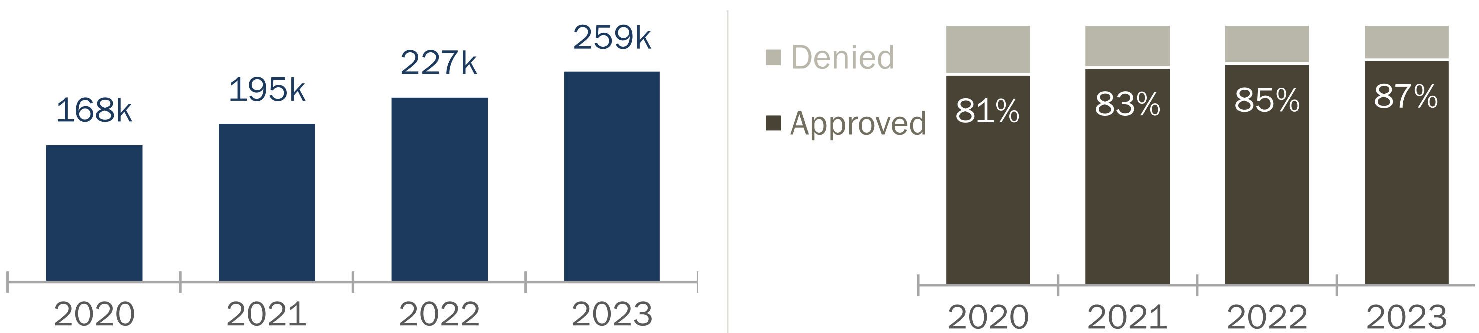
Note: Average weekly benefit for 2024 includes payments made in January through March.
Source: ESD and JLARC staff analysis of ESD data.

ESD has collected $4.5 billion in premiums. It has paid $4.2 billion in benefits on more than 700,000 approved applications through calendar year 2023. One person can have multiple applications.

Part 2. Program use

Benefit applications increased by an average of 15% each year, rising from 168,000 in 2020 to 259,000 in 2023. The percent of approved applications rose from 81% to 87%.

Figure 5: The number of benefit applications and the percent approved increased each year



Source: JLARC analysis of ESD data.

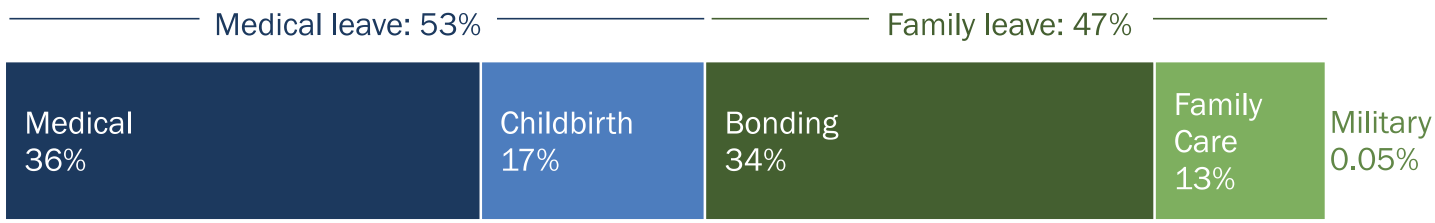
Medical leave, including childbirth, made up just over half of applications

Employees can use medical leave for serious health conditions or childbirth. They can use family leave for bonding, family care, or time before a military deployment.

ESD began to separately identify childbirth leave from other medical leave in July 2022. From that point through December 2023, it approved 326,000 benefit applications. Of those:

- Medical and childbirth leave made up 53% of approved applications.
- Family leave accounted for 47% of approved applications.

