

**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 Fiscal Policy

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BILL: CS/SB 1674

INTRODUCER: Fiscal Policy Committee and Senators Grall and Perry

SUBJECT: Facility Requirements Based on Sex

DATE: April 27, 2023

REVISED: 5.9.23

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Twogood</u>	<u>RC</u>	<b>Favorable</b>
2.	<u>Kraemer</u>	<u>Yeatman</u>	<u>FP</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1674 creates s. 553.865, F.S., the “Safety in Private Spaces Act,” and states the legislative purpose and intent of the act as providing restrooms and changing facilities for exclusive use by females or males, in order to maintain public safety, decency, and decorum.

As set out in the bill, covered entities are required to submit documentation regarding compliance with minimum requirements for restrooms and changing facilities, if applicable. Under the bill, if a covered entity maintains restrooms/changing rooms, the entity must have at a minimum:

- Designated restrooms/changing facilities for exclusive use by females or by males; or
- Unisex restrooms/changing facilities that are intended for a single-occupant or a family and enclosed by floor-to-ceiling walls and accessed by a full door with a secure lock that prevents someone from entering while the changing facility is in use.

The entities subject to the requirements in the bill include correctional institutions, educational institutions, certain juvenile correctional facilities and program facilities, and public buildings owned by the state, a state agency, or a political subdivision (i.e., counties, cities, and certain other districts in Florida).

The bill provides that beginning July 1, 2024, a person may submit a complaint to the Attorney General alleging that a covered entity failed to meet the minimum requirements for restrooms and changing facilities required by the act, and that failure to comply with the minimum requirements for restrooms and changing facilities subjects a covered entity to licensure or

regulatory disciplinary action. The bill also authorizes other penalties, including actions against covered entities by the Attorney General to enforce the act, to seek injunctive relief, and to seek imposition of a fine in an amount up to \$10,000.

The bill provides that accessing a restroom or changing facility designated for the opposite sex is often necessary, and lists circumstances and conditions in which such access is authorized, including situations involving comfort assistance or emergency medical help, and access by law enforcement, regulatory authorities, and maintenance.

Under the bill, any person who willfully enters a restroom or changing facility designated for the opposite sex on the premises of a covered entity for a purpose other than the authorized uses listed in the bill, and refuses to depart when asked to do so by those persons authorized in the bill to make such a request, commits the offense of trespass, with exclusions appropriate to the covered entity.

The bill requires each type of covered entity to establish disciplinary procedures for its employees, certain persons under its control, and other personnel described in the bill who willfully enter a restroom or changing facility designated for the opposite sex on the premises of the covered entity, for a purpose other than the authorized uses listed in the bill, and refuse to depart when asked to do so by those persons authorized in the bill to make such a request.

The bill further requires each educational institution to establish in its code of student conduct disciplinary procedures for any student who willfully enters a restroom or changing facility designated for the opposite sex on the premises of the educational institution, for a purpose other than the authorized uses listed in the bill, and refuses to depart when asked to do so by those persons authorized in the bill to make such a request.

The bill does not apply to persons born with a medically verifiable genetic disorder of sexual development under treatment by a physician, with specified conditions.

See Section V, Fiscal Impact Statement.

The bill is effective July 1, 2023.

## **II. Present Situation:**

### **The Florida Building Code**

The Florida Building Code (Building Code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities in the state.<sup>1</sup> The Building Code must be applied, administered, and enforced uniformly and consistently throughout the state.<sup>2</sup>

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<sup>1</sup> See s. 553.72, F.S. Part IV of ch. 553, F.S., is cited as the “Florida Building Codes Act.” See s. 552.70, F.S. and the Florida Building Code, 7th Edition, (Building Code) available at [https://www.floridabuilding.org/bc/bc\\_default.aspx](https://www.floridabuilding.org/bc/bc_default.aspx) (last visited Mar. 23, 2023).

<sup>2</sup> See s. 553.72(1), F.S.

The Florida Building Commission (commission) adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire Protection Association.<sup>3</sup> The Building Code is updated every three years. The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.<sup>4</sup> The next edition of the Building Code will take effect on December 31, 2023.

