

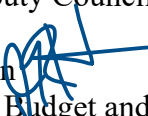


February 21, 2024

FISCAL AND POLICY NOTE

TO: Jennifer A. Jenkins
Council Administrator

Colette R. Gresham, Esq.
Acting Deputy Council Administrator

THRU: Josh Hamlin 
Director of Budget and Policy Analysis

FROM: David Noto 
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-003-2024 Mandatory Lactation Rooms in County Buildings

CB-003-2024 (*Proposed by:* Council Member Oriadha)

Assigned to the Government Operations and Fiscal Policy (GOFP) Committee

AN ACT CONCERNING MANDATORY LACTATION ROOMS IN COUNTY BUILDINGS AND OR REAL PROPERTY for the purpose of requiring lactation rooms in certain County buildings and or real property.

Fiscal Summary

Direct Impact

Expenditures: Additional expenditures required are dependent upon buildings which will need to be retrofitted. (See Note #4 under *Items for Council Consideration*)

Revenues: No anticipated impact.

Indirect Impact

Likely Favorable

Legislative Summary:

CB-003-2024, proposed by Council Member Oriadha, was presented on February 6th, 2024, and referred to the GOFP Committee. This bill would address the need for lactation rooms in County buildings by requiring that County buildings contain lactation rooms, with refrigeration units and privacy curtains, that are available for use by County employees or members of the public.

Background/Current Law:

Federal law:

President Obama signed the Affordable Care Act (ACA) on March 30, 2010. Section 4207 of the ACA amends the Fair Labor Standards Act of 1938 (29 U.S. Code 207) to require an employer to provide reasonable break time for an employee to express breast milk for her nursing child for one (1) year after the child's birth each time such employee has a need to express milk¹. The employer must also provide a place, other than a bathroom, for the employee to conduct this activity. Employers that employ fewer than 50 employees may not be subject to these requirements if these requirements impose undue financial hardship on the employer. The federal requirements shall not preempt a state law that provides greater protections to employees.²

Congress passed the Fairness for Breastfeeding Mothers Act in July 2019³. The law requires certain public buildings that are open to the public and contain a public restroom to provide a lactation room, other than a bathroom. The space must be hygienic, shielded from public view, and available for use by members of the public to express milk. Additionally, it must contain a chair, a working surface, and an electrical outlet.

State Law:

Section §20–801 of the Health-General Article of the Maryland Code provides that:

- A. A mother may breast-feed her child in any public or private location in which the mother and child are authorized to be.
- B. A person may not restrict or limit the right of a mother to breast-feed her child.⁴

¹<https://www.dol.gov/agencies/whd/nursing-mothers/law>

²<https://www.ncsl.org/research/health/breastfeeding-state-laws.aspx>

³<https://www.congress.gov/bill/116th-congress/house-bill/866>

⁴<https://mgaleg.maryland.gov/mgaweb/Laws/StatuteText?article=ghg§ion=20-801&enactments=false>

Prior County Legislation

CB-012-2022, sponsored by then-Council Chair Hawkins, was presented to the Council on March 1, 2022, and referred to the Committee of the Whole. CB-012-2022 sought to codify federal and state laws governing mothers' rights to breastfeed in County buildings and requiring the County to provide reasonable accommodations for nursing employees. CB-012-2022 would have incorporated the State requirements relating to the rights of breast-feeding mothers defined terms such as provided the definitions of *County Building*, *Covered County Building*, and *Lactation Room*, set forth the requirements of the lactation rooms and required the County to provide a designated area, other than a bathroom, that would shield the mother from view and intrusion of co-workers and/or the general public whilst expressing her milk.

However, this bill was held in Committee, because the information needed to determine the amount of any county expenditures to fully comply with the state and federal mandates, as well as the bill's provisions was not provided to Council staff at the time. At the time, the office of the County Executive expressed a desire to meet with the Office of Central Services and Council Member Hawkins to discuss the cost of retrofitting County buildings. However, the bill was never revisited and was deemed failed at the end of the 2022 legislative session⁵.

Discussion/Policy Analysis

CB-003-2024 would add Subtitle 12. Section 12-168 & 12-169 to the Prince George's County Code as follows:

Sec. 12-168. - Definitions.

1. **County Building** shall mean any building and or real property owned, operated, or managed by Prince George's County. County Property does not include real property owned or managed by the Prince George's County Board of Education.
2. **Covered County Building** shall mean a County building and or real property that is open to the public and contains a public restroom.
3. **Lactation Room** shall mean a hygienic place other than a bathroom, that:
 - a. is shielded from view;
 - b. is free from intrusion; and
 - c. contains a chair, a working surface, and, if the County building is otherwise supplied with electricity, an electrical outlet.

Sec. 12-169. Lactation Room Required.

