

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 87 Lactation Space in Courthouses
SPONSOR(S): Civil Justice Subcommittee, Gantt and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 144

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N, As CS	Mathews	Jones
2) Judiciary Committee	21 Y, 0 N	Mathews	Kramer

SUMMARY ANALYSIS

Women make up approximately 38% of the legal profession in the country (a 5% increase from 2012) and 41% of the attorneys eligible to practice in Florida. While motherhood was previously considered a barrier for women wanting to enter the legal field, it is becoming more common for women and mothers to enter the profession and remain active in the profession. The United States Department of Labor requires employers to provide reasonable break time for nursing mothers to address their lactation needs for one year after the birth of a child. Further, federal law requires a qualifying employer under the Affordable Care Act to provide a nursing employee a place to express breast milk that is not a bathroom, is private and shielded from view, and is free from intrusion from others. The employer must also provide a place for the mother to sit as well as a flat surface for the pump.

Florida was one of the first states to pass legislation specifically authorizing women to breastfeed in any public or private location. State law provides that the breastfeeding of a baby is an “important and basic act of nurture which must be encouraged in the interests of maternal and child health and family values.” Accordingly, “[a] mother may breastfeed her baby in any location, public or private, where the mother is otherwise authorized to be...” However, Florida does not currently require courthouses to have a dedicated lactation space available for public use.

CS/HB 87 creates s. 29.24, F.S., to require each county courthouse to provide at least one dedicated lactation space for members of the public to use to express breastmilk or breastfeed in private. The dedicated space must not be located in a restroom and must be hygienic, clean and sanitary, conducive to maintaining and preventing disease, shielded from public view and free from intrusion while in use, and must contain a functioning electrical outlet. Each courthouse must have such a dedicated lactation space by January 1, 2024. However, the bill does not require a lactation space if new construction would be required and if the courthouse does not already have a suitable space for employees which may be used by members of the public and the courthouse also does not have a space that could be repurposed or made private at a reasonable cost.

The bill provides a statement of legislative finding that the bill fulfills an important state interest. The bill may have an indeterminate fiscal impact on county government.

The effective date of the bill is July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

General Information and Federal Requirements

Working mothers who choose to provide breastmilk to their babies must navigate the challenges of maintaining a work schedule while finding time to pump throughout the workday. Working and pumping mothers face emotional challenges and adjustments, wardrobe considerations, scheduling concerns, and fears of a decrease in overall milk supply.¹ Breast milk production is demand-based. As such, it is imperative that a nursing mother be able to express milk when she is away from her child for an extended period of time. If a nursing mother is unable to express breast milk, her supply will decrease and her production could even cease altogether. For a nursing mother to maintain the necessary breast milk production levels to sustain her infant or toddler, a mother generally must pump, in lieu of nursing, every time she would normally nurse her child,² commonly every 2 to 3 hours. In addition to maintaining breast milk supply, a nursing mother may experience adverse health concerns if she is unable to pump or express breast milk on a regular basis. Clogged ducts, physical pain and engorgement, or infection may occur if a nursing mother is unable to express breast milk regularly.

Women make up approximately 38% of the legal profession in the country (a 5% increase from 2012)³ and 41% of the attorneys eligible to practice in Florida.⁴ While motherhood was previously considered a barrier for women wanting to enter the legal field,⁵ it is becoming more common for women and mothers to enter the profession and remain active in the profession. Statewide, the Florida Association of Women Lawyers (FAWL) works to help eliminate barriers for working mothers and working women. The FAWL's Courthouse Lactation Space Task Force specifically aims to allow working mothers in the legal field to balance their careers and their nursing needs, while also helping employers to fulfill legal requirements for lactation breaks.⁶

The United States Department of Labor requires employers to provide reasonable break time for nursing mothers to address their lactation needs for one year after the birth of a child.⁷ Further, federal law requires a qualifying employer under the Affordable Care Act to provide a nursing employee a place to express breast milk that is not a bathroom, is private and shielded from view, and is free from intrusion from others. The space must include a place for the mother to sit as well as a flat surface to for the pump.⁸

Breastfeeding in Florida

¹ See La Leche League International, *Working and Breastfeeding*, <https://www.llli.org/breastfeeding-info/working-and-breastfeeding/> (last visited Feb. 7, 2023).

² Florida Association of Women Lawyers, *Courthouse Lactation Space Handbook* (January 2023), https://cdn.ymaws.com/fawl.org/resource/collection/8E4F8C79-BD92-4983-8653-BA99104BC187/FAWL_Courthouse_Lactation_Space_Handbook_1.20.23.pdf (last visited Feb. 7, 2023).

