

Date of Hearing: July 12, 2023

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
SB 760 (Newman) – As Amended May 18, 2023

SENATE VOTE: 33-6

SUBJECT: School facilities: all-gender restrooms

SUMMARY: Requires, on or before July 1, 2025, each school district, county office of education (COE), and charter school maintaining any combination of classes from kindergarten to grade 12, inclusive, to provide at least one all-gender restroom for pupil use. Specifically, **this bill:**

- 1) Requires, on or before July 1, 2025, each school district, COE, and charter school, including charter schools operating in a school district facility, maintaining any combination of classes from kindergarten to grade 12, inclusive, to comply with the following for each of its schoolsites:
 - a) Provide at least one all-gender restroom for pupil use that meets the following requirements:
 - i) Has signage identifying the bathroom facility as being open to all genders and in conformity with Title 24 of the California Code of Regulations (CCR);
 - ii) Is available for pupil use as unlocked, unobstructed, easily accessible by any pupil, and consistent with existing pupil access to sex-segregated restrooms;
 - iii) Is consistent with the requirement to stock the school's restrooms at all times with an adequate supply of menstrual products; and
 - iv) Is available during school hours and school functions when pupils are present.
 - b) Designate a staff member to serve as a point of contact for implementation of these requirements; and
 - c) Post a notice regarding the requirements in a prominent and conspicuous location outside at least one all-gender restroom, including contact information for the person designated as a point of contact.
- 2) Authorizes a school district, COE, or charter school to use an existing restroom to satisfy the requirements of this subdivision if it otherwise complies with the requirements in (1).
- 3) Requires these requirements to be subject to compliance with the sex discrimination provisions included in the annual Coordinated Compliance Review Manual provided to school districts by the Superintendent of Public Instruction (SPI).

- 4) Requires the California Department of Education (CDE) to post on its website guidance for implementation of these requirements, including, but not limited to, examples of signage and best practices.
- 5) Requires that this requirement not supplant existing law related to pupil participation in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records.
- 6) Authorizes a school to temporarily close a restroom as necessary for pupil safety or as necessary to repair the facility.

EXISTING LAW:

- 1) Prohibits discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid. (Education Code (EC) 220)
- 2) States that it is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the pupil enrolled in these classes and courses. (EC 221.5 (a))
- 3) Requires every public and private school maintaining any combination of classes from kindergarten to grade 12, inclusive, to comply with all of the following:
 - a) Requires every restroom to at all times be maintained and cleaned regularly, fully operational and stocked at all times with toilet paper, soap, and paper towels or functional hand dryers; and
 - b) Requires the school to keep all restrooms open during school hours when pupils are not in classes, and shall keep a sufficient number of restrooms open during school hours when pupils are in classes. (EC 35292.5(a))
- 4) Authorizes a school to temporarily close a restroom as necessary for pupil safety or as necessary to repair the facility. (EC 35292.5(b))
- 5) Requires, on or before the start of the 2022–23 school year, a public school, including a school operated by a LEA, COE, or charter school, maintaining any combination of classes from grades 6 to 12, inclusive, to stock the school's restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women's restrooms and all-gender restrooms, and in at least one men's restroom. (EC 35292.6 (a))
- 6) Allows the CDE to conduct an annual compliance review. (EC 253)

- 7) Requires all single-user toilet facilities in any business establishment, place of public accommodation, or state or local government agency to be identified as all-gender toilet facilities by signage that complies with Title 24 of the CCR, and designated for use by no more than one occupant at a time or for family or assisted use. (Health and Safety Code (HSC) 118600(a))
- 8) Requires a combined circle and triangle symbol to be located at entrances to unisex toilet and bathing facilities. The combined circle and triangle symbol shall consist of a circle symbol $\frac{1}{4}$ inch (6.4 mm) thick and 12 inches (305 mm) in diameter with a $\frac{1}{4}$ inch (6.4 mm) thick equilateral triangle symbol superimposed on and geometrically inscribed within the 12-inch (305 mm) diameter of the circle symbol. (Title 24 California Code of Regulations (CCR) § 11B-703.7.2.6.3)
- 9) Requires the number of plumbing fixtures for schools to include:
 - a) Water closets (toilets): 1 for every 50 males, 1 for every 30 females;
 - b) Urinals: 1 for every 100 males; and
 - c) Lavatories (sinks): 1 for every 40 occupants (in male and female restrooms).
- 10) Requires for transitional kindergarten and kindergarten that restrooms are self-contained within the classroom or within the kindergarten complex. (Title 5 CCR § 14030)
- 11) Requires the number of plumbing fixtures for kindergarten (toilets to be within kindergarten complex):
 - a) Water closets (toilets): 1 toilet serves 1-20, 2 toilets serve 21-50, and over 50, add 1 toilet for every 50 people (in male and female restrooms); and
 - b) Lavatories (sinks): 1 serves 1-25, 2 serve 26-50; over 50, add 1 fixture for each additional 50 persons (in male and female restrooms). (Chapter 4, 2013 California Plumbing Code)