Figure 6: Medical leave made up just over half of applications



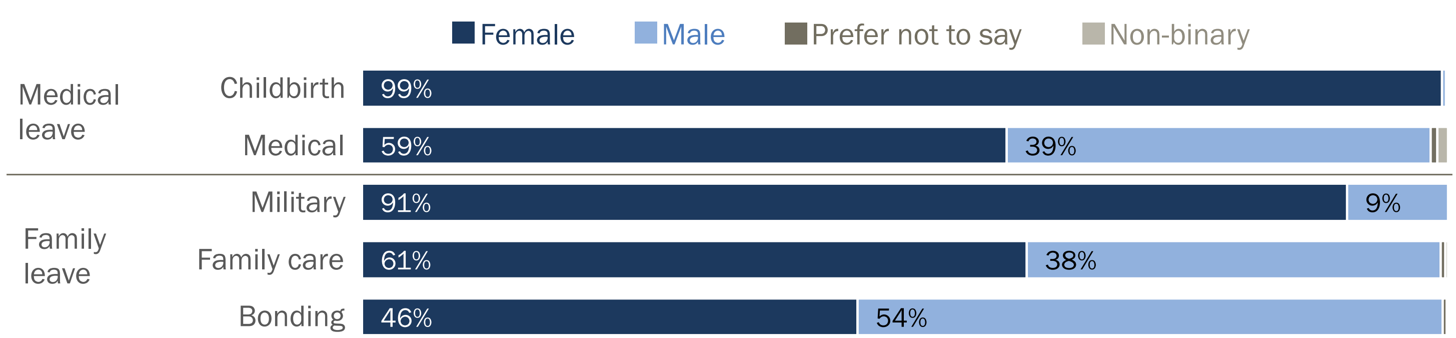
Source: JLARC staff analysis of ESD data, July 1, 2022 — December 31, 2023.

Female employees account for over 60% of paid leave applications

Since July 2022, 62% of employees using paid leave reported their gender as female. This is compared to an estimated 46% of the eligible population based on census data.

Female employees account for a higher share of approved applications for childbirth, medical, military, and family care leave. Male employees accounted for more family bonding leave. Employees must file separate benefit applications for childbirth leave (medical) and bonding leave (family).

Figure 7: Applications differ by employee gender



Source: JLARC staff analysis of ESD data.

Median income of employees using paid leave is comparable to that of all eligible employees

ESD collects wage reports from employers. JLARC staff compared the incomes of employees who use paid leave to those that are eligible for the program.

The 2023 median income of employees using paid leave is comparable to that of all eligible employees. For this comparison, eligible employees are those who have worked at least 820 hours in the past year, according to ESD data.

- The median for employees using the program was $66,000. Half had incomes between $44,000 and $101,000.
- The median for all eligible employees is $64,000. Half had incomes between $39,000 and $109,000.

Data limitations make it difficult to compare the race and ethnicity of PFML users to those who are eligible for the program

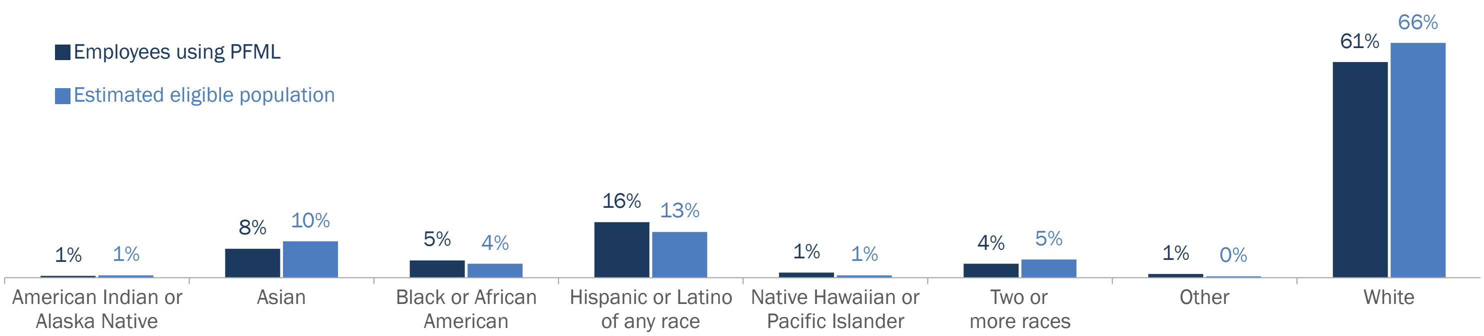
Available data suggests that the race and ethnicity of employees using paid leave is like that of the eligible population. However, data limitations preclude a precise comparison.

ESD collects demographic data about employees who use the program. It does not have comparable data about all eligible employees. JLARC staff used U.S. Census Bureau data, adjusted for those who meet program eligibility requirements, to estimate the demographics of the population that could use paid leave.

This approach has caveats:

1. It uses census data to estimate the demographics of the eligible population, but it is not an exact match.
2. ESD disaggregates the "Asian" population category into three different options. In contrast, the census uses one category.
3. Four percent of employees using PFML opted to not provide information about their race or ethnicity. Census data does not include this option.

Figure 8: Despite data limitations, available data suggests that the race and ethnicity of employees using paid leave is like that of the eligible population



Note: Employees using PFML does not add to 100% due to 4% of employees using PFML who did not provide information about their race or ethnicity.
Source: JLARC staff analysis of ESD data and ACS 2022 5-year microdata.

