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FISCAL IMPACT REPORT

SPONSOR HCPAC **ORIGINAL DATE** 2/21/19
LAST UPDATED 3/09/19 **HB** CS/205/aSCORC

SHORT TITLE Baby Changing Facilities in Restrooms **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Minimal	Indeterminate to Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
 Department of Health (DOH)
 General Services Department (GSD)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of SJC Amendments

The Senate Judiciary Committee Amendments to the Senate Corporations and Transportation Substitute for House Bill 205 expands the references to the entity responsible for drawings and submittal documents approval and issuance of a certificate of occupancy from CID to the “authority having jurisdiction,” and defines that term, consistent with RLD’s recommendations. The amendments also strike the subsection authorizing CID to assess an administrative penalty for violation of the section, because if plans are reviewed and rejected for noncompliance (or a certificate of occupancy not issued until the noncompliance is corrected), there should never be a situation in which a penalty would be imposed.

Synopsis of Bill

The House Consumer and Public Affairs Committee Substitute for House Bill 205 (CS/HB205) requires baby changing facilities be available in each restroom in a place of public accommodation. The bill identifies 12 types of facilities deemed to be public accommodations. No later than January 1, 2020, the Construction Industries Division (CID) of RLD must adopt

rules governing baby changing facilities for restrooms in these public accommodations. Every restroom must have baby changing facilities when a new restroom is constructed and those facilities can be provided in compliance with other local, state and federal laws regarding access for persons with disabilities and existing fire, health and safety standards. All drawings, specifications and other submittal documents for construction of a place of public accommodation shall incorporate the requirements of this section when submitted to the CID for plan review. No certificate of occupancy can be issued unless the submitted documents are in compliance with this requirement. RLD is authorized to assess an administrative penalty, not to exceed \$250 per day for violations of the bill or rules adopted. Those penalties are credited to RLD to offset the costs of administering this section.

FISCAL IMPLICATIONS

RLD notes CID (and local jurisdictions with authority) will require additional review of drawings and additional time during inspections to ensure compliance while on site. CID will incur cost in rule-making requirements and other administrative processes; however, no estimate of these costs was provided. Once rules are adopted and employees become familiar with SC/HB205's requirements, RLD believes any cost will be minimal.

SIGNIFICANT ISSUES

RLD points out that Subsection (B) (2) makes the need for a baby changing table in buildings of public accommodation permissive after compliance with the federal, state and local laws as to the Americans with Disabilities Act (“ADA”) and existing fire, health and safety standards. The issue that must be considered is the need for clearance for use of persons with disabilities as well as room in the restroom for the baby changing table or have at least one restroom serving both needs with signage in other restrooms in the building/structure directing persons to the compliant restroom. As this is for new construction, the configuration should address this requirement.

RLD also reports that in addition to CID, local jurisdictions that have full service building departments are authorized to conduct plan review approvals and inspections and issue certificates of occupancy. Additionally, RLD advises that realistically, if the plans are reviewed and rejected due to non-compliance, there should never be a penalty imposed, since in order to have the plans approved, contractors must comply with the requirements of this section.

Although Section 1(F) directs any administrative penalty for violation of this section be credited to RLD to offset the costs of administering the section's requirements, such a penalty well may be in the nature of a fine, and as such required to be credited to the current school fund under Art. XII, Sec. 4 of the New Mexico Constitution

NMAG points out that the definition of “public accommodation” in the bill is narrower than the definition found in the Human Rights Act. See Section 28-1-2 (H), NMSA 1978. This may result in confusion regarding the places or entities that are exempted from the scope of the bill.

OTHER SUBSTANTIVE ISSUES

NMAG notes the bill largely mirrors existing federal law requiring baby changing facilities in public buildings, but expands it to apply to private entities and businesses. See 40 U.S.C. § 3314.

TECHNICAL ISSUES

RLD recommends that Subsection D be amended to include:

1. Line 22 “section when submitted to the ~~division~~ appropriate authority having jurisdiction for plan review”. (This ensures the recognition that the division as well as local jurisdictions having a full service building department have the authority to review and approve plans.)
2. Line 23 “~~division~~ An authority having jurisdiction shall not ~~issue a certificate of occupancy~~ approve drawings and submittal documents for new construction..... No certificate of occupancy shall be issued for new construction of a place of public accommodation unless fully compliant with the provisions of this section.
3. Based on the inclusion of a new term, “authority having jurisdiction”, it is appropriate to include a definition in section G, suggested as follows: “authority having jurisdiction” means the state or a municipality, county or other political subdivision that has a full service building department employing a full-time certified building official and has permitting, inspection and enforcement authority over the general construction, electrical, and mechanical-plumbing trades within its jurisdiction.

MD /sb