

**INITIAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS
OF THE DIVISION OF THE STATE ARCHITECT (DSA-SS)
REGARDING THE 2022 CALIFORNIA PLUMBING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5
(DSA-SS-05/22)**

The Administrative Procedure Act (APA) requires that an Initial Statement of Reasons be available to the public upon request when rulemaking action is being undertaken. The following information required by the APA pertains to this rulemaking action:

STATEMENT OF SPECIFIC PURPOSE, PROBLEM, RATIONALE and BENEFITS

Government Code Section 11346.2(b)(1) requires a statement of specific purpose of each adoption, amendment, or repeal and the problem the agency intends to address and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute.

General Statement Regarding All-Gender Multi-User Restrooms: The Division of the State Architect pursuant to their authority to develop building standards applicable to public schools and community colleges (DSA-SS), in coordination with the California Building Standards Commission (BSC) propose to add new exceptions to the California Plumbing Code requirement that separate facilities be provided for each sex. The purpose of the proposed regulations is to reduce gender inequities and to provide for the ability to increase inclusiveness within the California Plumbing Code. Current model code requires that separate facilities must be provided with limited exceptions related to single user unisex restrooms. By providing the proposed exceptions it will allow school districts, community colleges, the State and local jurisdictions the ability to accept or require restrooms designed to be more inclusive of all genders. The benefit will be regulations which are more equitable across all genders. The proposed changes include the following:

1. New definition for *Privacy Compartment*
2. Clarification of plumbing fixture calculation for facilities designed for use by all genders
3. Exception that separate facilities are not required where toilet rooms have fixtures designed for use by all genders
4. Provisions requiring privacy for facilities designed for use by all genders
5. Allowance to substitute an equal number of water closets for urinals

Background: The 2022 California Plumbing Code is based on the 2021 Uniform Plumbing Code (UPC), developed by the International Association of Plumbing and Mechanical Officials (IAPMO). The 2021 UPC requires separate facilities for both sexes. In early 2022 the California Building Standards Commission (BSC) was contacted by members of the Government Operations Agency's California Leads as an Employer LGBTQIA+ Subcommittee (including representatives from the California Department of Social Services, Department of Corrections and Rehabilitation, Department of Aging, and the Public Employees Retirement Board) with a request to consider proposing an all-gender restroom exception in the 2022 California Plumbing Code (CPC). In April 2022 representatives from BSC and the Division of the State Architect (DSA) participated in the

American Institute of Architects Central Valley’s “We All Gotta Go – A Restroom for All” webinar, learning valuable information in the process. In May of 2022 DSA collaborated with California Department of Education in a public ad-hoc committee meeting and presentation, “CDE’s Safe School Bathrooms Ad Hoc Committee meeting”. Throughout 2022 BSC and DSA have closely monitored IAPMO’s development of an all-gender multi-user exception in the 2024 UPC, which is expected to be published in Spring 2023. In July of 2022 BSC and DSA hosted an All-Gender Plumbing Code precycle workshop, considering different strategies and receiving valuable feedback from affected stakeholders both during the meeting and afterwards via a precycle request for public comments in September 2022. While BSC and DSA received support letters from various public and private entities, it also received many letters that oppose requiring that all newly constructed public restrooms be designed to serve all genders. It is important to note that this proposal does not mandate that all new public restrooms be designed and constructed to serve all genders. Rather, it is an alternative that provides state buildings, state colleges and universities, community colleges and public schools with the option to do so should they choose to allow it within their respective jurisdictions or facilities. BSC and DSA have revised their co-adopted proposals, which “early adopt” the all-gender provisions that will likely be published in the 2024 UPC and further amending them based on stakeholder feedback.

Legislation: On September 29, 2022, Governor Newsom signed Senate Bill 1194 into law (Chapter 839, Statutes of 2022). The bill authorizes city and county building departments to require, by ordinance or resolution, that public restrooms constructed within its jurisdiction be designed to serve all genders instead of complying with the plumbing standards set forth in the California Building Standards Code. This authority sunsets on the date that standards that address all gender multiuser facilities take effect in the California Building Standards Code.

Plumbing, Electrical, Mechanical, and Energy (PEME) Code Advisory Committee: On March 15-16, 2023, DSA’s proposed amendments to the 2022 Part 5 CPC were heard by the PEME Code Advisory Committee (CAC), who recommended “Approve” on most of the items. The committee recommended “Further Study” on DSA’s proposed definition of “Privacy Compartment,” citing vagueness in its prohibition of gaps around doors and that it is inappropriate to place technical requirements within a definition. BSC, in coordination with DSA, further studied the definition and have removed the technical requirements, instead placing them within the all-gender multi-user restroom exception in Section 422.2 Exception 4. BSC and DSA have made additional revisions to the code language to clarify the issue of clearance at the bottom of the door and have included new language recently approved by IAPMO for inclusion in the 2024 UPC.

