

A COMPARATIVE ANALYSIS OF THE FAILURE OF BATHROOM LEGISLATION  
AIMED AT THE TRANSGENDER COMMUNITY IN THREE STATES:  
INDIANA, NORTH CAROLINA, AND TEXAS

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## **DEDICATION**

I would like to thank everyone involved with this thesis. If it was not for your support, this would not have been possible. You know who you are, and you have my gratitude.

:)

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## **Abstract**

In recent political history, the ever-polarizing ideological nature of the United States is marked by the continued public involvement in certain key issues, which perpetuate across the country. One of these issues are regulatory measures or laws pertaining to the public access of restrooms in educational, governmental, or publicly-owned facilities, informally known as “bathroom bills.” These bills, between the dates of 2013-2018, have appeared in state legislatures across the United States; and their stories are notably marked by one thing: their abject failure.

Using sources from a variety of media outlets, this paper attempts to construct narratives for three states which have encountered such legislation: Indiana, North Carolina, and Texas. Using these narratives, this paper hopes to provide some insight into this controversial wave of legislation without taking any sides in the arguments which surround it. Doing this, while also looking at the state governmental operations and procedure provide insight as to how these bills both succeeded and failed in their attempts to create policy.

Ultimately, these narratives show that the downfall of these bills rests in their lack of support by the public at large, with notable influence by individuals and organizations with economic and public relation capabilities, but cannot show which reason was the death blow to these bills. While this paper was not able to ascertain which factor was the determinant cause, it does provide insight, framework, and context to this phenomenon, and how this wave may progress or not in the near future.

## **Introduction**

On August 15, 2017, with the thunderous sound of a gavel, the Texas Legislature's 85th Special Legislative Session came to an end in the middle of the night. After months of rancorous debates, political deadlock, and metaphorical sparring, the hopeful ambitions of many came to a sudden halt, as the legislature adjourned for another two years (unless the Governor calls another special session). But to some, not only within the State of Texas but within other areas of the country itself, the end of the session meant they were able to breathe a sigh of relief. During both the last regular and special sessions two controversial bills were brought up for debate<sup>1</sup>: Senate Bill 6 of the regular Legislative session, and Senate Bill 3 of the special session, otherwise known as "bathroom bills."<sup>2</sup>

A bathroom bill, in its opponent's opinion, aims to limit the usage of public facilities (mostly in schools) by those who identify themselves as transgender. The opponents of these bills believe they are a major infringement on the rights of transgender individuals and discriminate against such persons. While they have recently appeared in Texas, bathroom bills have arisen in legislatures across the United States. While many

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<sup>1</sup> Other bills were proposed but did not garner as much attention.

<sup>2</sup> Morgan Smith, Patrick Svitek. "Texas Legislature ends special session without passing property tax measure," *The Texas Tribune*, Published August 15, 2017.  
<https://www.texastribune.org/2017/08/15/texas-house-adjourns-sine-die/>.

bills have been filed however, only one has passed; and, even then, the state later repealed it.

In an ever-polarized United States, bathroom bills are interesting to observe, especially when regarding their effects on the political climates around them. Most of the time, the debates which involve them turn quite bitter or resentful, whether within government institutions or the public itself. Even more intriguing is how these bills have failed and the public reactions when they are even suggested for debate.

While many bills have been proposed, four have rather interesting stories around them, in particular the bills proposed in the legislatures of Indiana, North Carolina, and Texas. Only North Carolina managed to pass its bill. All three states had major criticism concerning these bills within the political parties from which they originated, public and private interests, and society at large, which all contributed to their demise.

While these states to some extent are not special regarding their respective bathroom bills, looking at the stories surrounding them provides valuable insight as to this recent wave of proposed controversial legislation and how legislatures have tackled them, especially in regard to the actions and motivations of various political actors.

This paper compares and contrasts the various narratives surrounding these states and their respective bills in hopes of gaining broader understanding of this recent political phenomenon and the complex relationships that have defined it. At times the nature of these narratives may seem contradictory, the reason is that the many competing factors which have influenced these bills. Like most things in this world, nothing is as clear cut as it seems; and this is especially so in politics. Because of this, it is almost impossible to truly tell the definitive reason as to why these bills failed. Instead of arguing for one

potential cause, this paper hopes to outline the various competing reasons and ultimately provide an understanding of the events and rationales at hand.

