SB 783

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader - Revised

Senate Bill 783 (Senator Muse, *et al.*)
Finance

State Agencies - Lactation Room - Required

This bill requires each State agency that employs at least 25 employees to maintain on its premises a private lactation room that may be used by employees and members of the public to nurse a child and express breast milk. The lactation room must include, if practicable, a refrigerator.

Fiscal Summary

State Effect: Expenditures increase (all funds) significantly, by more than $1.8 million, in FY 2019 for one-time costs to construct and equip lactation rooms. General fund expenditures for the Department of General Services (DGS) increase by $94,000 in FY 2019 to oversee construction of new lactation rooms. Out-years reflect annualization, elimination of contractual positions and one-time costs, and increased costs for maintenance and leased office space. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	$0	$0	$0	$0	$0
GF Expenditure	94,000	105,600	0	0	0
GF/SF/Higher Ed Exp.	-	-	-	-	-
NonBud Exp.	-	0	0	0	0
Bond/PAYGO Exp.	-	0	0	0	0
Net Effect	(-)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: There is no requirement in State law for lactation areas in public buildings. However, State law allows a mother to breastfeed her child in any public or private location in which the mother and child are authorized to be, and a person may not restrict or limit that right. Increasingly, organizations voluntarily provide lactation facilities for employees and/or the public. For instance, according to the University of Maryland, Baltimore Campus, the university provides lactation rooms on campus for all women affiliated with the university, as well as visitors.

Under Section 7 of the Fair Labor Standards Act (FLSA), employers are required to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time she has the need to express the milk. Employers must provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Only covered employees who are not exempt from FLSA's overtime pay requirements are entitled to breaks to express milk. Employees who are exempt from FLSA's overtime pay requirements include executive, administrative, professional, computer, and outside sales employees, among others.

Background: When FLSA was amended in 2010 to require employers to provide reasonable break time and a place for nursing mothers to express breast milk, the U.S. Department of Labor (DOL) consulted with public health officials from the U.S. Department of Health and Human Services, including the Centers for Disease Control and Prevention and the Health Resources and Services Administration. DOL found that the frequency of breaks needed to express breast milk varies depending on factors such as the age of the baby, the number of breast feedings in the baby's normal daily schedule, whether the baby is eating solid food, and other factors. In the early months of life, a baby may need as many as 8 to 12 feedings per day. This means that a nursing baby needs food every two to three hours.

A nursing mother produces milk on a constant basis. If the baby does not take the milk directly from the mother, it must be removed by a pump about as frequently as the baby usually nurses. If a mother is unable to express breast milk while she is away from her baby, she may experience a drop in her milk supply, which could result in her being unable to continue nursing her child. The inability to express milk may also lead to an infection. Depending on the nursing mother's work schedule, it may be that the frequency of breaks needed tracks regular breaks and lunch periods, but this is not always the case. As the child grows and begins to consume solid foods, typically around six months of age, the frequency of nursing often decreases, and the need for a nursing mother to take breaks to express breast milk may also gradually diminish.

While Section 7 of FLSA applies only to employees who are not exempt from FLSA overtime pay provisions, State agencies provide break times and locations as required under federal law to all nursing mothers regardless of whether or not the employees are exempt from Section 7 of FLSA.

State Expenditures: Some State agencies already have a lactation room, so for those agencies there is no material fiscal impact to implement the bill. For example, the Department of Natural Resources has a lactation room with seating and outlets to accommodate three mothers at a time in individually partitioned spaces at its Tawes Office Building. The Department of Housing and Community Development, the Maryland State Department of Education, the Maryland Insurance Administration, and the Maryland Health Benefit Exchange each maintain a private lactation room. The Department of Commerce's main facility has a lactation room available for employees and registered visitors. The Baltimore-Washington International Thurgood Marshall Airport has Mamava Pods, which are self-contained pods that cost approximately $24,000 per unit (including shipping and set-up).

