



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: H. 4717 Introduced on January 25, 2018
Author: Henderson-Myers
Subject: SC Nursing Mothers Act
Requestor: House Medical, Military, Public, and Municipal Affairs
RFA Analyst(s): Powell, Mitchell, and R. Martin
Impact Date: March 19, 2018

Estimate of Fiscal Impact

| | FY 2018-19 | FY 2019-20 |
|----------------------------------|-------------------|-------------------|
| State Expenditure | | |
| General Fund | See Below | \$0 |
| Other and Federal | See Below | \$0 |
| Full-Time Equivalent Position(s) | 0.00 | 0.00 |
| State Revenue | | |
| General Fund | (\$3,540,000) | (\$7,080,000) |
| Other and Federal | \$0 | \$0 |
| Local Expenditure | See Below | \$0 |
| Local Revenue | \$0 | \$0 |

Fiscal Impact Summary

The Department of Administration indicated that for its agency, and for many state buildings, the expenditure increases associated with this bill would be minimal. However, due to varying usages, security requirements, and access restrictions in state buildings, some agencies may incur more substantial additional expenses because their options for locating such a room where it is accessible by all employees and the general public are limited.

There are 7,469 buildings in the State Property Inventory. From a preliminary analysis based on use descriptions, it appears that between 2,000 and 4,200 state buildings may be impacted by this bill. If an average one-time expenditure of between \$2,000 and \$15,000 per building is assumed, the expenditure impact to state agencies would be between \$4,000,000 and \$60,000,000. This impact would be split among various sources of funds depending on the agencies impacted. However, due to the varying nature of renovation costs and without a building by building analysis, this impact is undetermined.

General Fund revenues from individual and corporate income taxes, bank taxes, and insurance taxes will be reduced by an estimated \$3,540,000 in FY 2018-19 and an estimated \$7,080,000 in FY 2019-20 as a result of the tax credit allowed by this bill.

The non-recurring expenditure impact to school districts is estimated to be \$18,000,000. Counties have reported potential impacts ranging from \$135,000 to \$500,000 or more. Due to the low response rate and varying nature of the responses from the counties, this impact is undetermined.

Explanation of Fiscal Impact

Introduced on January 25, 2018

State Expenditure

This bill requires that governmental buildings and buildings owned by school districts provide suitable accommodations for the exclusive use of any woman to breastfeed a child or express breast milk. Suitable accommodations are defined as a room, other than a toilet stall, with a lockable door, a work surface and chair, storage for cleaning supplies, and a conveniently placed electrical outlet. The director of the Department of Administration and the State Superintendent of Education are allowed to exempt buildings under their respective jurisdictions if they determine that the demand in that building is insufficient to merit the cost. The federal Fair Labor Standards Act currently requires that employers 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. This requirement applies only to employees. The bill would expand this to require access for any woman, both employees and members of the public, to require that such a room be located in each building, and to specify that the room have a lockable door and how the room must be outfitted.

This bill also requires employers provide reasonable unpaid break time each day to an employee who needs to breastfeed a child or express breast milk. The federal Fair Labor Standards Act already requires this be provided for many employees up to one year beyond the child's birth¹. This bill would extend that time frame indefinitely and would also require break time be provided for exempt employees under the federal Fair Labor Standards Act. No expenditure impact is anticipated as a result of expanding this existing requirement.

Department of Administration. For itself, the Department of Administration estimates that any expenditure increases necessary to comply with this bill would be minimal as an empty office could be used. The Department of Administration indicated the same will likely be true for many agencies whose buildings they maintain. However, due to varying usages, security requirements, and access restrictions in state buildings, some agencies may incur more substantial additional expenses because their options for locating such a room where it is accessible by all employees and the general public are limited. Without assessing each building individually the Department of Administration was unable to provide a more detailed expenditure estimate. The Department of Administration also noted that the federal Patient Protection and Affordable Care Act and the Fair Labor Standards Act do not allow employers to provide exemptions from requirements to provide accommodations to employees. This means that, as they interpret it, while exemptions could be granted for public use, similar exemptions could not be granted for providing suitable accommodations for employees in those buildings.