FISCAL EFFECT: According to the Senate Appropriations Committee, “The magnitude of the bill’s costs is unknown and would largely depend on how schools comply with the bill’s requirements. To the extent that schools would simply require signage indicating that an existing single-user restroom facility is available to any person, the costs would be minor. However, if there are schools that would need to add, remove, or alter existing restroom facilities or structures, the costs could be significant. School construction costs can range from \$500 to \$1000 per square feet so a small bathroom that averages 80 square feet can cost between \$40,000 and \$80,000. To the extent that the Commission on State Mandates determines the bill’s requirements to be a reimbursable state-mandated activity, there could be pressure to increase the K-12 Mandate Block Grant.”

COMMENTS:

Need for the bill. According to the author, “SB 760 is a measure that aims to create a safe and inclusive environment not only for non-binary students but to all students by requiring each

public school to establish at least one all-gender restroom. This issue originated in 2021 when a member of the Chino Valley Unified School District introduced a measure that would have banned non-binary and transgender students from using restrooms corresponding with their gender identity. During the midst of this proposal, California State Superintendent of Public Instruction Tony Thurmond warned that the Chino Valley Unified School District's proposed resolution to exclude non-binary students from sex-segregated restrooms would violate state law. Although the proposed measure failed, the Superintendent and I believed there was an opportunity to create an inclusive environment for all students. In response to Chino Valley Unified School District's proposed resolution, the Superintendent launched the Safe School Bathrooms Ad Hoc Committee. Over the past year, it has been an honor to work alongside the Ad Hoc Committee, primarily composed of students who want to create a safe and inclusive environment for everyone. The measure in front of us today represents the hard work of everyone involved to create a safe, inclusive environment for all students.”

Key provisions of the bill. Existing law requires businesses, places of public accommodation, or state or local government agencies (including LEAs), that offer a single-user toilet facility to be designated as an all-gender toilet facility. Existing law further authorizes that a student shall be permitted to use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records.

This bill would require, on or before July 1, 2025, each school district, COE, and charter school to provide at least one all-gender restroom for pupil use. The all-gender restroom would be required to have appropriate signage, be available for pupil use as unlocked, unobstructed, easily accessible by any pupil, and consistent with exiting pupil access to sex-segregated restrooms, stocked with an adequate supply of menstrual products, and is available during school hours and school functions when pupils are present. Under the bill, an LEA is authorized to use or convert an existing restroom as an all-gender toilet facility.

Supporters of the measure would like to give students more restroom options in order for students to feel safe so they can focus on learning. As it relates to bathroom use for all students, school leaders and facilities staff report a tension between providing student safety and appropriate supervision.

Federal directives. In May 2016, after the introduction of lawsuits related to the use of restrooms by various genders, several states attempted to create laws restricting transgender students' bathroom use, the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) under the Obama Administration issued a directive instructing public schools across the country to allow transgender students to use the bathroom that matches their gender identity. Jointly, ED and DOJ clarified that the civil rights of transgender school students were protected under Title IX, which prohibits sex discrimination. In January 2017, the Trump Administration's DOJ and ED rescinded the previous guidance on federal support for transgender students, indicating they would not pursue federal enforcement of Title IX violations. Under the Biden Administration, the DOE is proposing regulations to reinstate similar provisions that were previously removed.