- A. Except as provided in subsection (B), Prince George's County shall ensure that any County Building contains a Lactation Room available for use by County employees or members of the public to express breast milk as well as a refrigeration unit for storage of expressed milk, and a privacy curtain if multiple users share the same space. Mandatory dimensions and of the Lactation Room shall be as follows:
 - a. Single user Lactation Room (minimum dimensions 6' x 8' or 7' x 7')
 - b. Multi-user Lactation Room (minimum dimensions 12' x 16')

⁵ [Sitting as the Committee of the Whole on 2022-03-17 AT 10:00 AM - Accessible in a Hybrid Manner -- Both Virtually and In-Person \(granicus.com\)](#)

- c. Signage
- d. Multi-user hospital-grade breast pump (the user shall provide their own collection kits)
- B. Covered County Building may be excluded from the
 - a. requirement in subsection (a) if:
 - i. it does already have either
 - ii. a designated Lactation Room, or
 - b. other room that could be repurposed as a Lactation Room
 - c. new construction would be required to create a Lactation Room in the County Building and the cost of such construction is unfeasible.

The American Academy of Pediatrics recommends that infants are exclusively breastfed for about the first six (6) months with continued breastfeeding while introducing complementary foods for at least one (1) year⁶.

Following a return to work or school, a breastfeeding parent must express breast milk about as often as the baby would usually feed to maintain their milk supply, ensure that they have enough expressed milk to feed their child, and to avoid health complications. Generally, in the first few months of life, babies need to breastfeed eight (8) to 12 times over the course of a 24-hour period. As the baby gets older, the number of feedings may go down. Pumping can take 10 to 15 minutes once the parent gets used to using the breast pump⁷.

Fiscal Impact

- *Direct Impact*

At the time of this report, information necessary to determine the amount of any County expenditures necessary to fully comply with the Bill's provisions was not provided to Council staff. However, Executive Branch staff provided a preliminary cost estimate of \$60,000 to retrofit one room/area into a designated lactation room. It is not clear what necessary modifications make up the estimated \$60,000 per lactation room cost, and in any event, the full impact would also be dependent upon the number of buildings which currently do not have lactation rooms. Inquiries were also made to discover the cost of setting up the lactation room located on the first floor of the Wayne K. Curry Administration Building. Furthermore, in July of 2023, Prince George's Community College announced the addition of "lactation pods" at their Largo and University Town Center campuses to support nursing parents with private lactation and pumping spaces. The manufacturer of these lactation pods, Mamava, provides each pod with lockable doors, seating, counter space, shelves, USB ports, and power outlets. Mamava's lactation pods, as well as those of a competitor, Brighter Booth, cost between \$7,945 and \$23,000 to install and comply with the minimum dimensions outlined⁸⁹.

⁶<https://publications.aap.org/pediatrics/article/129/3/e827/31785/Breastfeeding-and-the-Use-of-Human-Milk>

⁷<https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-and-going-back-work>

⁸www.mamava.com/all-products

⁹www.brighterbooth.com/

- *Indirect Impact*

Enactment of CB-003-2024 may have a favorable indirect impact on the County by enhancing the benefits for current employees and promoting a positive work/ life balance for the County's workforce.

- *Appropriated in the Current Fiscal Year Budget*

No.

Items for Committee Consideration:

- Under Sec. 12-168. - Definitions., "County Building" is defined as "any building and or real property owned, operated, or managed by Prince George's County". By including the term "real property" this could be taken to mean that all real property owned by the County, including undeveloped parcels of land with currently no structures would be required to have lactation rooms installed. Consequently, the Council may wish to strike "real property" from the definition of "County Building".
- Under Sec. 12-169. Lactation Room Required., minimum lactation room dimensions are included, but the lactation room dimensions do not include a minimum depth dimension for the lactation rooms. The Council may wish to revisit lactation room dimensions to include a minimum depth and to clarify which of the minimum dimensions are relative to the length of the lactation rooms and which are relative to the width of the lactation rooms.
- Under Sec. 12-169. Lactation Room Required., subsection B, it states that "Covered County Building may be excluded from the requirement in subsection (A) if new construction would be required to create a Lactation Room in the County Building and the cost of such construction is unfeasible." This phrasing is unclear as to what is being excluded and the Council may wish to clarify the standards for determining whether a cost is "unfeasible."
- To determine the true cost of CB-003-2024, one must identify the cost of retrofitting County Buildings with the necessary lactation rooms to comply with existing federal requirements, if such requirements are not currently being met, and to find the delta between compliance with the existing federal law and anything extra CB-003-2024 requires *beyond* federal law.

Effective Date of Proposed Legislation:

The proposed Act shall take effect forty-five (45) calendar days after it becomes law.

If you require additional information or have questions about this fiscal impact statement, please reach out to me via phone or email.