³ American Bar Association, *National Lawyer Population Survey* (2022), https://www.americanbar.org/content/dam/aba/administrative/market_research/2022-national-lawyer-population-survey.pdf (last visited Feb. 7, 2023).

⁴ The Florida Bar, *TFB Roster Report* (Feb. 1, 2023), <https://www.floridabar.org/about/faq/#members> (last visited Feb. 7, 2023).

⁵ Florida Association of Women Lawyers, *Courthouse Lactation Space Handbook* (January 2023), https://cdn.ymaws.com/fawl.org/resource/collection/8E4F8C79-BD92-4983-8653-BA99104BC187/FAWL_Courthouse_Lactation_Space_Handbook_1.20.23.pdf (last visited Feb. 7, 2023) (citing to *Leaving Law and Barriers to Reentry: A Study of Departures From Reentries to Private Practice*, LSAC (Nov. 2013), [https://www.lsac.org/docs/default-source/research-\(lsac-resources\)/gr-13-02.pdf](https://www.lsac.org/docs/default-source/research-(lsac-resources)/gr-13-02.pdf)).

⁶ Fla. Ass'n of Women Lawyers, *supra* note 2.

⁷ Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. at 80073.

⁸ 29 U.S.C. s. 207(r)(1) (2012).

Florida was one of the first states to pass legislation specifically authorizing women to breastfeed in any public or private location.⁹ State law provides that the breastfeeding of a baby is an “important and basic act of nurture which must be encouraged in the interests of maternal and child health and family values.”¹⁰ Accordingly, “[a] mother may breastfeed her baby in any location, public or private, where the mother is otherwise authorized to be, irrespective of whether the nipple of the mother’s breast is uncovered during or incidental to the breastfeeding.”¹¹ And any facility lawfully providing maternity services or newborn infant care may use the designation “baby-friendly” if it establishes a breastfeeding policy in accordance with certain Department of Health standards.¹² However, Florida law does not currently require a courthouse to have a dedicated lactation space for public use.

Current Lactation Spaces in Florida Courthouses

According to the Florida Association of Women Lawyers (FAWL), 32 judicial circuit courthouses currently provide dedicated lactation spaces, including the:

- 1st Judicial Circuit Court (Okaloosa County Courthouse and Courthouse Annex Extension);
- 2nd Judicial Circuit Court (Leon County Courthouse);
- 4th Judicial Circuit Court (Duval County Courthouse);
- 6th Judicial Circuit Court (St. Petersburg Judicial Center);
- 8th Judicial Circuit Court (Alachua County Criminal Justice Center and Family and Civil Justice Center);
- 9th Judicial Circuit Court (Orange County Courthouse);
- 10th Judicial Circuit Court (Polk County Courthouse);
- 11th Judicial Circuit Courts (including the Coral Gables Branch, Dade County Courthouse, Joseph Caleb Center, Lawson E. Thomas Courthouse, Miami-Dade Children’s Courthouse, Richard E. Gerstein Justice Building, and the South Dade Justice Center);¹³
- 12th Judicial Circuit Court (Sarasota County Justice Center – Judge Lynn N. Silvertooth Judicial Center and Manatee County Judicial Center);
- 13th Judicial Circuit Court (Edgecomb Courthouse and Criminal Courthouse Annex);
- 15th Judicial Circuit Court (Main Courthouse, West County Courthouse, and South County Courthouse);
- 17th Judicial Circuit Court (Central Courthouse);
- 18th Judicial Circuit Court (Brevard County Moore Justice Center, and Seminole County Civil Courthouse and Criminal Justice Center);
- 19th Judicial Circuit Court (Martin County Courthouse and Okeechobee County Judicial Complex); and
- 20th Judicial Circuit Court (Lee Justice Center, Collier County Courthouse, and Collier County Health Department Building).¹⁴

Additionally, two courthouses in the 11th Judicial Circuit (the Hialeah Branch Courthouse and the North Dade Justice Center), one in the 20th Judicial Circuit (the Lee Government Center), and two in the 4th Judicial Circuit (Green Cove Springs – Headquarters and the Robert M. Foster Justice Center) either intend to soon open, or have recently opened, lactation spaces.¹⁵

There remain 108 courthouses in Florida that do not offer dedicated lactation spaces.¹⁶ Further, none of the district courts of appeal (DCAs) currently offer dedicated lactation spaces.¹⁷

⁹ See National Conference of State Legislatures, *Breastfeeding State Laws*, <https://www.ncsl.org/health/breastfeeding-state-laws> (providing the passage dates of relevant legislation state-by-state and noting that Florida enacted s. 383.015, F.S., in 1993) (last visited Jan. 19, 2023).

¹⁰ S. 383.015, F.S.

