

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 144

INTRODUCER: Senator Berman

SUBJECT: Lactation Spaces

DATE: February 6, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	_____	_____	<u>FP</u>	_____

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**I. Summary:**

SB 144 requires each county courthouse to provide at least one dedicated lactation space, outside of the confines of a restroom, for members of the public to express breast milk or breastfeed in private.

The bill requires the lactation space to be provided no later than January 1, 2024. It must be hygienic, shielded from public view, free from intrusion while occupied, and contain an electrical outlet.

These requirements do not apply to a courthouse if the person responsible for the operation of the courthouse determines that:

- The courthouse does not contain a lactation space for employees which may be used by the members of the public, and the courthouse does not have:
  - A space that could be repurposed as a lactation space open to the public; or
  - A space that could be made private at a reasonable cost using portable materials, contingent upon private funding being made available for those costs.
- New construction would be required to create the lactation space.

The bill also authorizes the person responsible for the operation of the facility housing each district court of appeal to use state-appropriated funds or private funding to provide a lactation space.

The bill contains a legislative finding that the bill fulfills an important state interest.

The bill takes effect on July 1, 2023.

## II. Present Situation:

### Breastfeeding in Florida

Florida was one of the first states to pass legislation specifically authorizing women to breastfeed in any public or private location.<sup>1</sup> 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.”<sup>2</sup> 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.”<sup>3</sup> And any facility lawfully providing maternity services or newborn infant care may use the designation “baby-friendly” if it establishes a breast-feeding policy in accordance with certain Department of Health standards.<sup>4</sup>

### Lactation Spaces in Florida Courthouses

#### *Judicial Circuits*

According to the Florida Association of Women Lawyers (FAWL), 32 judicial circuit courthouses currently provide dedicated lactation spaces.<sup>5</sup> They include:

- 1<sup>st</sup> Judicial Circuit Court (Okaloosa County Courthouse and Courthouse Annex Extension);
- 2<sup>nd</sup> Judicial Circuit Court (Leon County Courthouse);
- 4<sup>th</sup> Judicial Circuit Court (Duval County Courthouse);
- 6<sup>th</sup> Judicial Circuit Court (St. Petersburg Judicial Center);
- 8<sup>th</sup> Judicial Circuit Court (Alachua County Criminal Justice Center and Family and Civil Justice Center);
- 9<sup>th</sup> Judicial Circuit Court (Orange County Courthouse);
- 10<sup>th</sup> Judicial Circuit Court (Polk County Courthouse);
- 11<sup>th</sup> 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);<sup>6</sup>
- 12<sup>th</sup> Judicial Circuit Court (Sarasota County Justice Center – Judge Lynn N. Silvertooth Judicial Center and Manatee County Judicial Center);
- 13<sup>th</sup> Judicial Circuit Court (Edgecomb Courthouse and Criminal Courthouse Annex);
- 15<sup>th</sup> Judicial Circuit Court (Main Courthouse, West County Courthouse, and South County Courthouse);

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<sup>1</sup> See National Conference of State Legislatures, *Breastfeeding State Laws*, <https://www.ncsl.org/health/breastfeeding-state-laws> (last visited Jan. 19, 2023) (providing the passage dates of relevant legislation state-by-state and noting that Florida enacted s. 383.015, F.S., in 1993).

<sup>2</sup> Section 383.015, F.S.

<sup>3</sup> Section 383.015(1), F.S.

<sup>4</sup> Section 383.015(2), F.S.; see also 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”).

<sup>5</sup> Fla. Ass’n of Women Lawyers, *Florida Courthouse Lactation Room Directory* (posted Jan. 31, 2023), available at [https://fawl.org/page/lactation\\_space](https://fawl.org/page/lactation_space).

<sup>6</sup> *Id.*; see also Florida’s Eleventh Judicial Circuit, *Courthouse Amenities – Lactations Rooms*, available at <https://www.jud11.flcourts.org/About-the-Court/Courthouse-Amenities/Lactation-Rooms>, (last visited Jan. 20, 2023).

- 17<sup>th</sup> Judicial Circuit Court (Central Courthouse);
- 18<sup>th</sup> Judicial Circuit Court (Brevard County Moore Justice Center, and Seminole County Civil Courthouse and Criminal Justice Center);
- 19<sup>th</sup> Judicial Circuit Court (Martin County Courthouse and Okeechobee County Judicial Complex); and
- 20<sup>th</sup> Judicial Circuit Court (Lee Justice Center, Collier County Courthouse, and Collier County Health Department Building).

Additionally, two courthouses in the 11<sup>th</sup> Judicial Circuit (the Hialeah Branch Courthouse and the North Dade Justice Center), one in the 20<sup>th</sup> Judicial Circuit (the Lee Government Center), and two in the 4<sup>th</sup> Judicial Circuit (Green Cove Springs – Headquarters and the Robert M. Foster Justice Center) either intend to soon open, or have recently opened, lactation spaces.<sup>7</sup> There remain 108 courthouses in Florida that do not offer dedicated lactation spaces.<sup>8</sup>

### *District Courts of Appeal*

According to FAWL, none of the district courts of appeal currently offer dedicated lactation spaces.<sup>9</sup>

### **Courthouse Lactation Room Handbook**

FAWL has published a Lactation Space Handbook (Handbook)<sup>10</sup> intended to promote women's (*i.e.* women lawyers, jurors, witnesses, and others who participate in the legal process) access to lactation rooms in courthouses throughout the state.<sup>11</sup> The Handbook includes, among other things, a discussion regarding why women need dedicated lactation spaces; the law regarding lactation breaks and spaces; and best practices for establishing lactation spaces (including room access, naming, specifications, amenities, and funding).<sup>12</sup>

According to The Florida Bar, 38 percent of Florida attorneys are women,<sup>13</sup> and 39 percent of Florida judges are women.<sup>14</sup> The percentage of women attorneys in the state is expected to rise over the coming years due to women accounting for almost 50 percent of the total number of law school students in Florida.<sup>15</sup>

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<sup>7</sup> Fla. Ass'n of Women Lawyers, *supra* note 5.

