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FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/09

SPONSOR Anderson LAST UPDATED _____ HB 168

SHORT TITLE Restroom Accessibility Act SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
Total		\$0.1 indeterminate	\$0.1 indeterminate	\$0. indeterminate	Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Developmental Disabilities Planning Council (DDPC)
 General Services Department (GSD)
 Department of Health (DOH)
 Attorney General's Office (AG)
 Governor's Commission on Disability
 Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

House Bill 168 enacts the restroom access act which defines medical conditions under which a retail establishment shall allow a customer to use the restroom. The bill provides that an employee of such an establishment be guilty of a misdemeanor for refusing to provide access pursuant to the act.

Eligible medical conditions include Crohn's disease, ulcerative colitis, irritable bowel syndrome or any other permanent or temporary medical condition that requires immediate access to a restroom.

FISCAL IMPLICATIONS

There will be an economic impact to DOH to establish disability identification and to DPS to monitor for compliance. There is no appropriation in the bill to assist with these efforts.

SIGNIFICANT ISSUES

Access is required only if:

- it is during regular business hours;
- the retailer does not have a public restroom;
- location of the employee restroom poses no health, safety or security risk;
- evidence of the eligible medical condition is provided; or
- at least three employees are physically present.

The retailer is not required to make any physical changes to the employee restroom. The bill provides limits for civil liability.

PERFORMANCE IMPLICATIONS

The American with Disabilities Act (ADA) requires that public restrooms be accessible to persons with disabilities. The bill will require retailers to provide restroom facilities without requiring those restrooms be accessible to persons with disabilities.

Certain state operations may qualify as “retail establishments” as defined in the bill. The AG recommended clarifying whether or not the civil liability provision is intended to provide a waiver of immunity under the State Tort Claims Act.

Some businesses justify “employee-only” use of restrooms because of insurance liability.

ADMINISTRATIVE IMPLICATIONS

DOH will be required to assist with determining medical eligibility and issuing ID cards.

TECHNICAL ISSUES

The bill does not address confidentiality issues in regards to the disclosure of medical information.

The AG suggests inserting the duty of care subsection (3) (C) on page 4, in Section 4 with the civil liability provisions.

OTHER SUBSTANTIVE ISSUES

Denial of immediate access to a bathroom can cause extreme pain and suffering, both physical and mental to persons afflicted with a wide range of medical conditions such as Crohn's disease, ulcerative colitis, an ostomy, urinary track infections, incontinence - common in 35% of women over 65 and men over 70 and various other conditions.

ALTERNATIVES

Delete the requirement for an identification card. Require only a letter from a health professional stating that immediate bathroom access is necessary. This would remove DOH’s involvement and help protect the customer’s privacy. Because this would be a new law, provide for a “warning letter” for a first time offense.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Retailers without public restrooms may continue to deny certain customers access to employee restrooms.

AHO/mc