Some industries are over- or under-represented in the data

JLARC staff compared the percentage of industry employment among employees using paid leave to that of the estimated eligible population.

For most industries, the share of employees who are using paid leave is similar to the share of eligible employees. There are exceptions, including:

- The health care and social assistance industry is over-represented. Nearly 19% of employees using paid leave worked in this industry. In contrast, they make up 12% of the eligible population.
- The accommodation and food services industry is under-represented. About 4% of employees using paid leave worked in this industry. They make up nearly 7% of the eligible population.
- The information industry is also under-represented. Just under 2% of employees using paid leave worked in this industry. These employees make up more than 4% of the eligible population.

Part 3.
Finances

Premium rates are set by a formula in statute. The Legislature revised the formula as program use exceeded expectations.

1. The 2017 Legislature set the premium rate at 0.4% of covered wages for the first two collection years (2019 and 2020). Covered wages are an employee's gross wages, not including tips, up to the Social Security cap ($168,600 in 2024).
2. Beginning in 2021, the Legislature based the rate on a ratio: the program's account balance divided by total covered wages from the prior fiscal year.
3. Due to declining account balances, the 2023 Legislature established a new premium rate formula starting in 2024.
    - The updated formula is 140% of expenses from the prior fiscal year minus the account balance on September 30, divided by covered wages from the prior fiscal year.
    - The rate is subject to two conditions:
        - It can be no more than 1.20%.
        - It cannot lead to an account balance that will be more than three months of expenses at end of the next year. If it is expected to do so, ESD must reduce the rate.

Figure 9: Premium rates have increased since 2019

Rate year	2019	2020	2021	2022	2023	2024	2025
Rate	0.40%	0.40%	0.40%	0.60%	0.80%	0.74%	0.92%

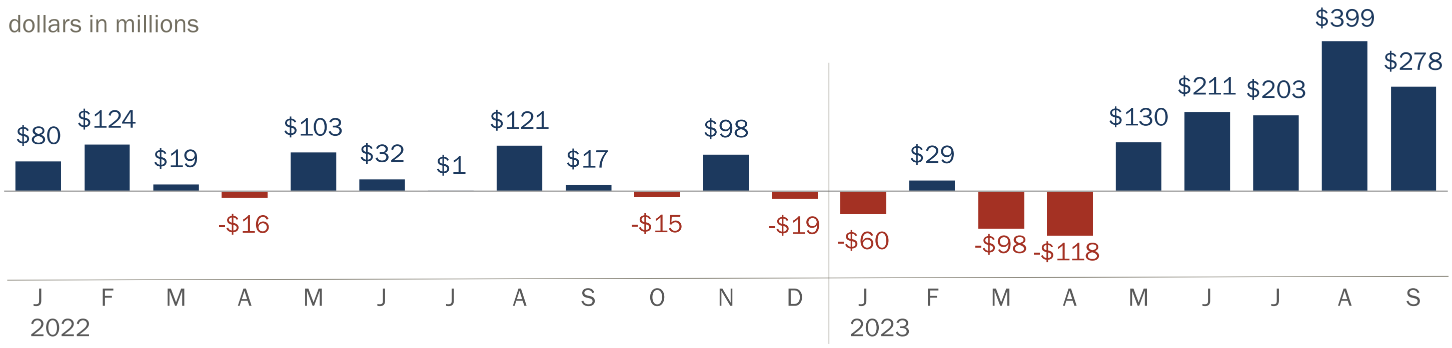
Source: JLARC staff analysis of ESD data.

The account has fluctuated between positive and negative balances

As shown in Figure 10, the PFML account's first negative balance was in April 2022. It then fluctuated between positive and negative balances through April 2023. State law allows agencies to run account deficits under certain circumstances, and, to date, the negative balances have not affected paid leave benefit payments.

The 2023 operating budget transferred $200 million into the PFML account to build a reserve and lower the 2024 premium rate. The transfer increased the balance to $278 million as of September 30 and reduced the 2024 premium rate to 0.74%. The rate would have been 0.82% without the transfer.

Figure 10: The monthly ending balance for the PFML account has fluctuated between positive and negative balances



Source: ESD.

ESD forecasts the program will have a negative balance for portions of 2025

ESD uses actual financial data and program utilization rates to project future account balances. ESD's latest forecast shows a negative account balance beginning in March 2025 and continuing through July 2026. In October, ESD announced that the premium rate in 2025 will be 0.92%.