Chapter 553, part IV, F.S., is known as the “Florida Building Codes Act” (Building Codes Act). The purpose and intent of the Building Codes Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>5</sup> The Building Code is adopted, updated, interpreted, and maintained by the commission, and is enforced by authorized state and local government agencies.<sup>6</sup>

The commission was statutorily created to implement the Building Code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The commission reviews International Codes published by the International Code Council,<sup>7</sup> the National Electric Code, and other nationally adopted model codes during its triennial update of the Building Code.<sup>8</sup>

### ***Building Construction Standards for Public Restrooms***

As directed by s. 553.86, F.S., the commission incorporated into the Florida Building Code, a ratio of public restroom facilities for men and women for all buildings with public restrooms newly constructed after September 30, 1992.<sup>9</sup> The Building Code requires the plumbing fixtures ratio for each fixture type to be applied to the occupant load of each sex in accordance with the classification of the building space.<sup>10</sup>

### **Local Enforcement of the Florida Building Code; Issuance of Building Permits**

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public’s health, safety, and

<sup>3</sup> See s. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

<sup>4</sup> *Id.*

<sup>5</sup> Section 553.72(1), F.S.

<sup>6</sup> See s. 553.72(3), F.S.

<sup>7</sup> The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to “construct safe, sustainable, affordable and resilient structures.” International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited Mar. 23, 2023).

<sup>8</sup> Sections 553.73, and 553.74, F.S.

<sup>9</sup> The requirement does not apply to establishments licensed under ch. 509, F.S., if the establishment does not provide meeting or banquet rooms accommodating more than 150 persons and has at least the same number of water closets for women as the combined total of water closets and urinals for men. *Id.*

<sup>10</sup> See ch. 4, *Fixtures, Faucets and Fixture Fittings*, [https://codes.iccsafe.org/content/FLPC2020P1/chapter-4-fixtures-faucets-and-fixture-fittings#FLPC2020P1\\_Ch04\\_Sec401](https://codes.iccsafe.org/content/FLPC2020P1/chapter-4-fixtures-faucets-and-fixture-fittings#FLPC2020P1_Ch04_Sec401), and the accompanying Minimum Plumbing Facilities Table 403.1 (last visited Mar. 23, 2023). See also ss. 403.1.1 (Fixture Calculations), 402.1.3 (Potty Parity), 403.2 (Separate Facilities), and 403.3 (Required Public Toilet Facilities).

welfare.<sup>11</sup> Every local government must enforce the Building Code and issue building permits.<sup>12</sup> It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>13</sup>

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.<sup>14</sup> Construction work may not be done beyond a certain point until it passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.<sup>15</sup>

### **Florida Accessibility Code for Building Construction**

The 1993 Legislature created the Florida Americans with Disability Accessibility Implementation Act (disability act)<sup>16</sup> which incorporated the architectural accessibility requirements of the Americans with Disabilities Act of 1990 and maintained existing provisions of Florida law thought to be more stringent than the ADA accessibility guidelines.<sup>17</sup>

The disability act established the Florida Accessibility Code for Building Construction (Accessibility Code).<sup>18</sup> The law was amended in 2011 and its resulting requirements were integrated into the Florida Building Code.<sup>19</sup> The Accessibility Code contains scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities. The requirements are to be applied during the design, construction, additions to, and alteration of sites, facilities, buildings, and elements.<sup>20</sup>

Chapter six of the Accessibility Code regulates wheelchair accessible toilet compartments including size, doors, approach, grab bars, and location within a restroom.<sup>21</sup> Chapter three of the Accessibility Code regulates reach ranges for building elements such as coat hooks, lockers, and other operable parts of a building.<sup>22</sup> Requirements include the height of forward reach, side reach, and obstructed reach for persons in a wheelchair.<sup>23</sup>

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<sup>11</sup> Section 553.72, F.S.

<sup>12</sup> Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>13</sup> Sections 125.56(4)(a) and 553.79(1), F.S.

<sup>14</sup> See s. 110 of the Building code at [https://www.floridabuilding.org/bc/bc\\_default.aspx](https://www.floridabuilding.org/bc/bc_default.aspx) (last visited Mar. 23, 2023).

<sup>15</sup> See e.g., Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, available at: <http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%9320Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Mar. 23, 2023).

<sup>16</sup> Section 553.501, F.S.