Chino Valley Unified School District (USD) Board of Education. In November of 2021, the Chino Valley USD Board of Education proposed a measure to restrict the use of restrooms, locker rooms, physical education classes, intramural sports and interscholastic athletic programs to students based on their biological gender. Under the school board's proposal, schools in their

district would provide gender-neutral or single-use restrooms or changing areas as well as other alternatives in order to address any student's privacy concerns in using sex-segregated facilities. SPI Tony Thurmond issued a stern warning to Chino Valley USD over its proposed resolution that would have violated existing law requiring schools to allow students to use facilities and participate in school activities with the gender a student identifies with. The proposed measure was subsequently struck down by the governing board in a 3-2 vote.

Experiences of LGBTQ youth in schools. A growing body of research has linked disparities to non-binary students' experiences of violence, harassment, and exclusion in educational settings. LGBTQ youth often navigate more hostile school climates than their peers. According to the 2023 U.S. National Survey on the Mental Health of LGBTQ Young People conducted by the non-profit organization The Trevor Project, among those enrolled, LGBTQ young people reported that these negative experiences happened to them while in school, including being verbally harassed because people thought I was LGBTQ (53%), experienced unwanted sexual contact because people thought they were LGBTQ (20%), believed they were more harshly disciplined because teachers/staff thought they were LGBTQ (15%), left school because the mistreatment was so bad (12%), and were physically attacked because people thought they were LGBTQ (9%).

According to the 2021 National School Climate Survey conducted by the Gay, Lesbian, and Straight Education Network (GLSEN), 81.8% of LGBTQ students who participated in the survey reported feeling unsafe in school because of at least one of their actual or perceived personal characteristics. Over half of LGBTQ students (61.6%) reported feeling unsafe in school because of their mental health or emotional disability. According to the survey, non-binary students' experiences of violence, harassment, and exclusion in educational settings can lead to negative educational experiences, including higher rates of chronic absenteeism, being disciplined in school, and not planning to pursue education beyond high school.

Schoolsite supports can improve outcomes for LGBTQ+ students. Several supportive factors at school appear to improve academic outcomes and improve safety for LGBTQ+ students. Research shows that LGBTQ+ students with many supportive educators feel safer at school, skip fewer classes, earn higher grades, and have fewer school-related problems than those without supportive educators (Russell, 2010). Students in schools with Gay Straight Alliance (GSA) clubs report less harassment and assault, are more likely to report these incidents when they occur, and are less likely to miss school because of safety concerns.

Evaluations from New York City, Illinois, and Massachusetts have found that teacher training helped to create safer environments for LGBTQ+ students. The U.S. Department of Health and Human Services, as part of its anti-bullying campaign, recommends that, "When youth reveal same-sex attractions and relationships, this is an opportunity for health, medical, and school professionals to better inform and support sexual minority youth by linking them with community resources and helping to overcome the tensions of parents, families, and peers." Feelings of safety at school are stronger when students know where to get information and support about sexual orientation and gender identity.

Safe School Bathrooms Ad Hoc Committee. In 2021, the CDE established the Safe School Bathrooms Ad Hoc Committee in response to the growing concern that students are not safely able to access restrooms at schools, and formed with the goal of a formal recommendation to expand the availability of gender-inclusive bathrooms on California school campuses. The

initial Ad Hoc committee was co-chaired by then-Senator Connie Leyva, and comprised of the California students, parents, school staff, CDE staff, and other stakeholders including the American Civil Liberties Union, Equality California, Senator Newman and Assemblymember Ting. In 2022, the Ad Hoc Committee evolved to include only youth members and developed recommendations related to the process of expanding the availability of gender-inclusive bathrooms on California school campuses.

Bathroom facility resources provided by the CDE's School Facilities and Transportation Services Division (SFTSD). The SFTSD provides school facilities best practices and research guidance documents in order to assist with modernization, new construction, and school facility improvements that help optimize learning for K–12 students, including restroom facilities in K–12 school facility design. The SFTSD makes this work available to all LEAs as guidance on the design and implementation of all-access restrooms.

According to the SFTSD, “In 2016, Assembly Bill 1732 (Ting) Chapter 818, Statutes of 2016, added HSC Section 118600, requiring that all single-user [including schools] toilet facilities be identified as all-gender toilets. Despite the statutory requirement, schools struggle with providing a safe and inclusive experience, especially for transgender and non-binary students. Many schools have begun to move away from single-user toilets in favor of dedicating a segment or segments of their restrooms as multi-user all-gender toilet facilities. The designs of all-access restrooms have been trending in schools throughout the state, the country, and the world, yet there are no current California design standards for these facilities.”

