

Date of Hearing: April 18, 2017

**ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS**

Rudy Salas, Chair

AB 1127 (Calderon) – As Introduced February 17, 2017

**SUBJECT:** Baby diaper changing stations.

**SUMMARY:** Requires state and local agencies, permanent food facilities, and specified public facilities, including a theater, sports arena, or library, to install and maintain at least one baby diaper changing station if the building or facility is open to the public, as specified.

**EXISTING LAW:**

- 1) Establishes, under the State Building Construction Act of 1955, requirements for state agencies relating to the acquisition, construction, and renovation of public buildings. (Government Code (GOV) §§ 15800-15849.7)
- 2) Defines, for purposes of the State Building Construction Act of 1955, the following: (GOV § 15802)
  - a) “Construction” includes the extension, enlargement, repair, renovation, restoration, improvement, furnishing, and equipping of any public building.
  - b) “Public building” includes any structure, building, facility, or work that a state agency has jurisdiction of, or is authorized to design or construct, including, but not limited to, infrastructure, parking lots, landscaping, and other ancillary facilities, including furnishings and equipment, incidental to the use of any building, and also includes the site thereof, and any easements or rights of way appurtenant thereto or necessary for its full use.
  - c) “State agency” includes any state office, officer, department, division, bureau, board, commission, organization, or agency including, without limitation, the University of California, the California State University, the California Community Colleges, and the Judicial Council.
- 3) Establishes the powers and duties of local agencies, including those relating to public buildings, and defines for those purposes the following: (GOV § 50001-51298.5)
  - a) “Local agency” means county, city, or city and county, unless the context otherwise requires. (GOV § 50001)
  - b) “Legislative body” means board of supervisors in the case of a county or city and county, and city council or board of trustees in the case of a city, unless the context otherwise requires. (GOV § 50002)
- 4) Establishes, in the California Health and Human Services Agency, the State Department of Public Health (CDPH) and authorizes the CDPH to commence and maintain all proper and necessary actions and proceedings for purposes of protecting the public health, as specified,

including administration and enforcement of the laws relating to public health. (Health and Safety Code Section (HSC) §§ 131000-131225)

- 5) Establishes, under the California Retail Food Code, uniform health and sanitation standards for retail food facilities and provides for the enforcement of those standards by local health agencies and by the CDPH, as specified. (HSC §§ 113700-114437)
- 6) Defines, for purposes of the California Retail Food Code, the following:
  - a) “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following: (HSC § 113789(a))
    - i) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.
    - ii) A place used in conjunction with the operations of a food facility, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.
  - b) “Food facility” includes permanent and nonpermanent food facilities, as specified.
  - c) “Food facility” does not include any of the following:
    - i) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.
    - ii) A private home, including a cottage food operation that is registered or has a permit pursuant to HSC § 114365.
    - iii) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.
    - iv) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.
    - v) Premises set aside for wine tasting or premises set aside by a beer manufacturer, as specified.
    - vi) An outlet or location, including, but not limited to, premises, operated by a producer, selling or offering for sale only whole produce grown by the producer or shell eggs, or both, provided the sales are conducted at an outlet or location controlled by the producer.
    - vii) A commercial food processing establishment.
    - viii) A child day care facility.