ITEM 1

Chapter 2, DEFINITIONS, Section 218.0, Definition of *Privacy Compartment*

DSA is co-adopting this new definition with BSC as the term is used in each agency’s proposal for an exception to Separate Facilities in Section 422.2. During the precycle phase BSC solicited feedback from various stakeholders and received a comment from the California Building Officials (CALBO) State Code Committee requesting a definition for the term “privacy compartment” that was included in the proposed code language. The

definition seeks to clarify the requirements for privacy within each compartment, specifying there be no gaps between the floor, partitions, and ceiling.

CAC Recommendation (if applicable):

Further Study

Agency Response:

Accept. The PEME committee expressed concern with the ambiguity of the element of this definition that specifies “no gaps” may exist around privacy compartment doors, pointing out that the industry tolerance for a slight gap at the bottom of the door for ventilation purposes may be perceived as a conflict. The committee also indicated it is not advised to include technical requirements within a definition. As such, BSC and DSA have removed language containing the technical requirements of the privacy compartment construction/installation and relocated them with further modification to Section 422.2 Exception 4.

ITEM 2

Chapter 4, PLUMBING FIXTURES AND FIXTURE FITTINGS, Sections 422.1 Fixture Count, 422.1.1 Fixture Calculations, 422.1.2 Family or Assisted-Use Toilet and Bathing Facilities.

This amendment is currently being proposed by IAPMO for inclusion in the 2024 UPC (see 2024 UPC Report on Comments Item #94, as published in August 2022). DSA is proposing additional amendments that delete the term “all-gender fixtures”. During the July 19, 2022 California Plumbing Code All-Gender Workshop facilitated by BSC and DSA, stakeholders expressed confusion with the term “all-gender fixtures,” asking the IAPMO representative if this referred to all-gender facilities or the plumbing fixtures within. The IAPMO representative clarified that fixtures are determined by CPC Table 422.1 first (e.g. total number of toilets and urinals), then the multi-user restroom exception may be used to design a facility for use by all genders, not that there are specific “all-gender fixtures.” This DSA amendment seeks to early adopt IAPMO’s proposal clarifying use of Table 422.1 to calculate the minimum number of plumbing fixtures for bathrooms designed for use by all genders, and is further amended to remove the term “all-gender fixtures” and replace it with “multi-user all-gender facilities” and other language that removes the misplaced pronoun “those fixtures” and replaces it with the phrase “the total number of fixtures collectively shall be used to determine the number of fixtures provided an occupancy”. Section 422.1 Family or Assisted-Use Toilet and Bathing Facilities and subsequent sections will be renumbered in codification of the CPC.

CAC Recommendation (if applicable):

Approve

Agency Response:

Accept

Section 422.2 Separate Facilities, Exception 4

This amendment is currently being proposed by IAPMO for inclusion in the 2024 UPC (see

2024 UPC Report on Comments Item #93, as published in August 2022). DSA is proposing additional amendments that delete the phrase “both sexes” and replaces it with “all genders” based on feedback received by stakeholders during the July 19, 2022 All-Gender Plumbing Code Workshop facilitated by BSC and DSA. During this workshop stakeholders indicated that referring to a person’s sex is inappropriate for purposes of identifying designated use of public restrooms, and that “all genders” is a more appropriate term (see joint public comment received from Translatin@ Coalition, Disability Rights California, and ACLU California Action dated August 1, 2022). This is also consistent with the proposed amendment above in Section 422.1.1. Additional amendments to Exception 4 clarify that urinals shall be located in a privacy compartment or separate private area only when installed, as newly proposed language in Section 422.1.1 allows them to be substituted with an equal number of water closets. During the July 19, 2022 workshop DSA indicated it had received comments from educational stakeholders requesting the option to substitute water closets for urinals, thereby increasing access to facilities by all genders.

CAC Recommendation (if applicable):

Approve

Agency Response:

Disagree. While further studying the definition of Privacy Compartment, BSC and DSA realized that the technical requirements should be relocated from the Privacy Compartment definition to Exception 4, which contains the allowance for an all-gender multi-user restroom and is a more appropriate place to include the technical requirements (e.g., requirements for walls, panel systems, doors, hinges, locks, etc.). Additionally, during the committee meeting BSC and DSA received public comments indicating IAPMO had recently approved additional provisions relative to all-gender multi-user restrooms in the forthcoming 2024 Uniform Plumbing Code. Specifically, 2024 UPC Section 422.6 Water Closet Compartment contains privacy provisions and incorporates new IAPMO reference standard IAPMO Z124.10. It was recommended that BSC and DSA consider these forthcoming provisions to address issues of privacy, as well as the committee’s Further Study recommendation reflecting ambiguity with the language requiring “no gaps” under the door. Upon review of the forthcoming 2024 UPC language, BSC and DSA have brought in elements of this model code language that address both issues to clarify the technical requirements for installation of a privacy compartment and the issue of gaps around the doors.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS

Government Code Section 11346.2(b)(3) requires an identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the regulation(s).