<sup>17</sup> See Preface to the 2020 Florida Building Code, Accessibility, 7<sup>th</sup> Edition.

<sup>18</sup> Section 553.503, F.S.

<sup>19</sup> Ch. 2011-222, Laws of Fla.

<sup>20</sup> Section 101.1, 2020 Florida Building Code, Accessibility, 7<sup>th</sup> Edition.

<sup>21</sup> Chapter 6: Plumbing Elements and Facilities, 2020 Florida Building Code, Accessibility, 7<sup>th</sup> Edition.

<sup>22</sup> Chapter 3: Building Blocks, 2020 Florida Building Code, Accessibility, 7<sup>th</sup> Edition.

<sup>23</sup> *Id.*

### III. Effect of Proposed Changes:

The bill creates s. 553.865, F.S., which provides the bill may be cited as the “Safety in Private Spaces Act,” for the legislative purpose and intent of providing restrooms and changing facilities for exclusive use by females or males, in order to maintain public safety, decency, and decorum.

#### Definitions

The following terms are defined in the bill:

- “Changing facility” is a room where two or more persons may be in a state of undress when others are present, including, but not limited to, a dressing room, fitting room, locker room, changing room, or shower room.
- “Correctional institution” means any state correctional institution as defined in s. 944.02, F.S.<sup>24</sup>; private correctional facility as defined in s. 944.710, F.S.<sup>25</sup>; or other facility used for the detention of adults charged with or convicted of a crime.
- “Covered entity” means any:
  - Correctional institution as defined in the bill.
  - Educational institution as defined in the bill.
  - Juvenile correctional facility or juvenile prison as described in s. 985.465, F.S., any detention center or facility designated by the Department of Juvenile Justice to provide secure detention as defined in s. 985.03(18)(a), F.S., and any facility used for a residential program as described in s. 985.03(44) (b), (c), or (d), F.S.; or
  - Public building as defined in the bill.
- “Educational institution” means a K-12 educational institution or facility or a postsecondary educational institution or facility.
- “Female” means a person belonging, at birth, to the biological sex which has the specific reproductive role of producing eggs.
- “K-12 educational institution or facility” means:
  - A school as defined in s. 1003.01(2), F.S., operated under the control of a district school board as defined in s. 1003.01(1), F.S.;
  - The Florida School for the Deaf and the Blind as described in ss. 1000.04(4) and 1002.36, F.S.;
  - A developmental research (laboratory) school established pursuant to s. 1002.32(2), F.S.;
  - A charter school authorized under s. 1002.33, F.S.; or
  - A private school as defined in s. 1002.01(2).
- “Male” means a person belonging, at birth, to the biological sex which has the specific reproductive role of producing sperm.
- “Postsecondary educational institution or facility” means:
  - A state university as defined in s. 1000.21(6);
  - A Florida College System institution as defined in s. 1000.21(3);
  - A school district career center as described in s. 1001.44(3);

<sup>24</sup> Section 944.02, F.S., defines “state correctional institution as “any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the [Department of Corrections].”

<sup>25</sup> See s. 944.710(3) F.S, defining “private correctional facility” as any facility not operated by the Department of Corrections (DOC) for the incarceration of adults or juveniles sentenced by a court and committed to the custody of the DOC.

- A college or university licensed by the Commission for Independent Education pursuant to s. 1005.31(1)(a); or
- An institution not under the jurisdiction or purview of the commission as identified in s. 1005.06(1)(b)-(f).
- “Public building” means a building comfort-conditioned for occupancy which is owned or leased by the state, a state agency, or a political subdivision. The term does not include a correctional institution, an educational institution, a juvenile correctional facility or juvenile prison as described in s. 985.465, F.S., a detention center or facility designated by the Department of Juvenile Justice to provide secure detention as defined in s. 985.03(18)(a), F.S., or any facility used for a residential program as described in s. 985.03(44)(b), (c), or (d), F.S.
- “Restroom” means a room that includes one or more water closets (i.e., toilets or urinals), but does not include a unisex restroom as defined in the bill.
- “Sex” means the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person’s sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.
- “Unisex changing facility” means a room intended for a single-occupant or a family in which one or more persons may be in a state of undress, including, but not limited to, a dressing room, fitting room, locker room, changing room, or shower room that is enclosed by floor-to-ceiling walls and accessed by a full door with a secure lock that prevents someone from entering while the changing facility is in use.
- “Unisex restroom” means a room with one or more water closets (i.e., toilets or urinals) that is intended for a single-occupant or a family, is enclosed by floor-to-ceiling walls and is accessed by a full door with a secure lock that prevents someone from entering while the room is in use.
- “Water closet” means a toilet or urinal.