JLARC's consultant projects expenses will exceed revenue in three of the next five years

JLARC staff contracted with actuarial services firm Spring Consulting to assess the solvency of the PFML account. Solvency means the account's ability to meet its financial obligations.

Spring Consulting found that the account balance is low compared to expenses and actuarial best practices. It estimates that the PFML account will have a 2024 year-end balance of $273 million. This is enough to cover roughly 14% of the projected $2.01 billion in expenses in 2025. In contrast, best practice suggests that a fund's ending balance should be able to cover at least 33% of expenses in the following year.

In two of its first four years, the PFML program had negative net income. This means that expenses (benefits and administrative costs) exceeded revenue (premiums and investment income). According to Spring Consulting, the program is likely to also have negative net income in three of the next five years. This rate increase is projected to keep the account balance positive throughout the forecast period. It estimates that rates will stay at about 0.90% through 2028. Additional detail is in **Appendix A**.

Figure 11: JLARC's consulting actuary projects PFML program expenses are likely to exceed revenue in three of the next five years

dollars in millions

						forecast			
	2020	2021	2022	2023	2024	2025	2026	2027	2028
Revenue	$678	$701	$1,109	$1,635	$1,750	$2,318	$2,348	$2,398	$2,560
Expenses	($665)	($959)	($1,258)	($1,538)	($1,846)	($2,014)	($2,203)	($2,408)	($2,629)
Net income	$13	($258)	($149)	$97	($96)	$304	$145	($10)	($69)

Source: JLARC staff analysis of state accounting data and Spring Consulting.

The premium rate formula contributed to the account's insolvency

The premium formula contributes to insolvency in two main ways:

1. **It is backward-looking and relies solely on financial information from the previous year to set rates for the next year**. As a result, the rates cannot reflect anticipated changes in program use or benefit payments. For example, the formula does not consider planned increases to the maximum weekly wage or legislative changes affecting program use (e.g., expanding the definition of a family member).
2. **It includes a maximum reserve amount (cap)**. This means that if the rate will result in an account balance that is more than three months of expenses, ESD must reduce it. The cap can only adjust rates down. The formula does not have a reserve minimum (floor) or target. Without a reserve floor or target, there is no mechanism to increase rates to ensure a sufficient reserve. The account has yet to accumulate a three-month reserve, and ESD does not project one in the next three years. This creates thinner reserve margins than best practices suggest.

JLARC's consulting actuary recommends using a forward-looking rate-setting approach and maintaining a financial reserve

Spring Consulting suggests using a forward-looking rate-setting approach that prioritizes long-term financial sustainability. A forward-looking approach is based on actuarial estimates of future revenue and benefit costs. It can:

- Reduce rate volatility.
- Include expected changes to the program.
- Incorporate long-term financial projections (e.g., Spring Consulting used five-year projections in its report).

A forward-looking formula is consistent with the approaches of seven of nine states that JLARC staff reviewed that also have paid family and medical leave programs. A similar approach is also used to set contribution rates for Washington's workers' compensation program.

Spring Consulting also suggests maintaining a reserve fund that is sufficient to cover shortfalls during economic uncertainty (e.g., recession or pandemic). Other state paid family and medical leave programs set fund reserves with a floor or a target. With a reserve floor or target, rates can move up or down to maintain the targeted balance. Washington is the only state to use a reserve cap when setting premium rates. A reserve cap can only move rates down.

Part 4. Administration

Three ESD divisions share program responsibility. One operates the program, another performs audits and investigates complaints, and a third manages accounting and finance. Administrative costs were $66 million in calendar year 2023.

A Paid Leave Advisory Committee monitors the program and provides feedback to agency staff. It has eight voting members, split evenly between representatives from labor and business.

ESD has not yet fully implemented key elements of the PFML program

The Legislature established the PFML program in 2017. ESD set priorities and followed best practices for technology development. It successfully implemented the core elements of the PFML program: premium collection began in January 2019 and benefit payments followed a year later.

However, ESD has not developed the technology to implement all program elements in law. These nine elements are known as the "paid leave balance of work." Some projects address technology upgrades to automate adjustments to benefit payments, allow tribes to participate, or provide additional information in the database. Others provide safeguards, penalties, and collection processes for overpayments.

Members of the advisory committee have previously expressed concern about whether ESD has correctly prioritized these projects for implementation. ESD raised the projects' priority level and requested additional funding from the Legislature. The 2024 Legislature appropriated $7.3 million for 48 new staff members to complete the work by April 2026.

ESD's prioritization process uses some best practices. However, it is unclear how it uses the scores to select projects.

