

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.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: SB 1674

INTRODUCER: Senators Grall and Perry

SUBJECT: Facility Requirements Based on Sex

DATE: April 25, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Twogood</u>	<u>RC</u>	Favorable
2.	<u>Kraemer</u>	<u>Yeatman</u>	<u>FP</u>	Pre-meeting

I. Summary:

SB 1674 creates s. 553.865, F.S., the “Safety in Private Spaces Act,” (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, a covered entity required to obtain a license to operate in Florida must 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 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.

The entities subject to the requirements in the bill include, educational institutions, public accommodations, public shelter space (public hurricane evacuation shelters), substance abuse service providers, health care facilities, and numerous other health care provider locations.

The bill requires separate treatment for females and males in these locations:

- Domestic violence centers must provide separate overnight accommodations for females and males, based on their sex, except for mixed-sex family units; and
- Correctional institutions, for all housing assignments, including temporary ones, must separately house females and males in custody, based on their sex.

The bill provides 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 18 years of age or older who willfully enters a restroom or changing facility designated for the opposite sex for a purpose other than the authorized uses listed in the bill, and refuses to immediately depart when asked to do so by another person in the restroom or changing facility, commits a second degree misdemeanor, which may result in up to 60 days in jail or up to a \$500 fine.

The bill requires each school to establish in its code of student conduct disciplinary procedures for any student under 18 years of age who willfully enters a school restroom or changing facility designated for the opposite sex for a purpose other than the authorized uses listed in the bill.

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.¹ The Building Code must be applied, administered, and enforced uniformly and consistently throughout the state.²

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.³ 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.⁴ 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

¹ 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 (last visited Mar. 23, 2023).

² See s. 553.72(1), F.S.

³ 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.

⁴ *Id.*

jurisdiction to jurisdiction.⁵ The Building Code is adopted, updated, interpreted, and maintained by the commission, and is enforced by authorized state and local government agencies.⁶

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,⁷ the National Electric Code, and other nationally adopted model codes during its triennial update of the Building Code.⁸

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, 1992.⁹ 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.¹⁰

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 welfare.¹¹ Every local government must enforce the Building Code and issue building permits.¹² 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.¹³

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.¹⁴ Construction work may not be done

⁵ Section 553.72(1), F.S.

⁶ See s. 553.72(3), F.S.

⁷ 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).

⁸ Sections 553.73, and 553.74, F.S.

⁹ 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.*

¹⁰ See ch. 4, *Fixtures, Faucets and Fixture Fittings*, 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).

¹¹ Section 553.72, F.S.

¹² Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹³ Sections 125.56(4)(a) and 553.79(1), F.S.

¹⁴ See s. 110 of the Building code at https://www.floridabuilding.org/bc/bc_default.aspx (last visited Mar. 23, 2023).

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.¹⁵

Florida Accessibility Code for Building Construction

The 1993 Legislature created the Florida Americans with Disability Accessibility Implementation Act (disability act)¹⁶ 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.¹⁷

The disability act established the Florida Accessibility Code for Building Construction (Accessibility Code).¹⁸ The law was amended in 2011 and its resulting requirements were integrated into the Florida Building Code.¹⁹ 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.²⁰

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

III. Effect of Proposed Changes:

The bill creates s. 553.865, F.S., which provides the act may be cited as the “Safety in Private Spaces Act,” (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.

¹⁵ 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%20E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Mar. 23, 2023).

¹⁶ Section 553.501, F.S.

¹⁷ See Preface to the 2020 Florida Building Code, Accessibility, 7th Edition.

¹⁸ Section 553.503, F.S.

¹⁹ Ch. 2011-222, Laws of Fla.

²⁰ Section 101.1, 2020 Florida Building Code, Accessibility, 7th Edition.

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

²² Chapter 3: Building Blocks, 2020 Florida Building Code, Accessibility, 7th Edition.

²³ *Id.*

Definitions

The following terms are defined in the act:

- “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” is any state correctional institution as defined in s. 944.02, F.S.²⁴; any juvenile detention center or residential program as described in s. 985.03, F.S.; any county or municipal detention facility as defined in s. 951.23, F.S.²⁵; any private correctional facility as defined in s. 944.710, F.S.²⁶; or any other facility used for the detention of adults or juveniles charged with or convicted of a crime.
- “Covered entity” means any:
 - “Educational institution” as defined in s. 768.38, F.S., (which includes “a school, including a preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic” (schools)).
 - Public accommodations, as defined in s. 760.02(11), F.S.²⁷
 - Public shelter space under s. 252.385, F.S., (public hurricane evacuation shelters);
 - Service provider, as defined in s. 397.311(44), F.S.²⁸
 - Health care facility, which includes any provider as defined in s. 408.803, F.S.²⁹; a provider with an active health care clinic exemption under s. 400.9935, F.S.³⁰; a

²⁴ 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].”