### **Minimum Requirements for Covered Facilities Maintained by Covered Entities**

Each covered entity must submit documentation regarding compliance with minimum requirements for restrooms and changing facilities, if applicable, set out in the bill as follows:

#### ***Restrooms***

A covered entity that maintains a water closet (toilet or urinal) must, at a minimum, have:

- A restroom designated for exclusive use by females and a restroom designated for exclusive use by males; or
- A unisex restroom (intended for a single-occupant or a family and enclosed in floor-to-ceiling walls and accessed by a full door with a secure lock that prevents someone from entering while the room is in use; see the defined term above).

#### ***Changing Facilities***

A covered entity that maintains a changing facility must, at a minimum, have:

- A changing facility designated for exclusive use by females and a changing facility designated for exclusive use by males; or

- A unisex changing facility (intended for a single-occupant or a family and enclosed in floor-to-ceiling walls and accessed by a full door with a secure lock that prevents someone from entering while the changing facility is in use; see the defined term above).

### **Authorized Access to Opposite-Sex Restrooms or Changing Facilities; Refusal to Depart Upon Request**

Under the bill, a person may enter a restroom or changing facility designated for the opposite sex under these circumstances (authorized uses):

- To accompany a person of the opposite sex to assist or chaperone a child under 12 years of age, an elderly person as defined in s. 825.101, F.S.,<sup>26</sup> or a person with a disability as defined in s. 760.22, F.S., or a developmental disability as defined in s. 393.063, F.S.;<sup>27</sup>
- For law enforcement or governmental regulatory purposes;
- For the purpose of rendering emergency medical assistance or to intervene in any other emergency situation where the health or safety of another person is at risk;
- For custodial, maintenance, or inspection purposes, provided that the restroom or changing facility is not in use; or
- If the appropriate designated restroom or changing facility is out of order or under repair and the restroom or changing facility designated for the opposite sex contains no person of the opposite sex.

### **Penalties for Improper Access to Opposite-Sex Restrooms or Changing Facilities**

#### ***Premises of Covered Entities; Discipline***

The bill requires each type of covered entity to apply existing disciplinary procedures or establish disciplinary procedures or policies, as applicable, for employees, certain persons under its control, and other personnel described in the bill who willfully enter a restroom or changing facility designated for the opposite sex on the premises of the covered entity, for a purpose other than the authorized uses listed in the bill, and refuse to depart when asked to do so by those persons authorized in the bill to make such a request.

The bill provides the following disciplinary consequences for a violators on the premises of a covered entity:

- For any Department of Corrections (DOC) employee or correctional institution employee, a violation subjects the violator to disciplinary action by the DOC;
- For instructional personnel or administrative personnel as those terms are described in s. 1012.01(2) and (3), F.S., respectively, for an educational institution, or the equivalent of

<sup>26</sup> Section 825.101, F.S., defines the term “elderly person” to mean “a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.”

<sup>27</sup>Section 760.22, F.S., provides that the term “disability” means that (a) a person has a “physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment;” or (b) a person has a developmental disability (as defined in s. 393.063, F.S.), that is an disorder or syndrome “that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”

such personnel for a private school, a violation constitutes a violation of the Principles of Professional Conduct for the Education Profession and violators are subject to discipline pursuant to s. 1012.795, F.S.;

- For instructional personnel or administrative personnel at a Florida College System institution or state university, violators are subject to disciplinary actions established in State Board of Education rule or Board of Governors regulation;
- For any delinquency program staff member, detention staff member, or residential program staff member, a violator is subject to disciplinary action by the Department of Juvenile Justice.