- ix) A community care facility.
  - x) A residential care facility for the elderly.
  - xi) A residential care facility for the chronically ill, which has the same meaning as a residential care facility.
  - xii) An intermediate care facility for the developmentally disabled, with a capacity of six beds or fewer, as specified.
  - xiii) A community food producer.
- 7) "Permanent food facility" means a food facility operating in a permanently constructed structure, including any room, building, place, or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, manufacturing, packaging, or otherwise handling food at the retail level. (HSC § 113849)
  - 8) Requires food facilities to provide clean toilet rooms in good repair and conveniently located and accessible for use by employees during all hours of operation. The number of toilet facilities required shall be in accordance with applicable local building and plumbing ordinances. Toilet tissue shall be provided in a permanently installed dispenser at each toilet. (HSC § 114250)
  - 9) Provides that food facilities located within amusement parks, stadiums, arenas, food courts, fairgrounds, and similar premises are not required to provide toilet facilities for employee use within each food facility if approved toilet facilities are located within 200 feet in travel distance of each food facility and are readily available for use by employees, as specified. (HSC § 114250.1)
  - 10) Requires a permanent food facility to provide clean toilet facilities in good repair for use by employees, as specified. (HSC § 114276)
  - 11) Establishes, under the California Building Standards Law, the California Building Standards Commission (CBSC) within the Department of General Services (DGS), to administer the processes related to the development, adoption, approval, publication, and implementation of the California Building Standards Code. (HSC §§ 18901-18949.31)
  - 12) Defines, for purposes of the California Building Standards Law, "building standard" as any rule, regulation, order, or other requirement, including any amendment or repeal of that requirement, that specifically regulates, requires, or forbids the method of use, properties, performance, or types of materials used in the construction, alteration, improvement, repair, or rehabilitation of a building, structure, factory-built housing, or other improvement to real property, including fixtures therein, and as determined by the CBSC. (HSC § 18909)
  - 13) Requires that any building standard adopted or proposed by state agencies must be submitted to, and approved or adopted by, the CBSC prior to codification. Prior to submission to the CBSC, building standards must be adopted in compliance with public participation requirements (GOV §§ C 11346). Building standards adopted by state agencies and

submitted to the commission for approval must be accompanied by an analysis written by the adopting agency or state agency that proposes the building standards, and the analysis must justify the approval of the standards under specified criteria, including consistency with state and national standards, ambiguity and vagueness, and reasonableness. (HSC § 18930)

- 14) Establishes, within the DGS, the Office of the State Architect and grants the office the general charge over the erection of all state buildings, except as specified. (GOV §§ 14950-14964)
- 15) Requires every public agency that conducts an establishment serving the public or open to the public, and maintains restroom facilities for the public, to make every toilet within the restrooms available without cost or charge to the patrons, guests, or invitees of the establishment. "Public agency" as used in this requirement means the state and any agency of the state and a city, a county, and a city and county. (HSC § 118500)
- 16) Requires publicly and privately owned facilities where the public congregates to be equipped with sufficient restrooms to meet the needs of the public at peak hours and specifies, for purposes of this requirement, the following: (HSC § 118505)
  - a) "Facilities where the public congregates" means sports and entertainment arenas, stadiums, community and convention halls, specialty event centers, specialty event centers in public parks, amusement facilities, and ski resorts.
  - b) In conformity with the State Plumbing Code, except as otherwise, standards shall be adopted in order to enforce this requirement, as follows:
    - i) The CBSC shall adopt standards with respect to all state-owned or state-occupied facilities where the public congregates and over which it has jurisdiction.
    - ii) The Office of the State Architect shall adopt standards with respect to all facilities where the public congregates and that are not covered by the CBSC, unless exempt from coverage.
    - iii) The standards adopted by either agency shall be published in the California Building Standards Code contained in Title 24 of the California Code of Regulations.
  - c) This requirement only applies to facilities where the public congregates that commence construction, or that undertake structural alterations, repairs, or improvements exceeding 50 percent of the entire facility, on or after January 1, 1989.
  - d) This requirement does not apply to the following:
    - i) Any hotel, meaning an establishment in which there exists the relationship of guests and innkeeper between the occupants and the owner or operator of the establishment, as specified.
    - ii) Any restaurant or food facility, as defined in HSC § 113785.
    - iii) Any public or private elementary or secondary school facility.

- iv) Any qualified historic building, defined as qualifying under provisions in the State Historical Building Code contained in Part 8 (commencing with Section 8-100) of Title 24 of the California Code of Regulations.

