

Below is an objective bill summary that details the intent of HB2. The Chamber will discuss this matter further at our upcoming Public Policy Committee meeting on Tuesday, April 12th, 8:15-9:15 a.m., in the Board Room of the Greater Durham Chamber of Commerce. The Chamber is located at 300 W. Morgan St. 14th floor Durham, N.C. 27701.

Greater Durham Chamber of Commerce’s Statement on House Bill 2:

“The Chamber’s position on LGBT issues has remained consistent since it first opposed Amendment One in 2012,” said Bill Brian, immediate past Chairman of the Chamber Board and present Chairman of the Chamber’s Public Policy Committee. “The Chamber always has been supportive of the LGBT community and civil rights in general, and believes that discrimination is bad for business. Further, discrimination of any kind is inconsistent with Durham’s community ethos. With regard to this specific legislation, the Chamber’s Public Policy Committee will review the **HB2-Public Facilities Privacy & Security Act**, its April meeting.”

OBJECTIVE SUMMARY: of 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 provisions 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 discrimination 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

Section 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 or changing facilities based on a person’s biological sex, as stated on that persons 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 of employees. Local governments would not be prohibited from regulating or imposing employee compensation requirements in the following areas:**

- Employees of 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.

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.

**Source: North Carolina General Assembly*

So, What Does All of This Mean?

How did this happen?

It began when the government of Charlotte, North Carolina, wanted to ban businesses from discriminating against LGBTQ people, much in the same way businesses can't discriminate against people based on their race or religion today. So on February 22, the city council **passed** (<http://www.charlotteobserver.com/news/politics-government/article61786967.html>) an ordinance doing just that.

Prior to the ordinance's passage, Gov. Pat McCrory **warned** (<http://thinkprogress.org/lgbt/2016/02/22/3751987/north-carolina-charlotte-lgbt-mccrory/>) that the Charlotte city council's passage of such a law would most likely cause the state to overturn the measure. House Speaker Tim Moore **echoed** (<http://www.charlotteobserver.com/news/politics-government/article61932507.html>) the sentiment shortly after the ordinance passed.

Here's what the **law** (<http://www.ncleg.net/Sessions/2015E2/Bills/House/HTML/H2v0.html>) does:

1. The statute overturns and bans local laws that don't conform to the state's nondiscrimination laws for the workplace and public accommodations (hotels, restaurants, and other places that serve the public). Since the state doesn't ban discrimination based on sexual orientation or gender identity in the workplace or public accommodations, this effectively forces all cities and counties to keep it legal to discriminate against LGBTQ people in these settings.
2. It prohibits transgender people from using bathrooms or locker rooms in schools and government agencies based solely on their gender identity. Instead, they're forced to use bathrooms and locker rooms based on the gender noted on their **birth certificate** which **can be changed** (<http://www.transequality.org/documents/state/north-carolina>) in North Carolina through an arduous process after gender-affirming surgery but not before then. Public facilities can still build unisex single-person bathrooms to accommodate trans people, but it's not required.

In other words, the law is a mix of two types of anti-LGBTQ measures: laws that ban local nondiscrimination measures for LGBTQ people and an anti-transgender bathroom bill.

Charlotte tried to fill a hole in the state law that keeps anti-LGBTQ discrimination legal in public places

North Carolina, like **most states** (<http://www.vox.com/2015/4/22/8465027/lgbt-nondiscrimination-laws>), legally permits discrimination against people based on sexual orientation or gender identity in public accommodations. In comparison, discrimination based on race and religion, for example, in public accommodations is forbidden by federal and state laws.

Charlotte was essentially trying to fix this gap in civil rights laws. By expanding the city's existing civil rights protections, the city council hoped to make it clear that LGBTQ people should be able to go to a bar or hail a taxi without the fear of legally allowed discrimination.

Most North Carolinians support these legal protections: In a 2015 **survey** (http://publicreligion.org/research/2016/02/beyond-same-sex-marriage-attitudes-on-lgbt-nondiscrimination-and-religious-exemptions-from-the-2015-american-values-atlas/#.Vvac0f_mqM9) by the Public Religion Research Institute, 64 percent of North Carolina respondents said they favor laws that protect LGBTQ people from discrimination in jobs, housing, and public accommodations. That was a little below the national average of 71 percent, but still a strong majority in favor of such protections.