²⁵ See ss. 951.23(1)(b) and (d), F.S. A “county detention facility” includes means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place (other than a municipal detention facility) that a county or county officer use to detain persons charged with or convicted of a felony or a misdemeanor, whether or not the facility is operated by a board of county commissioners, a sheriff, or any other entity; a “municipal detention facility” includes a city jail, a city stockade, a city prison camp, and any other place (other than a county detention facility) that a municipality or municipal officer use to detain persons charged with or convicted of a violation of municipal laws or ordinances, whether or not the facility is operated by a city or any other entity.

²⁶ 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.

²⁷ Section 760.02(11), F.S., defines “public accommodations” as places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments” and provides that the following are places of public accommodation if they serve the public: (a) Any inn, hotel, motel, or other lodging establishment for to transient guests, other than a place within a building of four rooms or less for rent or hire that is occupied as a residence by the proprietor; (b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, facilities located on the premises of any retail establishment, or any gasoline station; (c) Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment; (d) Any establishment which is physically located within the premises of any establishment otherwise covered by [s. 760.02(11), F.S.], or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

²⁸ Section 397.311(44), F.S., defines “service provider” as a private for-profit or not-for-profit agency, a person who is a private practitioner, or a hospital licensed under or exempt from ch. 398, F.S., relating to substance abuse services.

²⁹ Section 408.803, F.S., defines “provider” as any activity, service, agency, or facility regulated by the Agency for Health Care Administration (AHCA) listed in s. 408.802, F.S., which provides an extensive list of certain entities licensed, registered, or certified by AHCA.

³⁰ See s. 400.9905(4), F.S., describing entities that may claim an exemption.

continuing care³¹ facility with a certificate of authority under ch. 651, F.S., relating to continuing care contracts; an optical establishment permitted under s. 484.007, F.S.; a massage establishment licensed under s. 480.043, F.S.; a pharmacy as defined in s. 465.003, F.S.;³² an office described in s. 459.0138, F.S.,³³ which is required to register with the Department of Health; a pain-management clinic registered under s. 458.3265, F.S.;³⁴ an electrolysis (electrology)³⁵ facility licensed under s. 478.51, F.S.; or any health care setting owned or operated by a health care practitioner as defined in s. 456.001, F.S.,³⁶ or a provider licensed under ch. 394, F.S., relating to Mental Health, ch. 397, F.S., relating to Substance Abuse Services, or part IV of ch. 468, F.S., relating to Radiological Personnel Certification.

- “Female” means a person belonging, at birth, to the biological sex which has the specific reproductive role of producing eggs.
- “Male” means a person belonging, at birth, to the biological sex which has the specific reproductive role of producing sperm.
- “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 act.
- “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 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.
- “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, and the room is enclosed in floor-to-ceiling

³¹ Section 651.011(5), F.S., defines “continuing care” as furnishing shelter and nursing care or personal services to a facility resident pursuant to a contract, whether such services are provided in the facility or in another setting for continuing care, by an individual not related to the resident, upon payment of an entrance fee.

³² Under s. 465.003(20), F.S., the term “pharmacy” includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, and an internet pharmacy, as further described in the section.

³³ Section 489.0138, F.S., requires registration of offices where “a physician performs a liposuction procedure in which more than 1,000 cubic centimeters of supernatant fat is removed, a Level II office surgery, or a Level III office surgery must register with the [Department of Health] unless the office is licensed as a facility under [ch. 390, F.S., relating to termination of pregnancies, or ch. 395, F.S., relating to hospital licensing and regulation].

³⁴ See s. 458.3265, F.S., for the list of facilities that fall within the registration requirements.

³⁵ Section 478.51, F.S., refers to “electrology facilities.” See section VII on page X of this analysis regarding consideration of an amendment to address this issue.