¹¹ S. 383.015(1), F.S.

¹² S. 383.015(2), F.S.; see s. 383.016, F.S. (providing that “[a] facility lawfully providing maternity services or newborn infant care may use the designation “baby-friendly” on its promotional materials if the facility has complied with at least 80 percent of the requirements developed by the Department of Health in accordance with UNICEF and World Health Organization baby-friendly hospital initiatives”).

¹³ Fla. Ass’n of Women Lawyers, *supra* note 2; see Florida’s Eleventh Judicial Circuit, *Courthouse Amenities – Lactations Rooms*, <https://www.jud11.flcourts.org/About-the-Court/Courthouse-Amenities/Lactation-Rooms>, (last visited Feb. 7, 2023).

¹⁴ Fla. Ass’n of Women Lawyers, *supra* note 2.

¹⁵ *Id.*

¹⁶ *Id.*

Funding for Court-Related Items

Article V, section 14 of the Florida Constitution requires counties to fund the cost of “communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders’ offices, state attorneys’ offices, and the offices of the clerks of the circuit and county courts performing court-related functions.”¹⁸

In this context, the term “facility” means “reasonable and necessary buildings and office space and appurtenant equipment and furnishings, structures, real estate, easements, and related interests in real estate[.]”¹⁹ Consequently, counties are responsible for the funding of physical modifications and improvements to all facilities in order to comply with the Americans with Disabilities Act.²⁰

State law also provides that the construction or lease of facilities, maintenance, utilities, and security for the district courts of appeal and the Supreme Court are funded through state revenues in the General Appropriations Act.²¹

Effect of Proposed Changes

The bill creates s. 29.24, F.S., to require each county courthouse in the state to provide at least one dedicated lactation space for members of the public to use to express breastmilk or breastfeed in private. The dedicated space must not be located in a restroom and must be hygienic, clean and sanitary, conducive to maintaining and preventing disease, shielded from public view, and free from intrusion while in use, and must contain a functioning electrical outlet. Each courthouse must have such a dedicated lactation space by January 1, 2024.

The bill authorizes the person who is responsible for the operation of the facility housing each DCA to use state-appropriated funds or private funding to provide such a dedicated lactation space. Under the bill, a courthouse does not have to provide a dedicated lactation space if the person responsible for the operation of the courthouse determines that new construction would be required to create the space and the courthouse does not currently have a lactation space for employees that may also be used by members of the public and also does not have a space that could be repurposed or made private at a reasonable cost using portable materials, contingent on private funding being made available.

The bill has an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 29.24, F.S., relating to lactation spaces in courthouses.

Section 2: Makes a legislative finding that the act fulfills an important state interest.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁷ *Id.*

¹⁸ Art. V, s. 14(c), Fla. Const.; see s. 29.008(1), F.S. (citing the Florida Constitution). On the other hand, counties are not required to fund “the state courts system, state attorneys’ offices, public defenders’ offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions.” See Art. V, s. 14(c), Fla. Const.

¹⁹ S. 29.008(1)(a), F.S.

²⁰ *Id.*

²¹ S. 29.004(4), F.S.

2. Expenditures:

Facility costs of the trial courts are the responsibility of counties under Article V, Section 14 of the Florida Constitution. As a result, there is no anticipated impact to State Court System expenditures for providing a lactation space in county courthouses. If a district court of appeal were to repurpose a space into a lactation space, there may be some expenditures related to minor modifications of the space and the purchase of furniture. If a district court of appeal were to include such a space in new construction, there may be a minimal impact to fixed capital outlay expenses, but such an impact, if any, cannot be determined.²²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Facility costs of the trial courts are the responsibility of counties under Article V, Section 14 of the Florida Constitution. As a result, the bill may have an indeterminate fiscal impact to counties that do not already have a qualified lactation space in the county courthouse and that do not meet one of the exceptions under the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires each county courthouse to create a dedicated lactation space; however, an exemption may apply as the requirement may impose only an insignificant fiscal impact. Additionally, the bill essentially provides an exception to the requirement sought if the space cannot be created at a reasonable cost.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 14, 2023, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute required the lactation space to be hygienic and also be clean and sanitary, and conducive to maintaining and preventing disease. The committee substitute clarified that the exemption to the lactation space requirement is conjunctive, not disjunctive. As such, a courthouse does not have to have a dedicated lactation space if the person responsible for courthouse operations determines that:

- New construction would be required to create the lactation space; and
- The courthouse does not already have a lactation space for employees that could be used by members of the public as needed and the courthouse does not have:
 - A space that could be repurposed to meet the specifications of the bill; or
 - A space that could be made private at a reasonable cost using portable materials, contingent on private funding.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.