ESD has a formal process for prioritizing projects. Projects include the paid leave balance of work and other projects, such as implementing new legislation and migrating software platforms to the cloud.

1. First, it prioritizes projects based on technical complexity and statutory deadlines. It categorizes each project as either now, next, or later.
2. In the second step, ESD assesses each project based on 15 factors, including cost, risk, external impact, equity, efficiency, duration, and complexity. All factors have equal weight and the project's overall assessment score is an average of the individual scores.

Individual components of ESD's project prioritization process use best practices from the field of portfolio management. For example, ESD conducts monthly reviews and updates to ensure the projects align with the agency's strategic plan. The agency also involves subject matter experts and uses consistent criteria during the second step.

Paid leave balance of work

1. Child support withholding.
2. Automated PFML/Unemployment insurance crossmatch.
3. PFML/Labor & Industries crossmatch.
4. Benefit overpayments.
5. Penalties & interest.
6. Elective coverage for tribes.
7. Collections.
8. Conditional benefit payments.
9. Database updates (adding county and legislative district).

Details are in **Appendix B**.

However, JLARC staff found that certain areas lack documented procedures and criteria.

- ESD lacks documented procedures for the prioritization in step one and clear criteria for the three priority categories. As a result, it is unclear why some projects are in the category they are and whether they have been appropriately prioritized.
- ESD assigns equal weight to all factors in the assessments done in step two. This obscures the relative risks associated with each project and contributes to a narrow range of scores. For example, five of the ten "now" projects in November 2023 had the same assessment score. It is unclear how ESD uses the scores to decide which projects to implement.

As a result, it is not possible to assess the effectiveness of the process. It is unclear how ESD prioritized the implementation of the paid leave balance of work compared to other projects in the past. Improving project selection will likely improve stakeholder confidence.

ESD has a backlog of 600 employer audits

ESD audits employers to determine if they are properly reporting premiums and maintaining accurate records as required by law. As of June 2024, ESD had assigned 801 audits. Of these, 201 were complete. Of the remaining 600 audits, 187 were pending supervisor review and 413 were either underway or not yet started.

ESD reports that it has been working through a backlog of audits. A past practice of assigning audits in batches may have contributed to the backlog. For example, of the 801 audits, supervisors assigned 537 in just two months (March 2022 and March 2023). The agency was unable to provide any current documented procedures or criteria for assigning audits.

ESD identified reporting errors in 96% of audits completed in 2023

In 2023, ESD completed 169 audits. Of these, 163 resulted in corrections to the employer's wage reports. These corrections typically involve adjustments to the reported number of employees and their wages. Based on these corrections, ESD systems recalculated the employer's premium balance.

- The 2023 audits found $283,000 in underpayments and $48,000 in overpayments.
- State regulation (WAC 192-510-065) prohibits employers from deducting past-due premiums from their employees during a different pay period.
- ESD's software systems are currently unable to levy fines against employers who willfully fail to submit wage reports or remit premiums in full, as is allowed by statute. This functionality is one of the items on the paid leave balance of work.

The 169 audits represent 0.08% of the 200,000 employers that submitted wage reports in 2023. There is no basis for extrapolating the results because the audits are unlikely to be representative of all employers.

ESD's audit procedures are not aligned with best practices for compliance auditing, such as:

- Assigning audits based on specific criteria such as employer size or missing wage reports. The U.S. Department of Labor (DOL) encourages states to include larger employers in their unemployment insurance audit selection criteria.
- Determining the percentage of employers that will be audited each year (i.e., audit penetration rate). For example, the DOL requires state unemployment insurance programs to audit 1% of employers annually.

ESD has a backlog of unlawful act investigations

Employees can submit a complaint to ESD if they believe their employer has committed an unlawful act like interfering with an employee's right to use paid leave. Employees must use the "Unlawful Acts Complaint Form" posted on the PFML website.

As of April 2024, ESD had received 271 complaints. The most common complaint types are discharge/termination (38%) and interference (29%).

ESD investigated 193 of the 271 complaints; 78 remain open. Of the 193 investigations:

- Most complaints (85%) were unsubstantiated, not accepted, or withdrawn.
- Eighteen complaints (9%) were substantiated. Five of the 18 substantiated complaints resulted in damages paid by employers to the employee. Damage amounts range from $1,200 to $17,000.
- The remaining investigations were resolved in some other way. For example, in some cases the employee and employer reached a resolution without further ESD involvement.