The bill requires establishment of disciplinary procedures for violators, as follows:

- Each postsecondary educational institution or facility defined under subparagraphs (3)(h)4. and 5., F.S., and private school defined under subparagraph (3)(f)5., F.S., must establish a disciplinary policy for administrative personnel and instructional personnel who willfully enter, for a purpose other than the authorized uses listed in the bill, a restroom or changing facility designated for the opposite sex on the premises of the educational institution and refuse to depart when asked to do so by a person authorized in the bill to make such a request for the educational institution or facility.
- For each juvenile correctional facility or juvenile prison as described in s. 985.465, each detention center or facility designated by the Department of Juvenile Justice to provide secure detention as defined in s. 985.03(18)(a), F.S., and each facility used for a residential program as described in s. 985.03(44)(b), (c), or (d), F.S., shall establish disciplinary procedures for any juvenile as defined in s. 985.03(7), F.S., who willfully enters, for a purpose other than the authorized uses listed in the bill, a restroom or changing facility designated for the opposite sex in such juvenile correctional facility, juvenile prison, secure detention center or facility, or residential program facility and refuses to depart when asked to do so by delinquency program staff, detention staff, or residential program staff.
- For each public building under its jurisdiction, the applicable governmental entity must establish disciplinary procedures for any employee of the governmental entity who willfully enters, for a purpose other than the authorized uses listed in the bill, a restroom or changing facility designated for the opposite sex at such public building and refuses to depart when asked to do so by any other employee of the governmental entity.

### ***Criminal Offense***

Under the bill, any person who willfully enters a restroom or changing facility designated for the opposite sex on the premises of a covered entity, for a purpose other than the authorized uses listed in the bill, and refuses to depart when asked to do so by those persons authorized in the bill to make such a request, commits the criminal offense of trespass. Certain employees, staff, and others on the premises of a covered entity are not subject to this provision.

### ***Disciplinary Procedures in Code of Student Conduct***

The bill requires each educational institution to establish in its code of student conduct disciplinary procedures for any student who willfully enters a restroom or changing facility designated for the opposite sex on the premises of the educational institution, for a purpose other than the authorized uses listed in the bill, and refuses to depart when asked to do so by those persons authorized in the bill to make such a request.



## **Persons Authorized to Request Departure from Opposite-Sex Restrooms or Changing Facilities on the Premises of Covered Entities**

The bill authorizes certain persons to request another person depart from restrooms or changing facilities designated for the opposite sex on the premises of a covered entity, as follows.

### ***Correctional Institutions***

Any employee of the Department of Corrections or an employee of the correctional institution.

### ***Educational Institutions***

For a K-12 educational institution or facility, any instructional personnel as described in s. 1012.01(2), administrative personnel as described in s. 1012.01(3), or a safe-school officer as described in s. 1006.12(1)-(4) or, if the institution is a private school, any equivalent of such personnel or officer.

For a postsecondary educational institution or facility, any administrative personnel, faculty member, security personnel, or law enforcement personnel.

### ***Juvenile Facilities (Correctional, Secure Detention, and Residential Program Facilities)***

Delinquency program staff, detention staff, or residential program staff.

### ***Public buildings***

Any other employee of the applicable governmental entity for the public building within its jurisdiction.

## **Required Documentation of Compliance**

The bill requires covered entities to submit documentation regarding compliance with the minimum requirements for restrooms and changing facilities, if applicable, within one year after being established or, if the institution or facility was established before July 1, 2023, no later than April 1, 2024, as follows.

- A correctional institution must submit documentation to the Department of Corrections.
- A K-12 educational institution or facility, Florida College System institution as defined in s. 1000.21(3), F.S., or a school district career center as described in s. 1001.44(3), F.S., must submit documentation to the State Board of Education.
- A state university as defined in s. 1000.21(6), F.S., must submit documentation to the Board of Governors.
- A postsecondary educational institution or facility as defined in subparagraph (3)(h)4. or subparagraph (3)(h)5., F.S., must submit documentation to the Department of Education.
- A juvenile correctional facility or juvenile prison as described in s. 985.465, F.S., a detention center or facility designated by the Department of Juvenile Justice to provide secure detention as defined in s. 985.03(18)(a), F.S., or a facility used for a residential program as described in s. 985.03(44)(b), (c), or (d), F.S., must submit documentation to the Department of Juvenile Justice.