### **What is a Bathroom Bill?**

While there is no concrete definition of a “bathroom bill,” the purpose is always to regulate the usage of public and/or private facilities by dictating that individuals may only use them according to their “biological sex,” that is, sex assigned at birth. In some other cases, the legislation also attempts to prevent local governmental entities from declaring policies toward anti-discrimination of transgender individuals, such as in the case of Charlotte, North Carolina, which is discussed later. These bills use various means to enact the desired outcome and their text can vary significantly, although they use much of the same terminology.<sup>3</sup>

The State of Arizona proposed the first bathroom bill in 2013, and from 2013 to 2016, twenty-four states proposed equivalent legislation. In 2017, sixteen states debated related bills, and in 2013 to 2017; only North Carolina managed to pass a bathroom bill.

Bathroom bill texts can vary greatly although they all have the same effect and intent. There are three types of bathroom bills. The first type restricts access to sex-segregated facilities according to a person’s biological sex. These bills, while not explicitly stating the terms “transgender,” “transgenderism,” etc., discriminate against transgender persons on various levels in commercial, public, or private facilities.<sup>4</sup> An

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<sup>3</sup> Katy Steinmetz, “Everything You Need to Know About the Debate Over Transgender People and Bathrooms.” Time. Time Inc. Published July 28, 2015. <http://time.com/3974186/transgender-bathroom-debate/>.

<sup>4</sup> Ibid; In the case of Indiana, the bill in question criminalized the usage of facilities designated for the opposite biological sex. While this may be categorized into something different, the regulatory reach falls under type one bills.

example of such of a bill would be Senate Bill 6 of the 85th Texas Legislative Session (Regular).<sup>5</sup>

This bill, while explicitly naming educational facilities, does not stop there, and proceeds to name other governmental entities. This is the major difference between the first type of bill and the third type. House Bill 2 of the State of North Carolina falls within this first category, but it is not quite as clear-cut.

The second type of bathroom bill blocks municipal and county anti-discrimination laws under the guise of state preemption. If an entity at these local levels were to enact a policy, regulation, etc. which prohibits discrimination against transgender persons when concerning the use of sex-segregated facilities, the entity will be subject to penalties by the state, whether it be fines, reprimands, etc. In some instances, the enforcement clause is vague, but in cases like the State of Texas, the clause dictates the involvement of the Office of the Attorney General in the administration of penalties against the party.

During the 85th Special Session, a bill from the House appeared in this format, House Bill 46. An example of this text, as from HB 46, is as follows:

Except in accordance with federal law as enacted by Congress and interpreted in controlling federal case law and state law as enacted by the legislature and interpreted in controlling case law of this state, a political subdivision, including a public school district, may not adopt or enforce an order, ordinance, policy, or other measure to protect a class of persons

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<sup>5</sup> Sen. Lois Kolkhorst, The Legislature of the State of Texas, *Senate Bill 6*, 85<sup>th</sup> Regular Legislative Session, Document: 85R 6551 LED-D. Last Action: March 16, 2017. <http://www.legis.state.tx.us/tlodocs/85R/billtext/pdf/SB00006E.pdf#navpanes=0> For a full version of this bill, please see Addendum 4.

from discrimination to the extent that the order, ordinance, policy, or other measure regulates access to multiple-occupancy restrooms, showers, or changing facilities.<sup>6</sup>

Ultimately, the second type of bill is an outlier in the general spectrum of bathroom bills. While this may be grounds for its exclusion in the scheme of things, these provisions are sometimes included in with the first and third type, making them relevant.

The third and final type of bathroom bill only regulates sex-segregated facilities at state-sanctioned educational establishments. These bills are a direct challenge to a now withdrawn Federal Guidance as issued in May of 2016 under the Obama Administration, now withdrawn under the Trump Administration.<sup>7</sup>

Typically, these bills limit the rights of charter and public schools in this area and require them to designate their facilities to be used by the defined “biological sex” alone. An example of such a bill would be Senate Bill 3 of the 85th Texas Special Session.<sup>8</sup> While these bills would probably fall under the reach of type one bills, it is their focus and reactionary intent which distinguishes them. The text for this bill is as follows:

Each multiple-occupancy restroom, shower, and changing facility of a political subdivision, including a public school district, or an open-

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<sup>6</sup> Ron Simmons, Jodie Laubenberg, and Drew Springer, et al. (Reps), The Legislature of the State of Texas, *House Bill 46*, 85<sup>th</sup> Special Session Special Session, Document: 85S1 364 JCG-D. Last Action: July 20<sup>th</sup>, 2017. <http://www.legis.state.tx.us/tlodocs/851/billtext/pdf/HB00046I.pdf#navpanes=0>.