<sup>8</sup> *Id.*

<sup>9</sup> *See id.* (addressing District Courts of Appeal, but not addressing branches); *see also* s. 35.05(1), F.S. (identifying the headquarters for the six District Courts of Appeal). At this time it is unknown whether the new Sixth District Court of Appeal, whose operations began on January 1, 2023, or the Second District Court of Appeal, which is being relocated from Lakeland to St. Petersburg to facilitate creation of the Sixth District Court of Appeal, have plans to offer dedicated lactation spaces. *See* Florida Second District of Appeal, *Home*, <https://2dca.flcourts.gov/> (last visited Jan. 20, 2023).

<sup>10</sup> Fla. Ass'n of Women Lawyers, *Courthouse Lactation Space Handbook* (posted Jan. 20, 2023), [https://fawl.org/page/lactation\\_space](https://fawl.org/page/lactation_space).

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.* at 7-15.

<sup>13</sup> The Florida Bar, *Women in the Law/Gender Bias* (rev. Feb. 13, 2017), <https://www.floridabar.org/about/diversity/diversity003/issue-04/>.

<sup>14</sup> *Id.*

<sup>15</sup> *See id.* (stating that the number is currently at 48.7% and has risen over the last few years).

### **Funding Requirements for Court-Related Functions**

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.”<sup>16</sup>

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[.]”<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup>

### **III. Effect of Proposed Changes:**

The bill creates s. 29.24, F.S., to require each county courthouse to provide at least one dedicated lactation space outside the confines of a restroom for members of the public to express breast milk or breastfeed in private by January 1, 2024. The dedicated space must be hygienic, shielded from public view, and free from intrusion while occupied. The lactation space must also contain an electrical outlet.

The bill authorizes the person responsible for the operation of the facility housing each district court of appeal to use state-appropriated funds or private funding to provide a dedicated lactation space.

The bill establishes that the requirements to provide a dedicated lactation space do not apply to a county courthouse if the person who is responsible for the operation of the courthouse determines that:

- The courthouse does not contain a lactation space for employees which may be used by the members of the public, and the courthouse does not have:
  - A space that could be repurposed as a lactation space open to the public; or
  - A space that could be made private at a reasonable cost using portable materials, contingent upon private funding being made available for those costs.

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<sup>16</sup> FLA. CONST. art. V, s. 14(c); *see also* s. 29.008(1), F.S. (citing the Florida Constitution as requiring counties to fund the cost of “communications services, existing radio systems, existing multiagency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit and county courts, public defenders’ offices, state attorneys’ offices, guardian ad litem offices, and the offices of the clerks of the circuit and county courts performing court-related functions”). 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* FLA. CONST. art. V, s. 14(c).

<sup>17</sup> Section 29.008(1)(a), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 29.004(4), F.S.

- New construction would be required to create the lactation space.

The bill contains a legislative finding that the bill fulfills an important state interest.

The bill takes effect July 1, 2023.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution provides that:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds ... unless the legislature has determined that such law fulfills an important state interest and unless: ... the law requiring such expenditure is approved by two-thirds of the membership of each house of the legislature ....

Counties will incur costs in complying with the lactation space requirements set forth in the bill, unless the person responsible for the operation of the courthouse determines that the lactation space requirements do not apply based upon the criteria in the bill. As drafted, the bill contains a finding that the bill fulfills an important state interest.

The mandate requirements do not apply to laws having an insignificant impact<sup>20</sup> which, for Fiscal Year 2022-2023, would include laws having a statewide impact that is less than \$2,256,827.<sup>21</sup> The fiscal impact of this bill on counties is indeterminate. If costs imposed by the bill do not exceed \$2,256,827, then the mandate requirements (*i.e.* the legislative finding and 2/3 vote) do not apply and the bill will be binding on the counties.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. State Tax or Fee Increases:

None.

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<sup>20</sup> FLA. CONST. art. VII, s. 18(d). An insignificant fiscal impact is “an amount not greater than the average statewide population for the applicable fiscal year times ten cents.” See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact* (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf>.

<sup>21</sup> Based upon the Demographic Estimating Conference, the population forecast for Florida in 2023 is 22,568,268. See Economic and Demographic Research, *Demographic Estimating Conference, Executive Summary* (Jul. 18, 2022), <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf>.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes private entities to contribute funds for lactation spaces in county courthouses and in district courts of appeal.

C. Government Sector Impact:

Each county will incur costs associated with providing a dedicated lactation space in its county courthouses. Also, the state may incur costs associated with providing a dedicated lactation space within district courts of appeal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 29.24 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.