Resources provided by the SFTSD include:

- ***Inclusive Restroom Design Guide.*** Offers an overview, graphics, summaries, and diagrams that aide in visualizing the implementation of inclusive restrooms in K–12 school facilities, as well as code implications, a case study, and a post-occupancy survey.
- ***Supporting the Health and Well-Being of Transgender Students.*** An article which includes research and statistics on the negative health effects, harassment, and discrimination transgender students experience when avoiding or using public restrooms. The article includes a list of resources for further analysis, terminology definitions, and resources for school nurses, staff, and families.
- ***Stalled: Gender-Neutral Public Bathrooms.*** An article which includes research, history, legislation, trends, and design recommendations for public gender-neutral bathrooms.
- ***Expanding the Scope of Universal Design: Implications for Gender Identity and Sexual Orientation.*** An article that identifies the need for faculty and staff to understand the intersection and interdependence among social identities and consider what steps they can take to apply Universal Design principles in ways that consider multiple aspects of identity in order to provide inclusive educational experiences for all. The article describes reimagining inclusive spaces beyond persons with disabilities, including gender-inclusive, multi-stall restrooms and/or all-gender single-stall restrooms.

School Facility Program (SFP). The construction and rehabilitation of public K-12 facilities are funded by a combination of state and local general obligation (GO) bonds, developer's fees and, local assessments such as Mello-Roos community facilities districts. State bond funds are allocated pursuant to the SFP and administered by the Office of Public School Construction

(OPSC) under the direction of the SAB, a ten member body comprised of the Department of Finance, the Director of the Department of General Services, the SPI, three Senators, three Assemblymembers, and a Governor’s appointee. Under the SFP, the New Construction program requires a 50% local match, unless the school district qualifies for financial hardship, which pays up to 100% of project costs. Modernization funds are awarded at 60% with a 40% match. Since the inception of the SFP in 1998, voters have approved \$54 billion in state GO bonds for K-12 schools.

The last bond passed by voters, Proposition 51 on the November 2016 statewide ballot, provided \$9 billion for K-12 and California Community Colleges facilities. While the full amount of the bond has not been sold, there is a total of \$3.3 billion in applications submitted without funding authority. Of that amount, \$1.94 billion are from applications for modernization funding.

While this bill specifies that a school may use an existing restroom to meet the requirements of this bill, there may be instances in which a school may need to construct a new restroom. *The Committee may wish to consider* the potential cost and time associated with the construction of a new restroom.

Proposed regulations. The Division of State Architect (DSA) is currently working on updates to the California Code of Regulations, Title 24, which would allow for local jurisdictions (including schools) to require all-gender “multi-user” restrooms, with accompanying access standards to support these types of restrooms. The regulations are currently being proposed and reviewed as part of the 2022 Intervening Code cycle. If approved and included in Title 24, the regulations would become effective July 1, 2024.

Recommended Committee Amendments. *Staff recommends that the bill be amended* as follows:

- Apply the requirement to have an all-gender restroom to those schoolsites that have more than one female and one male restroom designated exclusively for pupil use, excluding restrooms designated for transitional kindergarten and kindergarten pupils, prior to July 1, 2026. State that this shall not preclude a schoolsite with one or less female restroom and one or less male restroom, designated exclusively for pupil use, excluding restrooms designated for transitional kindergarten and kindergarten pupils, from identifying and making easily accessible a restroom for pupil use that satisfies the requirements of this subdivision.
- Require that a decision to use an existing restroom to satisfy the requirements of the bill must ensure that all pupils have restrooms that are in easily accessible locations.
- Authorize a school to temporarily close a restroom as necessary for a documented pupil safety concerns, unless there is an immediately threat to health and safety, or as necessary to repair the facility.
- Require, if a governing board of a school district, county board of education, or governing body of a charter school applies for state funding for a school modernization project submitted after July 1, 2026, the application to include an all-gender restroom designed exclusively for pupil use, excluding restrooms designated for transitional

kindergarten and kindergarten pupils, at each schoolsite that has not already established an all-gender restroom.

- At the request of the author, add uncodified findings and declarations.