Other agencies anticipate being able to implement the bill with existing resources. For example, the Maryland Department of Agriculture, the Maryland State Retirement Agency, and the Maryland Department of Planning have existing space that can accommodate a private lactation room.

However, some agencies may incur significant costs to maintain a private lactation room that may be used by employees and the public. The bill can be interpreted as requiring a lactation room at *every* location that a State agency with 25 or more employees owns or leases, regardless of whether there are 25 employees at each location, or it can be interpreted as requiring a State agency with 25 or more employees to have *only one* lactation room despite having multiple locations.

This analysis assumes that a lactation room is required at every location that a State agency with 25 or more employees owns or leases, so expenditures increase significantly, likely by more than $1.8 million, in fiscal 2019. Agencies that have secure facilities with no space available for the public are likely to incur greater costs. For example, the Department of State Police (DSP) has more than 100 buildings and estimates having to add 40 lactation rooms since the barracks and lab do not have a space for the public. If construction costs are $12,800 per lactation room, expenditures for DSP increase by $512,000 in fiscal 2019. The Office of the Public Defender (OPD) reports its worksites that are accessible to the public have waiting rooms with access to public restrooms, but all other areas are controlled access areas. Thus, OPD would have to construct a small lactation room in the waiting room at a cost of $5,500 per lactation room, resulting in expenditures for OPD increasing by approximately $275,000 in fiscal 2019 for 50 worksites. The Department of Public Safety and Correctional Services (DPSCS) estimates construction costs of $580,000 to add lactation rooms to its 29 facilities, plus additional costs for equipment and construction on 35 leased spaces. DPSCS advises that these costs reflect each facility (not each building within a facility) and do not factor in space for use by the general public, visitors, offenders, or detainees. Agencies may also experience minimal annual maintenance costs associated with the lactation rooms beginning in fiscal 2019.

In addition to construction costs, DGS reports that, in State-leased buildings, landlords need to be consulted to determine the feasibility and costs associated with providing lactation rooms. According to DGS, State agencies are in approximately 270 leased facilities. For State agencies with lease agreements, expenditures may annually increase, likely by no more than $2,500 per lactation room, if more space is needed for a lactation room beginning in fiscal 2019.

Furthermore, DGS has determined that three regular full-time positions are needed to oversee approximately 162 construction projections to construct lactation rooms in leased buildings. However, the Department of Legislative Services (DLS) advises that the added responsibilities incurred by this legislation occur mostly during the initial years and, thus, may be performed by contractual employees. Once all State agencies with 25 or more employees have lactation rooms on their premises, existing DGS staff can ensure that any new buildings have lactation rooms, if required. Additionally, DLS anticipates DGS overseeing fewer than 162 construction projects since some agencies already have space to accommodate a lactation room; in other cases, multiple agencies share office space, which further reduces the number of anticipated projects since it is assumed that they can share access to the lactation room.

Thus, general fund expenditures increase by $94,043 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring two contractual administrators for two years to assess locations for lactation rooms, negotiate and coordinate with landlords and their architects, and manage and oversee the construction of lactation rooms. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Positions	2
Salaries and Fringe Benefits	$81,825
Operating Expenses	12,218
Total FY 2019 State Expenditures	**$94,043**

Future year expenditures reflect full salaries with annual increases and employee turnover, ongoing operating expenses, and the elimination of the contractual positions June 30, 2020.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Information Technology; Department of Commerce; Maryland Commission on Civil Rights; Maryland Institute for Emergency Medical Services Systems; Maryland Department of Aging; Comptroller's Office; Governor's Office of Crime Control and Prevention; Secretary of State; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State Department of Education; Maryland School for the Deaf; Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of Disabilities; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Maryland Department of Planning; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; Maryland Department of Transportation; Department of Veterans Affairs; Office of Administrative Hearings; Maryland State Archives; Maryland Energy Administration; Health Benefit Exchange; Maryland Insurance Administration; Maryland State Lottery and Gaming Control Agency; Public Service Commission; State Retirement Agency; Maryland Stadium Authority; Department of Legislative Services

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