Some cities (<http://williamsinstitute.law.ucla.edu/wp-content/uploads/NorthCarolina.pdf>) in North Carolina already forbade workplace discrimination against LGBTQ people, but the state as a whole currently legally allows anti-LGBTQ discrimination in the workplace, housing, and public accommodations. (Again, federal and state laws forbid workplace, housing, and public accommodations discrimination on the basis of, for example, race.)

*(Local Communities noted in the aforementioned Report: In 2001, Raleigh, High Point, Chapel Hill, Carrboro, and Durham had non-discrimination policies covering municipal employees that included sexual orientation. Since 2001, at least four other cities—Bessemer City, Boone, Greensboro, and Winston Salem—added sexual orientation to their non-discrimination ordinances along with four counties—Durham, Guilford, Mecklenburg, and Orange. Asheville. Boone, Carrboro, Chapel Hill, and Orange County also prohibit gender identity discrimination in employment by local ordinance. *the Williams Institute, September 2009, North Carolina – Sexual Orientation and Gender Identity Law and Documentation of Discrimination)*

One big risk: It could spark a national firestorm. In 2015, when Indiana passed a religious freedom law that was **widely misinterpreted** (<http://www.vox.com/2015/3/31/8319493/indiana-rfra-lgbt>) as allowing anti-LGBTQ discrimination, businesses and celebrities threatened boycotts, drawing widespread media coverage. Eventually, the controversy forced the state legislature to clarify that the law is not meant to allow discrimination against LGBTQ people, but only after **reportedly hurting** (<http://www.advocate.com/religion/2016/1/26/indiana-took-60-million-hit-after-passing-antigay-law>) its tourism industry.

One big hurdle, which **reportedly killed** (<http://www.vox.com/2016/2/17/11032100/south-dakota-transgender-discrimination>) South Dakota's bathroom bill: Banning trans students from using the school bathroom that comports to their gender identity could violate federal law, particularly **Title IX** (<https://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq>). The Justice Department and Department of Education interpret the law not just to ban sex discrimination in federally funded schools, but also ban anti-trans discrimination. So by passing an anti-trans bathroom law, North Carolina could risk big federal funds for public schools.

Is North Carolina the first? No.

In Arkansas, for example, it's already illegal for municipalities to ban discrimination against LGBTQ people in the state.

The cause: In 2015, the legislature passed the "**Intrastate Commerce Improvement Act,**" (<http://www.arkleg.state.ar.us/assembly/2015/2015R/Bills/SB202.pdf>) which requires cities' and counties' nondiscrimination laws to match state laws. Since Arkansas doesn't include sexual orientation or gender identity in its civil rights laws, the act nullified local LGBTQ protections that existed at that point and banned future measures.

Arkansas legislators claimed the intent was to keep the state's nondiscrimination laws uniform, but the law clearly targeted places like **Fayetteville, Arkansas** (<http://www.arktimes.com/ArkansasBlog/archives/2014/12/09/fayetteville-ordinance-early->

[vote-opposes-repeal-of-gay-civil-rights-ordinance](#)) for passing ordinances that would have prohibited anti-LGBTQ discrimination.

*Source: www.vox.com

*Full Article: <http://www.vox.com/2016/2/23/11100552/charlotte-north-carolina-lgbtq-pat-mccrory>

For additional information on *HB2-Public Facilities and Security Act*, please contact John White, Vice President of Public Policy at jwhite@durhamchamber.org.

Additional Resource Links:

- Findings of the National Transgender Discrimination Survey - North Carolina
 - (http://www.endtransdiscrimination.org/PDFs/ntds_state_nc.pdf)
- Injustice at Every Turn, A Report of the National Transgender Discrimination Survey - Executive Summary
 - (http://endtransdiscrimination.org/PDFs/NTDS_Exec_Summary.pdf)

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