ESD completed two investigations from June 2023 through April 2024. ESD is uncertain when the backlog will be cleared. It has one staff member assigned to conduct these investigations.

PFML accounting practices and procedures are consistent with standards

The 2022 Legislature directed JLARC staff to evaluate if ESD prepares financial information for the PFML account in accordance with generally accepted accounting principles (GAAP). Due to its relative size, the State Auditor's Office categorizes the PFML account as a non-major enterprise fund. Standalone financial reporting is not required for these funds. The state's Annual Comprehensive Financial Report (ACFR) includes high-level information about the PFML program.

Given the limited reporting requirements, JLARC staff evaluated whether ESD's accounting policies, procedures, and practices for the PFML account aligned with GAAP and the State Administrative Accounting Manual (SAAM). To do this, JLARC staff contracted with the accounting firm Eide Bailly to:

- Review ESD's accounting policies and procedures.
- Sample and test transactions for compliance with generally accepted accounting principles and state requirements.
- Review month-end and year-end reconciliations between PFML's accounting system and AFRS, the statewide accounting system.

In its report, Eide Bailly found that ESD accounts for activity in the PFML account in accordance with all applicable standards.

Part 5.
Customer service

ESD's customer service representatives process claims and staff the phones in the call center. The 2024 Legislature provided funding for additional customer service staff, bringing the number of customer service staff to 371.

ESD's staffing practices mean that as application processing time increases, staff answer fewer phone calls

Customer service staff typically spend four days processing benefit applications and weekly claims and one day answering phones per week.

When application processing times rise, ESD shifts staff from phones to application processing tasks. This approach can reduce benefit payment delays since employees cannot file weekly claims until ESD approves the application. In addition, by processing more applications, it aims to limit calls from people checking their application's status.

The impact of this strategy results in a tradeoff between application processing timeliness with customer service calls answered. For example, from May through September 2023, application processing time increased from 3.1 to 4.4 weeks. In response, ESD increased the number of staff assigned to process applications. In December 2023, application processing time had fallen to 3.4 weeks. However, with fewer staff available to answer phones, the average monthly hold time increased from 14 minutes in May 2023 to 33 minutes in December 2023.

PFML calls have increased, and call center performance has declined

The number of calls about PFML to ESD's call center increased each year.

- In 2022, ESD received an average of 47,000 calls per month and answered 60%.
- Through the first half of 2024, it was 78,000 calls per month. ESD answered 23% of total calls between January and June 2024.

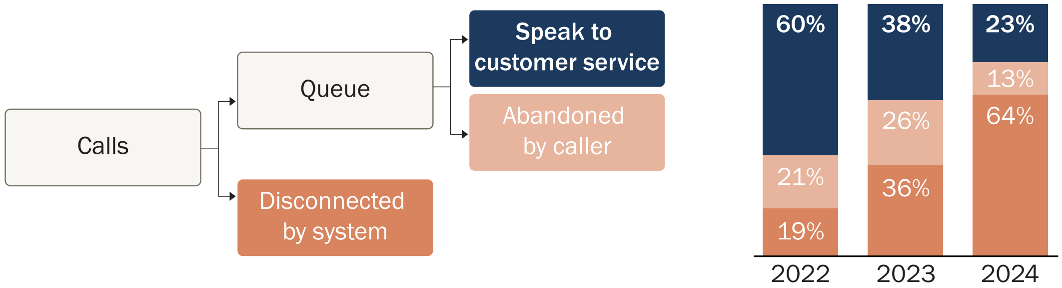
The call center handles phone calls for both PFML and the WA Cares program. All calls enter a phone tree that divides the calls in queues based on the program and call purpose. There are 14 queues: 10 for PFML, three for WA Cares, and one for both.

Overall, the system is limited to 380 calls at one time. ESD caps each queue to 75 calls.

- If a call enters a queue, the caller must wait for an available customer service representative. ESD adjusts queue capacities to keep hold times below 90 minutes. Some callers abandon the call before reaching customer service.
- When a queue reaches its maximum capacity, callers cannot enter. Instead, they receive a recorded message that the system is experiencing a high number of calls, and the system disconnects their call. The percentage of calls disconnected due to high call volume increased from 19% in 2022 to 64% in the first six months of 2024.

ESD prioritizes calls by queue. Generally, calls in queues with higher priorities will be answered more quickly. The highest priorities are logon help, callers who prefer a language other than English, and healthcare providers.

Figure 12: ESD answered 23% of total calls between January and June 2024. More than six in ten calls were disconnected due to high call volume.



Source: JLARC staff analysis of ESD data.