We consulted the Department of Administration's State Property Inventory and determined that there are currently 7,469 state buildings of varying use types. It is unclear from the listing how many of these buildings would be considered governmental buildings. Governmental buildings as defined in Section 10-5-220 of the South Carolina Code of Laws includes all buildings used by the public. Based only on square footage and use descriptions in the state property inventory

¹ <https://www.dol.gov/whd/regs/compliance/whdfs73.pdf>

it appears that between 2,000 and 4,200 buildings may be covered under this bill. The 4,200 estimate excludes most buildings labeled as agricultural, barn, camp, canopy, storage, shed, greenhouse, and utility. This was narrowed further to exclude metal buildings, residences not accessible to the public and other buildings of miscellaneous designations under 1,000 square feet. As part of its research regarding this bill, the Department of Education (Department) consulted a contractor regarding the cost to fully upfit a room for this purpose, including basic upper and lower cabinetry to provide storage and a counter for a work surface, a sink with associated plumbing for cleaning, a small refrigerator, and two chairs with side tables. The cost quoted for such a renovation was approximately \$15,000. Florence County also provided an estimate of renovation costs, with costs ranging from \$2,000 to \$15,000 depending on the type and location of available space in a building. At a cost of \$15,000 per building, the potential expenditure impact would range from \$30,000,000 to \$63,000,000. At a cost of \$2,000 per building, the potential expenditure impact would range from \$4,000,000 to \$8,400,000. Many buildings will require expenditures of less than \$15,000 per building, but without a comprehensive analysis of each building and because of the uncertainty in how many buildings will be impacted, this impact cannot be determined.

Department of Education. The Department estimates that non-recurring expenditures of \$690,000 will be necessary for the agency to provide suitable accommodations as defined in this bill. The Department estimates the cost of complying at \$15,000 per building for its four office locations and forty-two local bus shops. It is the agency's opinion that its bus shops would be included in this bill.

State Revenue

This bill would add Section 12-6-3740 to create a nonrefundable tax credit for any resident employer that provides suitable accommodations for the exclusive use of any woman to breastfeed a child or to express breast milk. The accommodations must meet the minimum conditions established in Section 10-5-300 in order to qualify for the credit. The credit is equal to \$50 for each accommodation for each full month in which the accommodation is available, but may not exceed \$2,000 each tax year. The tax credit may be claimed against individual and corporate income taxes, bank taxes, and insurance taxes. This section takes effect upon approval by the Governor and applies to tax years beginning after 2017.

Based on the latest information from the U.S. Department of Labor, Bureau of Labor Statistics, there are nearly 110,900 employers in the private sector in South Carolina. This bill defines "employer" as a person or entity that employs five or more employees. After adjusting the total number of private sector employers by the number of employers that employ fewer than five employees, there remain 47,200 private sector employers that employ more than five employees. If each of the 47,200 private sector employers constructs one suitable accommodation that is available for use during the tax year, the taxpayer would be eligible for a nonrefundable tax credit of \$600 (\$50 per month for 12 months) during the tax year. Multiplying 47,200 private sector employers by a nonrefundable tax credit of \$600 for each suitable accommodation yields an estimated \$28,320,000 per tax year. However, not every employer will undertake this project. If only one-half of the 47,200 private sector employers construct one suitable accommodation, multiplying 23,600 private sector employers by a nonrefundable tax credit of \$600 yields an estimated \$14,160,000 per tax year. Furthermore, some taxpayers may not have enough taxable

income to apply the entire tax credit, and may carry forward a portion of the tax credit to be used in future tax years. If an estimated one-half of taxpayers meet this situation, then the amount of nonrefundable tax credits would be reduced by one-half, or an estimated \$7,080,000 per tax year. Since this bill is effective upon the signature of the Governor and applies to tax years beginning after 2017, this bill would only affect one-half of tax year 2018. Therefore, this section would reduce General Fund individual and corporate income taxes, bank taxes, and insurance taxes by an estimated \$3,540,000 in FY 2018-19 and an estimated \$7,080,000 in FY 2019-20.

Local Expenditure

The Department responded on behalf of the local school districts. Some districts indicated that the expenditure impact of complying with this bill would be minimal, while other school districts indicated that they would be required to reconfigure space to comply with this bill. Based on a survey, the Department estimates that non-recurring expenditures of approximately \$18,000,000 by the school districts would be needed to meet the requirements of this bill.

Forty-six counties and the Municipal Association of South Carolina have been surveyed regarding this bill. Responses have been received from four counties and the Municipal Association of South Carolina. Counties have reported potential impacts ranging from \$135,000 to \$500,000 or more. The counties estimated the cost to upfit most buildings would be between \$2,000 and \$15,000. In some limited cases, the cost may be up to \$50,000 if an addition or substantial renovation is required. They noted that, while this bill allows for waivers for state agencies, there is no such provision granted for the counties. This means that even very small buildings, such as those accompanying recreation facilities, would need to be renovated to incorporate such a room, which may require an addition and increase upfit costs substantially. Due to the low response rate and varying nature of the responses, this impact is undetermined.

Local Revenue

N/A



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