DSA’s all-gender multi-user restroom proposal in Item 2 is based on a similar proposal being developed by IAPMO for inclusion in the 2024 UPC (see [2024 UPC Report on Comments Items 93 and 94, as published in August 2022](#)) (codes.iapmo.org/docs/2024/UPC/2022%20UPC%20Report%20on%20Comments.pdf) . Additionally, [Senate Bill 1194 \(Chapter 839, Statutes of 2022\)](#)

(leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1194) authorizes city and county building departments to require that public restrooms constructed within its jurisdiction be designed to serve all genders instead of complying with the plumbing standards set forth in the California Building Standards Code. This authority sunsets on the date that standards that address all gender multiuser facilities take effect in the California Building Standards Code.

STATEMENT OF JUSTIFICATION FOR PRESCRIPTIVE STANDARDS

Government Code Section 11346.2(b)(1) requires a statement of the reasons why an agency believes any mandates for specific technologies or equipment, or prescriptive standards are required.

California Building Standards Law (Health and Safety Code Section 18901 et. seq.) requires the adoption of the UPC into the California Plumbing Code (CPC), which contains prescriptive building standards. However, this proposal does not mandate the use of specific technologies or equipment beyond the existing requirements already contained within the CPC. Item 2 of this proposal contains a proposed exception that if utilized for public schools, state buildings, state colleges or universities, would still require compliance with existing CPC provisions relative to installation of, water closets, privacy, and other elements within restrooms. Other provisions are proposed for, and in consistency with existing statutes and regulations with no intended change in regulatory effect.

CONSIDERATION OF REASONABLE ALTERNATIVES

Government Code Section 11346i2(b)(4)(A) requires a description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific action or procedures, the imposition of performance standards shall be considered as an alternate. It is not the intent of this paragraph to require the agency to artificially construct alternatives or describe unreasonable alternatives.

On July 19, 2022, BSC and DSA considered various alternatives for an all-gender multi-user restroom exception during its All-Gender Plumbing Code Workshop, including the following:

1. Wait to adopt the all-gender provisions in the 2024 UPC during the 2024 Triennial Code Adoption Cycle
2. Early adopt IAPMO's 2024 UPC All-Gender proposal during the 2022 Intervening Code Adoption Cycle
3. Amend Chapter 29 of the 2022 California Building Code (Part 2 of Title 24) during the 2022 Intervening Code Cycle (not currently adopted by California)
4. Copy elements of International Building Code Section 2902 into the CPC during the 2022 Intervening Code Cycle (not currently adopted by California)
5. Add a pointer to SB 1194 (Chapter 839, Statutes of 2022)

Based on feedback received during the workshop it was determined that early adopting and further amending IAPMO's 2024 UPC All-Gender proposal (Option #2 above) was the most appropriate and least burdensome path forward as California already adopts the UPC pursuant to State Housing Law and Building Standards Law (see Health and Safety Code Sections 17922, 18916, 18928, and 18928.1). However, waiting to adopt the 2024 UPC (Option #1) was ruled out because those standards would not become effective until

January 1, 2026, and stakeholders indicated that the exception for all-gender restrooms is needed much sooner. Alternatives to consider language in Chapter 29 of the CBC/IBC (Options 3 and 4) were rejected because California historically has not adopted this chapter and doing so would have required plumbing standards in multiple Parts of Title 24 which would likely create confusion for the code user. Adding a pointer to recently enacted SB 1194 was ruled out because while it provides the exception to design all-gender restrooms to city and county building departments, it does not address the occupancies under BSC's authority (state buildings, state colleges and universities) or to DSA's Authority (Public Schools and Community Colleges, state-owned essential services buildings). BSC has received multiple comments in support of early adopting and further amending IAPMO's 2024 UPC All-Gender proposal, including from the City of Santa Monica, the City of Foster City, the University of California, the Los Angeles Department of Water and Power and the California State Pipe Trades Council.

REASONABLE ALTERNATIVES THE AGENCY HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

Government Code Section 11346.2(b)(4)(B) requires a description of any reasonable alternatives that have been identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business.

