



# HOUSE BILL 2: Public Facilities Privacy & Security Act.

2016-2017 General Assembly

<b>Committee:</b>	Senate Judiciary II	<b>Date:</b>	March 23, 2016
<b>Introduced by:</b>	Reps. Bishop, Stam, Howard, Steinburg	<b>Prepared by:</b>	Kara McCraw
<b>Analysis of:</b>	Second Edition		Committee Co-Counsel

**SUMMARY:** *House Bill 2 would:*

- 1. Require single sex multiple occupancy bathrooms and changing facilities in public schools and public agencies.*
- 2. Supersede and preempt all local ordinances, regulations, or resolutions imposing any requirements on employers pertaining to compensation of employees, with certain exceptions.*
- 3. Prohibit cities and counties from requiring private contractors to abide by regulations or controls on employment practices or mandate or prohibit provision of goods, services, or accommodations to any member of the public, except as required by State law.*
- 4. Supersede and preempt any local ordinance, regulation, or resolution that regulates or imposes any requirements on employers pertaining to regulation of discriminatory practices in employment.*
- 5. Create a State law pertaining to discrimination in public accommodations. Supersede and preempt any local ordinance, regulation, or resolution that regulates or imposes any requirements pertaining to regulation of discriminatory practices in a place of public accommodation.*

**BILL ANALYSIS:** House Bill 2 would make the following changes:

## **PART I: SINGLE SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING FACILITIES**

**Sections 1.1, 1.2, and 1.3:** Require local boards of education and public agencies to designate and require use of single sex multiple occupancy bathroom and changing facilities based on a person's biological sex, as stated on that person's birth certificate.

- Local boards of education and public agencies would be permitted to provide accommodations upon request due to special circumstances, but such accommodations could not include use of a single sex multiple occupancy bathroom or changing facility designated for the opposite biological sex.
- Exceptions to the requirements include the following: custodial use, maintenance or inspection, medical assistance, assistance in facility, and use of a facility temporarily designated for use by that biological sex.

## **PART 2: STATEWIDE CONSISTENCY IN LAWS RELATED TO EMPLOYMENT AND CONTRACTING**

**Section 2.1:** As part of the State Wage and Hour Act, would supersede and preempt ordinances, regulations, resolutions, or policies adopted or imposed by any unit of local government or other political subdivision regulating or imposing any requirements on employers pertaining to compensation



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of employees. Local governments would not be prohibited from regulating or imposing employee compensation requirements in the following areas:

- Employees of the local government.
- Economic development incentives awarded under Chapter 143B.
- Economic development incentives awarded under the Local Development Act of 1925.
- Federal community development block grants.
- Community development programs and activities established by cities and counties under G.S. 153A-376 or G.S. 160A-456.

**Section 2.2 and 2.3:** Current law authorizes counties and cities to contract for any public purpose, but prohibits contract provisions that create restrictions the county could not impose on all employers in the county.

Section 2.2 and 2.3 would instead prohibit counties and cities from requiring private contractors to abide by the following, except as otherwise required or allowed by State law:

- Regulations or controls on the contractor's employment practices.
- Mandates or prohibitions on the provision of goods, services, or accommodations to any member of the public.

## **PART III: PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS**

**Section 3.1:** Current state law declares the public policy of the State to protect and safeguard the right and opportunities of all persons to employment without discrimination on the basis of race, religion, color, national origin, age, sex, or handicap by employers of 15 or more.

Sec. 3.1 would clarify the protected class of sex as "biological sex".

Sec. 3.1 would declare the regulation of discriminatory practices in employment an issue of general statewide concern, and supersede and preempt ordinances, regulations, resolutions, or policies adopted or imposed by any unit of local government or other political subdivision regulating or imposing any requirements on employers relating to regulation of discriminatory practices in employment, except regulations related to that body's own personnel that do not otherwise conflict with State law.

**Section 3.2:** Would state that neither statutory nor common law private rights of action are created by the Equal Employment Practices Article, and no person may bring a civil action based on the public policy expressed in that Article.

**Section 3.3:** Would establish a new Article, "Equal Access to Public Accommodations," declaring the public policy of the State to protect and safeguard the right and opportunities of all individuals to enjoy fully and equally places of public accommodation without discrimination on the basis of race, religion, color, national origin, or biological sex.

An exception would allow the provision of multiple or single occupancy bathrooms or changing rooms based on biological sex.

Sec. 3.3 would also declare the regulation of discriminatory practices in a place of public accommodation an issue of general statewide concern, and supersede and preempt ordinances, regulations, resolutions, or policies adopted or imposed by any unit of local government or other political subdivision regulating or imposing any requirements on employers relating to regulation of discriminatory practices in a place of public accommodation.

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Sec. 3.3 would authorize the Human Relations Commission in the Department of Administration to receive, investigate, and conciliate complaints of discrimination in public accommodations and use best efforts to affect amicable resolutions.

Sec. 3.3 would also state that neither statutory nor common law private rights of action are created by the Equal Access to Public Accommodations Article, and no person may bring a civil action based on the public policy expressed in that Article.

**Section 4** would provide for severability of each provision of the act.

**EFFECTIVE DATE:** House Bill 2 would become effective when it becomes law, and would apply to any action taken on or after that date, to any ordinance, resolution, regulation, or policy adopted or amended on or after that date, and to any contract entered on or after that date. Sections 2.1, 2.2, 2.3, 3.1, 3.2, and 3.3 of the act would supersede and preempt any ordinance or resolution adopted prior to the effective date of the act that purports to regulate a subject matter preempted by this act or that violates or is not consistent with the act, and such ordinances, resolutions, regulations, or policies would be null and void as of the effective date.