³⁶ The term “health care practitioner” means any person licensed under the following chapters in the Florida Statutes: ch. 457 (Acupuncture); ch. 458 (Medical Practice); ch. 459 (Osteopathic Medicine); ch. 460 (Chiropractic Medicine); ch. 461 (Podiatric Medicine); ch. 462 (Naturopathy); ch. 463 (Optometry); ch. 464 (Nursing); ch. 465 (Pharmacy); ch. 466 (Dentistry, Dental Hygiene, and Dental Laboratories); ch. 467 (Midwifery); part I (Speech-Language Pathology and Audiology), part II (Nursing Home Administration), part III (Occupational Therapy), part V (Respiratory Therapy), part X, (Dietetics and Nutrition Practice), part XIII (Athletic Trainers), or part XIV (Orthotics, Prosthetics, and Pedorthics of ch. 468 (Miscellaneous Professions and Occupations); ch. 478 (Electrolysis); ch. 480 (Massage Therapy Practice); part I (Clinical Laboratory Personnel), part II (Medical Physicists), or part III (Genetic Counseling) of ch. 483 (Health Testing Services); ch. 484 (Dispensing of Optical Devices and Hearing Aids); ch. 486 (Physical Therapy Practice); ch. 490 (Psychological Services); or ch. 491 (Clinical, Counseling, and Psychotherapy Services).

walls and 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

A covered entity required to obtain a license to operate in Florida 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).

The bill does not specify the form of the compliance documentation to be submitted to the licensing entity, nor require the licensing entity to review and approve such documentation prior to issuance of a license.³⁷ The compliance documentation, if applicable to the covered entity, must be submitted upon initial application for a license, or on the first renewal of an existing license occurring after July 1, 2023.

The bill provides that failure to comply with the minimum requirements for restrooms and changing facilities subjects a covered entity to licensure or regulatory disciplinary action, as applicable, but does not specify the disciplinary actions authorized to be imposed by a licensing or regulatory entity for such failure or grant authority to such entities to do so.³⁸ 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.

³⁷ See section VII on page X of this analysis regarding consideration of an amendment to address these issues.

³⁸ *Id.*

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 minor child,³⁹ an elderly person,⁴⁰ or disabled person;⁴¹
- 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 opposite designated restroom or changing facility⁴² contains no person of the opposite sex.

Under the bill, any person 18 years of age or older who willfully enters a restroom or changing facility designated for the opposite sex for a purpose other than the authorized uses listed above, and refuses to immediately depart when asked to do so by another person in the restroom or changing facility, commits a second degree misdemeanor, which may result in up to 60 days in jail or up to a \$500 fine.⁴³

Student Discipline for Improperly Accessing Opposite-Sex Restrooms or Changing Facilities at Schools

The bill requires each school to establish in its code of student conduct disciplinary procedures for any student under 18 years of age⁴⁴ who willfully enters a school restroom or changing

³⁹ Under s. 414.0252, F.S., the term “minor child” means “a child under 18 years of age, or under 19 years of age if the child is a full-time student in a secondary school or at the equivalent level of career training, and does not include anyone who is married or divorced.” In contrast, s. 877.21, F.S., provides that the term “minor” means “any person under 16 years of age.” See section VII on page X of this analysis regarding consideration of an amendment to address this issue.

⁴⁰ 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.”

⁴¹ The term “disabled person” is not defined in Florida law; however, s. 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.” See section VII on page X of this analysis regarding consideration of an amendment to address this issue.

⁴² The phrase to “the opposite designated restroom or changing facility” is ambiguous; See section VII on page X of this analysis regarding consideration of an amendment to address this issue.

⁴³ Under ss. 775.082 and 775.083, F.S., a second degree misdemeanor is punishable by a term of imprisonment not to exceed 60 days, and by a fine not to exceed \$500, respectively.

⁴⁴ As noted above, a person 18 years of age or older, (including a student at a school) who willfully enters a restroom or changing facility designated for the opposite sex for a purpose other than the authorized uses listed in the bill, and refuses to immediately depart when asked to do so by another person in the restroom or changing facility, commits a second degree misdemeanor. Under ss. 775.082 and 775.083, F.S., a second degree misdemeanor is punishable by a term of imprisonment not to exceed 60 days, and by a fine not to exceed \$500, respectively.

facility designated for the opposite sex for a purpose other than the authorized uses listed above, and refuses to immediately depart when asked to do so by another person in the restroom or changing facility.

Separation of Females and Males at Domestic Violence Centers and in Correctional Facilities

Under current law, a domestic violence center is defined as “an agency that provides services to victims of domestic violence as its primary mission.”⁴⁵ The bill requires a domestic violence center to provide separate overnight accommodations for females and males based on their sex, except for mixed-sex family units. Similarly, a correctional institution, for all housing assignments in the institution, including temporary assignments, must separately house females and males in its custody based on their sex.

Enforcement by Attorney General; Severability

The bill authorizes the Attorney General to enforce the act against entities subject to its provisions, through the judicial system, by seeking injunctive relief, and by seeking a fine of up to \$10,000 for any covered entity found to have willfully violated the act. Collected fines must be deposited in the General Revenue Fund.

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

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.