No alternatives were identified to lessen any adverse impact on small businesses. In addition to code changes that ensure clarity and consistency with existing law and regulation and with no intended change in regulatory effect, this proposal contains an exception for all-gender multi-user restrooms that is not mandatory. Rather, it is an alternative available to public schools, community colleges, state buildings, state colleges and universities should they wish to design restrooms for use by all genders.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS

Government Code Section 11346.2(b)(5)(A) requires the facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

BSC and DSA have determined that this regulatory action would not result in a significant adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states. In addition to code changes that ensure clarity and consistency with existing statutes and regulations, Item 2 of this proposal contains an exception to the CPC Separate Facilities requirements that allows local jurisdictions and building owners the option of designing newly constructed restrooms for use by all genders. Because this is an alternative and not a mandatory requirement in the CPC and under DSA and BSC authorities is only applicable to public schools, community colleges, state buildings, state colleges and universities, DSA anticipates no significant economic impact to schools and community colleges. BSC and DSA have vetted the proposal during the precycle phase of the 2022 Intervening Code Cycle. In early 2022 BSC was contacted by members of the Government Operations Agency's California Leads as an Employer LGBTQIA+ Subcommittee (including representatives from the California Department of Social Services, Department of Corrections and Rehabilitation, Department of Aging, and the Public Employees Retirement Board) with a request to consider proposing an all-gender restroom exception

in the 2022 CPC. In April 2022 representatives from BSC and DSA participated in the American Institute of Architects Central Valley’s “We All Gotta Go – A Restroom for All” webinar, learning valuable information in the process. In May of 2022 DSA collaborated with California Department of Education in a public ad-hoc committee meeting and presentation, “CDE’s Safe School Bathrooms Ad Hoc Committee meeting”. Throughout 2022 BSC and DSA have been closely monitoring IAPMO’s development of an all-gender multi-user exception in the 2024 UPC, which is expected to be published in Spring 2023. In July of 2022 BSC and DSA hosted an All-Gender Plumbing Code workshop attended by over 150 stakeholders and subject matter experts, considering different strategies, and receiving valuable feedback during the meeting and afterwards via a precycle request for public comments in September 2022. While BSC received support letters from various public and private entities, it also received many letters that oppose requiring that all newly constructed public restrooms be designed to serve all genders. It is important to note that this proposal does not mandate that all new public restrooms be designed and constructed to serve all genders. Rather, it is an alternative that provides public schools, community colleges, state buildings, state colleges and universities with the option to do so should they choose to allow it within their respective jurisdictions. BSC and DSA have revised their co-adopted proposals, which “early adopt” the all-gender provisions that will likely be published in the 2024 UPC and further amending them based on stakeholder feedback.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

Government Code Sections 11346.3(b)(1) and 11346.5(a)(10)

BSC has assessed whether and to what extent this proposal will affect the following:

A. The creation or elimination of jobs within the State of California.

BSC’s and DSA’s all-gender multi-user restroom exception—applicable to state buildings, state colleges and universities, community colleges and public schools—could create more jobs in the design and construction of restrooms.

B. The creation of new businesses or the elimination of existing businesses within the State of California.

BSC’s and DSA’s all-gender multi-user restroom exception—applicable to state buildings, state colleges and universities, community colleges and public schools—could create new business for architects and contractors that design and construct public restrooms.

C. The expansion of businesses currently doing business within the State of California.

BSC’s and DSA’s all-gender multi-user restroom exception—applicable to state buildings, state colleges and universities, community colleges and public schools—could expand existing business for architects and contractors that design and construct public restrooms.

D. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment.

By providing the proposed exceptions it will allow state buildings, state colleges and universities, community colleges and public schools the ability to accept or

require restrooms designed to be more inclusive of all genders. The benefit will be regulations which are more equitable across all genders.

ESTIMATED COST OF COMPLIANCE, ESTIMATED POTENTIAL BENEFITS, AND RELATED ASSUMPTIONS USED FOR BUILDING STANDARDS

Government Code Section 11346.2(b)(5)(B)(i) states if a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.

The all-gender multi-user restroom exception in Item 2 of the express terms is not mandatory. However, if utilized by a state building, state college, university, public school, school district or community college, it could result in additional costs to design restrooms for use by all genders, including costs for additional privacy features for urinal and water closet privacy compartments (e.g., partitions, mechanical ventilation, lighting, fire strobe lighting, etc.). For estimated costs of these items, see the Economic and Fiscal Impact Statement (STD. 399) form and Attachment A – Cost Analysis. By providing the proposed exceptions it will allow state buildings, state colleges and universities, public schools, school districts or community colleges, the ability to accept or require restrooms designed to be more inclusive of all genders. The benefit will be regulations which are more equitable across all genders, the health and welfare of California residents, and worker safety. These estimated costs of compliance and potential benefits are assumed if the all-gender multi-user restrooms exception is utilized by a public school, community college state building, state college or university.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

Government Code Section 11346.2(b)(6) requires a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal to describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from these federal regulations upon a finding of one or more of the following justifications: (A) The differing state regulations are authorized by law and/or (B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

The proposed regulations do not duplicate or conflict with federal regulations.