ESD's customer service staffing model is not connected to performance measures

ESD developed a staffing model to determine the number of customer care representatives it needs per year. The model is based on the average time to process applications, available staff hours, and expected number of applications.

JLARC staff found the staffing model uses reasonable assumptions and adequately estimates the number of employees needed to process applications based on current practice. However, the model does not evaluate the number of staff needed against specific performance measures. For example, it cannot estimate how many more staff members are needed to process all applications within two weeks or answer 90% of incoming calls. Connecting the model to performance measures such as timeliness would allow the agency and stakeholders to better compare the costs and benefits of investing in additional staff.

Employees wait two to four weeks for their first benefit payment

ESD measures the time from the date an employee submits an application to the date it issues the first payment. ESD's target is three weeks from application to first payment. Since January 2022, median processing times have varied from 2.4 weeks to 4.4 weeks.

Figure 13: ESD met its 3-week target in 16 of the 30 months (January 2022 through June 2024)

Source: JLARC staff analysis of ESD data.

ESD lacks formal performance measures for application processing and call center operations

While ESD tracks metrics such as call hold times, it does not use any formal performance measures to manage application processing or call center performance.

Without formal measures, it is difficult to evaluate the program's operational strategy and performance. For example, as noted above, ESD shifts resources from the call center to application processing. While this has improved processing times, it has also reduced call center performance. Formal measures would allow the agency and stakeholders to clearly identify and evaluate the tradeoffs of this approach.

Other state paid family and medical leave programs use performance measures for application processing and call center management. Examples include:

- Oregon's paid leave law includes a two-week target from when the agency receives the application to when the employee is paid.
- Colorado targets average call hold times of no more than three minutes.
- Connecticut requires its third-party service provider to keep the abandonment rate below 3%.

Performance measures in Washington could include the following. Each should have targets, standards for how it will be measured, and a plan for attaining the target.

- Time from submission to determination.
- Time from submission to first payment.
- Phone system availability (i.e., rejected call rate).
- Phone hold times and/or percentage of calls answered within a certain amount of time.
- Percentage of issues resolved in a single call.
- Calls per application.
- Percentage of applications processed without follow-up or fact finding.

Recommendations

The Legislative Auditor makes four recommendations.

Recommendation #1:
The Legislature should implement a forward-looking rate-setting approach that maintains a sufficient financial reserve for the PFML program.

ESD should ensure that legislators and legislative staff have the information necessary to implement the forward-looking approach. This approach would replace the current statutory formula.

Actuarial best practices recommend incorporating trends in claim experience, potential future economic shifts, and demographic changes into the rate-setting process.

Legislation Required: Yes

Fiscal Impact: Depends on statutory language.

Agency Response: **ESD** concurs.

Recommendation #2:
ESD should adopt criteria for its compliance audit program.

Best practices include assigning audits based on specific criteria (e.g., employer size) and determining the percentage of employers that will be audited each year.

Legislation Required: None

Fiscal Impact: JLARC staff assume this can be completed within existing resources. If ESD believes additional resources are needed, it should include that information in its future budget requests.

Implementation Date: November 2025

Agency Response: **ESD** concurs.

Recommendation #3:
ESD should adopt quantifiable customer-oriented performance measures for claims processing and call center management.

Best practice is to establish specific and actionable performance measures. In developing these measures, ESD should conduct outreach to its customers and stakeholders.

Legislation Required: None

Fiscal Impact: JLARC staff assume this can be completed within existing resources. If ESD believes additional resources are needed, it should include that information in its future budget requests.

Implementation Date: November 2025

Agency Response: **ESD** concurs.

Recommendation #4:
ESD should develop a documented and transparent process for prioritizing projects.

ESD should document its procedures and decision-making throughout the prioritization process. Project assessments should be updated to accurately reflect the relative risk of each project.

Legislation Required: None

Fiscal Impact: JLARC staff assume this can be completed within existing resources. If ESD believes additional resources are needed, it should include that information in its future budget requests.

Implementation Date: November 2025

Agency Response: **ESD** concurs.

Agency Response

ESD concurrs with the recommendations. See **attached letter (PDF)**.

The Office of Financial Management (OFM) was given an opportunity to comment on this report. OFM responded that it does not have any comments.

Current Recommendation Status

JLARC staff follow up on the status of Legislative Auditor recommendations to agencies and the Legislature for four years. The most recent responses from agencies and status of the recommendations in this report can be viewed on our **Legislative Auditor Recommendations page**.