**Enforcement by Attorney General; Severability**

The bill provides that beginning July 1, 2024, a person may submit a complaint to the Attorney General alleging that a covered entity failed to meet the minimum requirements for restrooms and changing facilities required by the bill, and that a covered entity that fails to comply with the minimum requirements is subject to penalties sought by the Attorney General and to licensure or regulatory disciplinary action, as applicable.

The bill authorizes the Attorney General to take enforcement action against covered entities through the judicial system beginning July 1, 2024, by seeking injunctive relief, and by seeking a fine of up to \$10,000 for any covered entity found to have willfully violated the requirements in the bill. Collected fines must be deposited in the General Revenue Fund.

The bill does not apply to an individual who is or has been under treatment by a physician who, in his or her good faith clinical judgment, performs procedures upon or provides therapies to a minor born with a medically verifiable genetic disorder of sexual development, including any of the following:

- External biological sex characteristics that are unresolvably ambiguous.
- A disorder of sexual development in which the physician has determined through genetic or biochemical testing that the patient does not have a normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female, as applicable.

By January 1, 2024, the Department of Corrections, the Department of Juvenile Justice, and the State Board of Education must each adopt rules, and the Board of Governors must adopt regulations, establishing procedures to carry out the act and to ensure compliance with and enforcement of act, including, but not limited to, the type, format, and method of delivery of the documentation required to be submitted by covered entities.

Under the bill, the act's provisions are severable, meaning that if any provision of the act or its application to any person or circumstance is held invalid, such invalidity does not affect the other provisions or applications of the act which can be given effect.

The bill includes technical drafting changes.

The bill is effective July 1, 2023.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact to the private sector is dependent upon implementation of the minimum requirements for restrooms and changing facilities. Restrooms and changing facilities maintained by a covered entity may take the form of restrooms and changing facilities designated for exclusive use by females or males, or unisex restrooms or changing facilities (intended for a single-occupant or a family and enclosed in floor-to-ceiling walls and accessed by a full door with a secure lock that prevents someone from entering while the changing facility is in use), as determined by the covered entity.

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) indicates there are potential impacts to state government, including an increase in general revenue due to the collection of fines from covered entities through enforcement actions initiated by the Attorney General, and an increase in funds payable to the Hotel and Restaurant Trust Fund through the collection of fines assessed against covered entities that do not comply with the minimum requirements for restrooms and changing facilities set forth in the bill.<sup>28</sup> As to the impact on staff of the Division of Hotels and Restaurants, the DBPR notes there may be a potential increase in staff and labor for processing compliance documentation submitted with applications for initial licenses and for license renewals, with a potential increase in legal staff and labor for the processing of administrative actions against covered entities for noncompliance with the minimum requirements for restrooms and changing facilities set forth in the bill.<sup>29</sup>

The Department of Corrections (DOC) raised concerns in its analysis of the bill as originally filed of conflicts between state and federal law requirements respecting the

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<sup>28</sup> See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for HB 1521 (identical to SB 1674)* at 4 (Mar. 13, 2023) (on file with the Senate Rules Committee).

<sup>29</sup> *Id.*

housing of females and males in custody and determining their sex, which may cause a loss of federal funding under the Justice Assistance Grant (JAG) program as follows:

The Prison Rape Elimination Act (PREA) was signed into law by President George W. Bush on September 4, 2003. It was created to eliminate sexual abuse in confinement facilities. PREA includes forty-three (43) standards that define three clear goals: to prevent, detect and respond to sexual abuse. PREA requires that, “All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.” (28 CFR Part 115.41). In accordance with this requirement, the Department conducts an assessment of each inmate upon arrival into agency custody and when transferred to a new facility. Information obtained is used to “inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.” (28 CFR Part 115.42). Housing decisions are made on a case by case basis to ensure the inmate’s “health and safety, and whether the placement would present management or security problems”.

The Department has a zero-tolerance policy for all forms of sexual abuse, sexual battery, and sexual harassment. The Department has assigned a PREA Coordinator to develop, implement, and monitor the Department's compliance with the PREA standards. In accordance with PREA guidelines, the Department screens inmates to determine if they are at risk of being either a sexual victim or a sexual aggressor. PREA screening considers a variety of relevant factors, including whether an inmate has a disability; an inmate's age, physical build, incarceration history, criminal history, and prior experiences of sexual victimization; an inmate's actual and/or perceived sexual orientation and gender identity; and the inmate's own perception of vulnerability.