⁴⁵ See s. 39.903, F.S., and part XII of ch. 39, F.S.

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.⁴⁶ 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.⁴⁷

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

⁴⁶ 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).

⁴⁷ *Id.*

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.⁴⁸

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.

⁴⁸ See Department of Corrections, *2023 Agency Legislative Bill Analysis for SB 1674* at 2 (Mar. 24, 2023) (on file with the Senate Rules Committee).

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).⁴⁹

The Department of Management Services indicates the bill in its current form does not impact that department.⁵⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

Definitions and Technical Issues

The sponsor may wish to consider an amendment to revise the term "electrolysis facility," which does not match the designation in s. 478.51, F.S., to "electrology facility." *See* lines 57-58 of the bill.

With respect to the circumstances in which persons of the opposite sex may enter into a restroom or changing facility designated for the opposite sex, the sponsor may wish to consider an amendment to refer to "minors under the age of 16" or whatever age the sponsor believes is appropriate, rather than to "minor child", and to refer to "persons with a disability," as the term "disability" is defined in current law. *See* lines 99 to 104 of the bill.

With respect to situations when a restroom or changing facility is out of order or under repair, the sponsor may wish to consider an amendment to refer to "the restroom or changing facility designated for the opposite sex," rather than the ambiguous phrase "opposite designated restroom or changing facility." *See* lines 113 to 116 of the bill.

⁴⁹ *Id.* at 3.

⁵⁰ *See* letter from the Director of Legislative Affairs, the Department of Management Services (Mar. 20, 2023) (on file with the Senate Rules Committee).

Documentation, Licensure and Regulatory Discipline

The DBPR notes that adoption of rules may be required to:⁵¹

promulgate rules to provide guidance on what covered entities should submit as documentation for proof of compliance and directives on verification of compliance documents. The type of documentation required may have an indeterminate impact on the amount of division [of Hotels and Restaurants] staff and labor needed to verify compliance of each establishment.

While the DBPR states the transfer of a license from one location or from one individual to another is prohibited by s. 509.241(1), F.S., and therefore, a change in ownership requires the Division of Hotels and Restaurants (DHR) to issue a brand new license, it is unclear why a new type of license would be required under the bill.⁵²

The DHR's Counsel notes that:

Not all public food service and public lodging establishments fall under the definition of "public accommodations". The division [of Hotels and Restaurants] will need to determine which licensed establishments fall under the bill's requirement and amend its rules accordingly. Some licensed establishments that are currently exempt from the division's public restroom requirements may not be exempt from the bill's requirements. Ex. Vacation rentals.

The sponsor may wish to consider an amendment to specify the form of the required documentation so compliance or non-compliance may be objectively determined, and to require that such documentation be submitted to the covered entity's licensing or regulatory board.

The sponsor may wish to consider an amendment to address the imposition of licensing and regulatory discipline upon non-compliant covered entities, to provide due notice to covered entities of the possibility of such discipline, authorize licensing and regulatory boards by specifying the documentation required, the circumstances for imposing such discipline, and the penalties for noncompliance.

Section 553.865(11)(b), F.S., provides that a covered entity is subject to licensure and regulatory disciplinary action, as applicable, for a violation of s. 553.865(4) or (5), F.S., created by the bill. See lines 144 to 147 of the bill.

The bill affects many different types of entities, including licensed entities that are subject to disciplinary and licensure requirements specified by the licensing act for the particular type of entity. A licensing act may not provide the licensing board or agency with sufficient disciplinary

⁵¹ See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for HB 1521 (identical to SB 1674)* at 6 (Mar. 13, 2023) (on file with the Senate Rules Committee).

⁵² *Id.*

authority, including a basis for denial of an initial license or a renewal license, for violations not specified in the applicable licensing act.

Disciplinary statutes may set forth penalties for a licensee's violations of law. Without specific authority to a licensing or regulatory board or agency for a specific penalty, it is not clear that the licensed entity may be subject to discipline for a violation that is not prohibited by the applicable licensing act.

For example, alcoholic beverage licensees under chs. 561, 562, 563, 564, and 565, F.S., may be disciplined, or have a license renewal denied, for a violation of any laws of this state or the United States.⁵³ However, public food service establishments and public lodging establishments licensed under ch. 509, F.S., may be disciplined, or have a license renewal denied, for a violation of ch. 509, F.S., a rule of the DHR with the DBPR, or a crime related to prostitution, controlled substances, gambling, or reflecting on professional character.⁵⁴

VIII. Statutes Affected:

This bill creates section 553.865 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁵³ See s. 561.29(1), F.S.

⁵⁴ See ss. 509.261(1), (5), (6), and (7), F.S.