Arguments in support. Superintendent of Public Instruction Thurmond writes, “As the SPI, I am pleased to sponsor Senate Bill 760 to ensure every K-12 public school in California has an all-gender restroom, providing equitable access for students to feel safe using the restroom while on campus. Currently, students do not feel safe at school for meeting their basic needs. According to a 2019 National School Climate Survey, 45% of LGTBQ+ and non-binary students avoid gender-segregated school bathrooms due to feeling unsafe and uncomfortable while using them. Students can suffer health and academic harm by not using the restroom during the school day. Schools should be a welcoming, safe place for all students – this includes access to bathrooms. This legislation is a critical step toward preparing California students to succeed by ensuring the necessary steps of having a safe foundation to rely on: having a safe and inclusive place to use the restroom.”

Arguments in opposition. The Small School Districts’ Association writes, “We appreciate and agree with the intent of your bill, and we assert that every student should feel safe, comfortable, and welcome in our schools. In fact, many of our schools already ensure these restrooms exist on their campuses. However, some small school districts in our state will face unique implementation challenges given the way the bill is currently drafted.

The fiscal impact of implementing this mandate statewide would be considerable. Many of our schools, especially those in less affluent and very rural areas, struggle with the cost of basic upkeep and maintenance. Many small and very small schools may only have two restrooms – one for boys and one for girls – on site. In those scenarios, this bill could be forcing these schools to undertake expensive renovations to construct all-gender restrooms, and could divert essential funds from other more pressing educational needs, such as improving classroom resources, hiring more teachers, or expanding student programs.”

Related legislation. AB 230 (Reyes) of the 2023-24 Session would expand the grade range in which a public school’s women’s and all-gender restrooms, and in at least one men’s restroom, must stock menstrual products to any combination of classes from grades 6 to 12 to grades 3 to 12, beginning the 2024-25 school year.

SB 857 (Laird) of the 2023-24 session would require the SPI by July 1, 2024, to convene an advisory task force of at least 15 members to identify the statewide needs of LGTBQ+ students and make recommendations to assist in implementing supportive policies and initiatives to address LGTBQ+ student education and well-being.

AB 2638 (Bloom), Chapter 793, Statutes of 2022, requires new construction or modernization projects submitted to the DSA by a school district or governing body of a charter school includes one or more water bottle filling stations.

AB 367 (C. Garcia), Chapter 664, Statutes of 2021, requires all public schools serving students in grades 6 to 12 to stock specified restrooms with an adequate supply of free menstrual products, commencing in the 2022-23 school year; and requires the California State University (CSU) and each community college district, and encourages the Regents of the University of

California (UC), independent institutions of higher education, and private postsecondary educational institutions, to stock an adequate supply of free menstrual products at no fewer than one designated and accessible central location on each campus.

AB 1732 (Ting), Chapter 818, Statutes of 2016, required, commencing on March 1, 2017, businesses, places of public accommodation, or state or local government agencies that offer a single-user toilet facility to be designated as an all-gender toilet facility, as specified, and authorizes an inspector, as specified to inspect for compliance.

AB 1266 (Ammiano), Chapter 85, Statutes 2013, requires a pupil be permitted to participate in sex-segregated school programs, activities, and facilities including bathrooms, athletic teams and competitions, consistent with his/her gender identity, regardless of the gender listed on the pupil's records.

SB 777 (Kuehl) Chapter 569, Statutes of 2007, established the California Student Civil Rights Act, and the policy of the State of California to afford all persons in public schools, regardless of disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other specified characteristics, equal rights and opportunities in the educational institutions of the state. Established a definition for "gender" to mean sex, and includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Alliance for Children's Rights
California Academy of Family Physicians
California Association of Student Councils
California Calls
California Federation of Teachers AFL-CIO
California Teachers Association
City of West Hollywood
Conference of California Bar Associations
Dap Health
Disability Rights California
Dolores Huerta Foundation
Ella Baker Center for Human Rights
Equality California
Genup
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Naral Pro-choice California
National Association of Social Workers, California Chapter
Oxnard Union High School District
Peace and Freedom Party of California
Pflag National
Public Counsel
Santa Clara County School Boards Association

State Superintendent of Public Instruction Tony Thurmond
The Source Lgbt+ Center
Transfamily Support Services
Transyouth Liberation

Opposition

Small School Districts' Association

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