**THIS BILL:**

- 1) Requires specified state agencies, local agencies, and facilities open to the public to provide one of the following:
  - a) At least one safe, sanitary, and convenient baby diaper changing station that is accessible to women entering a restroom provided for use by women and at least one safe, sanitary, and convenient baby diaper changing station that is accessible to men entering a restroom provided for use by men; or
  - b) At least one safe, sanitary, and convenient baby diaper changing station that is accessible to both men and women.
- 2) Specifies that this requirement applies to all new construction and, except as otherwise provided, to all renovations of bathrooms for which a permit has been obtained in which the estimated cost of the new construction or renovation is \$10,000 or more.
- 3) Specifies that this requirement does not apply to a renovation if a local building permitting entity or building inspector determines that the installation of a baby diaper changing station is not feasible or would result in a failure to comply with applicable building standards governing the right of access for persons with disabilities.
- 4) Authorizes the permitting entity or building inspector to grant the exemption from the requirements based on the specified feasibility and right of access determination.
- 5) Specifies the following for state and local agencies:
  - a) The requirement applies to a public building that is owned by a state or local agency, or the portion of a non-public building that is owned by a state or local agency that includes at least one public restroom.
  - b) The specified buildings subject to the requirement must provide the required changing stations on each floor level containing one or more restrooms that are accessible to the public.
  - c) Requires each station to include signage at or near the entrance to the station indicating the location of the baby diaper changing station. If there is a central directory identifying, for the benefit of the public, the location of offices, restrooms, and other facilities in the building, that central directory shall indicate the location of the baby diaper changing stations.
  - d) Requires each baby diaper changing station to be maintained, repaired, and replaced as necessary to ensure safety and ease of use and cleaned with the same frequency as the restroom in which it is located.

- 6) Specifies the following for facilities open to the public:
- a) The requirement applies to the following facilities if open to the public:
    - I. A theater or movie house.
    - II. Grocery store.
    - III. Health facility.
    - IV. Convention center.
    - V. Sports arena.
    - VI. Auditorium.
    - VII. Cultural complex.
    - VIII. Exhibition hall.
    - IX. Library.
    - X. Passenger terminal.
    - XI. Permanent amusement park structure.
    - XII. Restaurant with a seating capacity of at least 50 seats.
    - XIII. Shopping center of more than 25,000 square feet.
    - XIV. Tourist attraction.
    - XV. Retail store of more than 5,000 square feet.
  - b) The requirement does not apply to the following:
    - I. An industrial building or to a nightclub or bar that does not permit anyone who is under 18 years of age to enter the premises.
    - II. A restroom located in a health facility (HSC § 1250) if the restroom is intended for the use of one patient or resident at a time.
    - III. A restaurant with a seating capacity of at least 50 seats if there is a centrally located facility with a baby diaper changing station located within 300 feet of the entrance to the restaurant.
  - c) Provides that the requirement specific to facilities open to the public are not enforceable by a private right of action.
- 7) Specifies the following for permanent food facilities:

- a) If a permanent food facility that is required to install and maintain at least one baby diaper changing station under this bill under the requirements for facilities open to the public, the facility shall provide one or more clean baby diaper changing stations in good repair for consumers, guests, or invitees.
  - b) Notwithstanding existing law relating to general violations of the California Retail Food Code (HSC § 114395), the penalty for a food facility's first violation of the clean and good repair requirement is a warning. The penalty for each subsequent violation constitutes an infraction punishable by a fine of not more than \$250.
- 8) States the following legislative intent:
- a) The Legislature finds and declares that ensuring safe, sanitary, and convenient baby diaper changing stations are widely available throughout the state is a matter of statewide concern, and not a municipal affair. Therefore, Section 2 of this act is applicable to charter cities, charter counties, and charter cities and counties. The Legislature encourages the University of California to comply with Section 1 of this act.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the author. According to the author, “[this bill] will require buildings owned by a state or local agencies, as well as public venues such as restaurants, movie theaters and grocery stores, to provide at least one diaper-changing table available to both women and men. This requirement will apply to all new construction and any restroom renovations that exceed \$10,000. The effects of [this bill] will be two-fold. First, more buildings will have diaper-change tables available to the public. Second, these new diaper-change tables will be available for use by both women and men, ensuring that California’s public health polices adapt to support the evolving needs of all Californians and their families. [This bill] seeks to ensure that both moms and dads have a safe, sanitary place to change their baby.”