Appendices

Appendix A: Spring Consulting baseline results and sensitivity analyses

JLARC staff contracted with Spring Consulting to evaluate the solvency of the PFML account.

Appendix B: Paid leave balance of work

Project	Description
Child support withholding	This work includes establishing a crossmatch between PFML benefit customers and child support obligations, process to withhold funds from benefit payments as directed by DCS, and to notify the benefit customer.

Project	Description
PFML/Unemployment Insurance crossmatch	Develop an automated crossmatching system between PFML and UI to prevent improper benefit payments to individuals claiming both benefits in the same week.
PFML/Labor & Industries crossmatch	Develop a crossmatching system between PFML and Workers' Comp to prevent improper benefit payments to individuals claiming both benefits in the same week.
Benefit overpayments	Implement a process with the ability to identify, investigate, determine, and receive payment for benefit overpayments.
Employer penalties and interest	Develop processes that enable accurate identification of employers subject to reporting and payment requirements. Implement system ability to identify potential noncompliance and generate notifications to employers.
Disqualifications, employee penalties & interest	Develop processes to identify and assess penalties and interest against employees who have knowingly made false statements and obtained improper PFML benefits.
Elective coverage for tribes	Implement the ability for a federally recognized Tribe to elect coverage and design functionality for tribes that have opted in to report wages and pay premiums quarterly.
Collections	Implement collections processes to collect premiums, interest, or penalties when not paid within ten days after the service or mailing of the order and notice of assessment.
Conditional benefit payments	Would provide an employee who has already received at least one benefit payment, and whose eligibility is being questioned by ESD or employer, to opt to receive conditional benefit payments while the dispute is resolved.
Database updates (adding county and legislative district)	Implement the ability to report to the Legislature on the county and legislative district of benefit customers.

Appendix C: Applicable statutes

Title 50A RCW: FAMILY AND MEDICAL LEAVE

This report reflects statute as documented in the following chapters during the study period.

50A.05: General provisions.
50A.10: Premiums.

50A.15: Benefits.
50A.20: Employer requirements.
50A.24: Small business assistance.
50A.25: Privacy.
50A.30: Voluntary plans.
50A.35: Employment protections.
50A.40: Unlawful acts.
50A.45: Limitations, disqualifications, penalties, and interest.
50A.50: Appeals.

Appendix D: Study questions

This study aimed to answer the following questions, which were presented to JLARC in May 2023 (**view here**). JLARC staff presented **a briefing report in September 2023**, as directed by statute.

1. Are ESD's program administration and organizational structure consistent with statute and best practices?
    a. Does ESD process PFML applications in a timely, systematic, and equitable manner?
    b. To what extent does program participation or experience vary by race or ethnicity?
    c. How does ESD monitor and assess employer and employee compliance with requirements?
2. Does ESD prepare and report PFML financial information in accordance with best practices?
3. Does the PFML premium rate formula produce rates that meet statutory requirements?

Methods

The methodology JLARC staff use when conducting analyses is tailored to the scope of each study, but generally includes the following:

- **Interviews** with stakeholders, agency representatives, and other relevant organizations or individuals.
- **Site visits** to entities that are under review.
- **Document reviews**, including applicable laws and regulations, agency policies and procedures pertaining to study objectives, and published reports, audits or studies on relevant topics.
- **Data analysis**, which may include data collected by agencies and/or data compiled by JLARC staff. Data collection sometimes involves surveys or focus groups.
- **Consultation with experts** when warranted. JLARC staff consult with technical experts when necessary to plan our work, to obtain specialized analysis from experts in the field, and to verify results.

The methods used in this study were conducted in accordance with Generally Accepted Government Auditing Standards.

More details about specific methods related to individual study objectives are described in the body of the report under the report details tab or in technical appendices.

Appendix E: Audit Authority

The Joint Legislative Audit and Review Committee (JLARC) works to make state government operations more efficient and effective. The Committee is comprised of an equal number of House members and Senators, Democrats and Republicans.

JLARC's nonpartisan staff auditors, under the direction of the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other analyses assigned by the Legislature and the Committee.

The statutory authority for JLARC, established in **Chapter 44.28 RCW**, requires the Legislative Auditor to ensure that JLARC studies are conducted in accordance with Generally Accepted Government Auditing Standards, as applicable to the scope of the audit. This study was conducted in accordance with those applicable standards. Those standards require auditors to plan and perform audits to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. The evidence obtained for this JLARC report provides a reasonable basis for the enclosed findings and conclusions, and any exceptions to the application of audit standards have been explicitly disclosed in the body of this report.

JLARC members on publication date

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