According to the Edward Byrne Memorial Justice Assistance Grant Program Frequently Asked Questions document prepared by the Bureau of Justice Assistance, “The PREA statute provides that a state whose governor does not certify full compliance with DOJ’s National Standards to Prevent, Detect, and Respond to Prison Rape (PREA Standards), 34 U.S.C. 30307(e), is subject to the loss of five percent of any DOJ grant funds that it would otherwise receive for prison purposes, unless the governor submits to the Attorney General an assurance that such five percent will be used by the state solely to adopt and achieve full compliance with the PREA Standards in future years.” The five percent is assessed against the state’s 60 percent share of federal funding plus any allocation for certain smaller, local entities, but excludes funding that is

passed through to local governments.<sup>30</sup>

The DOC does not estimate the amount of potential loss of Justice Assistance Grant funds (five percent of any DOJ grant funds that the state would otherwise receive for prison purposes), or provide the amounts of such funds granted in prior years.

As to housing assignments and determination of the sex of persons in its custody, the DOC states:

Although the [DOC] generally assigns inmates to facilities in a manner consistent with the requirement for correctional institutions, uncompromising adherence to the bill's requirements could potentially call into question the case-by-case assessment required under PREA. This in turn could potentially place at risk some federal Justice Assistance Grant (JAG) funding received by the state for justice programs. There is the potential for a financial loss of five percent of the state's 60 percent share of JAG funding, including the less-than-\$10,000 allocation (funds available to local governments whose calculated allocation is under \$10,000), but excluding the mandatory variable passthrough amount (allocations made through the state to local governments).<sup>31</sup>

The Department of Management Services indicates the bill as originally filed does not impact that department.<sup>32</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 553.865 of the Florida Statutes.

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<sup>30</sup> See Department of Corrections, *2023 Agency Legislative Bill Analysis for SB 1674* at 2 (Mar. 24, 2023) (on file with the Senate Rules Committee).

<sup>31</sup> *Id.* at 3.

<sup>32</sup> See letter from the Director of Legislative Affairs, the Department of Management Services (Mar. 20, 2023) (on file with the Senate Rules Committee).

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Fiscal Policy Committee on April 25, 2023:**

- Clarifies the authorized purposes to enter a restroom or changing facility designated for the opposite sex, for assistance to a child under 12; an elderly person 60 years of age or older as defined in s. 825.101, F.S., or a person with a developmental disability.
- Revises the term “covered entities” to
  - Include public buildings owned by the state, a state agency, or a political subdivision (i.e., counties, cities, and certain other districts in Florida), excluding buildings of covered entities subject to the act; and
  - Remove: county and municipal detention facilities; the health care facilities described in the bill as filed; public accommodations; public shelters; and (5) substance abuse providers.
- Clarifies that “correctional institutions” addresses the detention of adults only, and provides that juvenile correctional facilities, juvenile prisons, detention centers and facilities designated by the Department of Juvenile Justice for secure detention, and any facility used for certain residential programs for juveniles, are covered entities.
- Revises “educational institution” to mean “a K-12 educational institution or facility or a postsecondary educational institution or facility,” including:
  - For K-12 facilities: schools operated by county school district board, the Florida School for the Deaf and the Blind, developmental research (lab) schools, charter schools, and private schools; and
  - For postsecondary facilities: state universities and colleges, school district career centers, and colleges or universities licensed by the Commission for Independent Education and certain specified institutions not under its jurisdiction.
- Identifies those who may request a person to depart a restroom or changing facility designated for the opposite sex on a covered entity’s premises, when the entry is not for an authorized purpose, and:
  - Requires each type of covered entity to establish disciplinary procedures for its employees, certain persons under its control, and other personnel described in the act; and
  - Provides that the failure to depart by other persons constitutes the offense of trespass, with exclusions appropriate to the covered entity.
- Does not apply to persons born with a medically verifiable genetic disorder of sexual development under treatment by a physician, with specified conditions.
- Includes technical drafting and conforming changes.

**B. Amendments:**

None.