**Background.** While existing law establishes various requirements relating to restrooms, there are no state requirements for the provision of baby diaper changing accommodations. However, there are some technical standards in place for those facilities which choose to install them. This bill would impose a statewide standard for government buildings and specified facilities open to the public. It also imposes differing signage, access, and cleanliness requirements between the types of buildings covered under the bill.

*Building Standards.* CBSC is charged by the California Building Standards Law (HSC §§ 18901-18949.31) to administer the processes related to the adoption, approval, publication and implementation of California's building codes. The building codes serve as the basis for the design and construction of buildings in California.

Under this process, relevant state agencies propose amendments to model building codes, which the CBSC must then adopt, modify, or reject. For example, the Department of Housing and Community Development (HCD) is the relevant state agency for residential building codes. The Office of Statewide Health Planning and Development is responsible for hospitals and clinics,

and the Division of the State Architect is the relevant agency for schools and emergency service buildings.

Not all buildings fall under the jurisdiction of a relevant state agency. Most commercial, industrial, and manufacturing structures are considered “local buildings,” for which local governments may determine applicable building standards. With respect to green building standards, however, current law gives BSC the authority to adopt building standards for these local buildings. This bill would preempt conflicting local ordinances.

**Other Jurisdictions.** Under federal law, the BABIES Act (H.R.5147, Public Law No. 114-235 (10/07/2016)), requires restrooms in a public building controlled by the federal General Services Administration (GSA) to be equipped with baby changing facilities that are physically safe, sanitary, and appropriate. That law specifies that the GSA determines the standards for physically safe, sanitary, and appropriate.

On March 3, 2017, the San Francisco County Board of Supervisors passed ordinance no. 53-17, which requires: 1) installation of baby changing accommodation in all city-owned buildings available to the public; 2) expansion of existing diaper accommodations in women’s restrooms to men’s/unisex restrooms in all facilities open to the public (including private); 3) installation of diaper accommodations in all new public-serving establishments and public-serving establishments with substantially renovated toilet rooms; and 4) various signage requirements.

**Prior Related Legislation.** SB 1350 (Lara) of 2014, would have directed the CBSC, as part of the next triennial update of the California Building Standards Code adopted after January 1, 2015, to require that, if a baby changing station is installed in a new or newly renovated restroom in a place of public accommodation, the station be equally available regardless of gender.

*NOTE: This bill was vetoed by Governor Brown. In the veto message, Governor Brown indicated that the bill was unnecessary and could be adequately handled by the private sector.*

SB 1358 (Wolk and Lara) of 2014, was substantially similar to this bill. *NOTE: This bill was vetoed by Governor Brown. In the veto message, Governor Brown indicated that the bill was unnecessary and could be adequately handled by the private sector.*

AB 622 (Bonilla), Chapter 742, Statutes of 2015, required the installation by specified facilities of changing stations for use by adults with a disability.

#### **ARGUMENTS IN SUPPORT:**

The **Consumer Federation of California** writes in support, “Unfortunately, changing tables are not always present or available for families—even more so for fathers.... This bill [will ensure] that all parents have a safe, sanitary place to change their child.”

#### **ARGUMENTS IN OPPOSITION:**

None on file.

#### **IMPLEMENTATION ISSUES:**

1) The author may wish to clarify the following:



- a) “Safe, sanitary, convenient” and other similar terms used under this bill are not currently defined or cross-referenced. For example, the federal BABIES Act directed the responsible state agency to determine the standards.
- b) “Changing station” is not currently defined. For example, AB 622 (Bonilla), Chapter 742, Statutes of 2015, defined “adult changing station” as an adult changing table placed within an enclosed restroom facility or other similar private facility that is for use by persons with physical disabilities who need help with diapering.

**REGISTERED SUPPORT:**

Consumer Federation of California

**REGISTERED OPPOSITION:**

None on file.

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