<sup>7</sup> This paper does not discuss the legal reasoning behind these bills in relation to the federal constitutional Supremacy Clause; nor will other legal theories be discussed for that matter.

<sup>8</sup> Joellen Kralik, “‘Bathroom Bill’ Legislative Tracking.



enrollment charter school must be designated for and used only by persons of the same sex as stated on a person's:

(1) birth certificate; or

(2) driver's license, personal identification certificate, or license to carry a handgun, issued to the person by the Department of Public Safety of the State of Texas.”<sup>9</sup>

These three types of bills are not rigid in their structure. Many of them are quite fluid in their intentions, whether to preempt policies, outline definitions, or set forth crimes (as in the state of Indiana). Many of them tend to pick and choose what they want to do. All three examples arose in the Texas Legislature, but many state legislatures have proposed similar text in their respective bills.

These bills, generally speaking, are in reaction to the current trend of transgender policies in the United States and by extension the Supreme Court ruling in *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (June 26, 2015)<sup>10</sup>, which legalized gay marriage across the United States, although many occurred before that landmark case. While intentions may vary from a state attempting to limit government control to social conservatives attempting to assert ideology, none of them have managed to become law, save for North Carolina.<sup>11</sup>

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<sup>9</sup> Sen. Lois Kolkhorst, The Legislature of the State of Texas, *Senate Bill 3*, 85th Special Legislative Session, Document: 85S1 1077 JCG-D. Last Action: July 27, 2017. <http://www.legis.state.tx.us/tlodocs/851/billtext/pdf/SB00003E.pdf#navpanes=0>.

<sup>10</sup>"*Obergefell v. Hodges*." Oyez. Accessed February 2, 2018. <https://www.oyez.org/cases/2014/14-556>.

<sup>11</sup> Joellen Kralik, "'Bathroom Bill' Legislative Tracking.

## The State of Indiana

Indiana, when compared with other states with similar situations, has a special and interesting relationship with bathroom bills and L.G.B.T. (Lesbian, Gay, Bisexual, and Transgender) rights in general. These are not new subjects for the state to be involved in. In fact, Indiana has one of the most active histories, which is not just limited to transgender rights, but includes the gay rights and religious freedom debate at large.

Post *Obergefell*, the State of Indiana led the reactionary charge against both the Supreme Court decision and the general social progression toward a liberal viewpoint on the subject of gay and transgender rights.

In 2015, under the leadership of then Governor (now Vice President) Mike Pence, the state spearheaded the charge of religious protection bills, mainly a Religious Freedom Restoration Act (RFRA), which passed that same year.<sup>12</sup> This bill's main purpose attempted to allow people to refuse commercial service on the basis of religious belief. For example, in a theoretical (yet very possible) case of a baker refusing to make a wedding cake for a gay couple getting married. But to the surprise of those who championed the bill, the backlash was absolutely immense. Countless organizations, businesses, and political entities came out against the bill.

As David Von Drehle put it in *Time* magazine, "...more than two decades of painstaking work to attract jobs and tourists to the *Hoosier State* was being pounded into rubble, moving the state's largest newspaper – the *Indianapolis Star* – to bugle the retreat

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<sup>12</sup> It is of note that RFRA was ruled unconstitutional in *City of Boerne v. Flores* 521 U.S. 507 (1997).

in a front-page editorial. *Fix This Now*, the paper headlined....”<sup>13</sup> The bill essentially drove away interstate commerce under the guise of commercial discrimination, something as Von Drehle put, was a policy the state had invested decades into.

To say the criticism of the state government’s actions were monumental would be an understatement. The backlash to the Indiana Religious Freedom Restoration Act would prove to be only the opening cry of something more to come. It seems as if Indiana would not learn its lesson from this incident. In 2016, the same misstep occurred, but this time, with the bathroom bill.

The bill for the State of Indiana, which became well known, is Senate Bill 35 of the 2016 Legislative Session, the state’s bathroom bill. This bill would probably fit into the third category of bathroom bills, being those which only apply to school facilities, both public and private. The major difference though, is that Senate Bill 35 took it a step further, and criminalized usage of those facilities by people of the opposite “biological sex.” This extension of the normal parameters of a bathroom bill is what set this bill apart, as instead of implementing restrictions or dictating policy, it decided to push the envelope to what many considered as treading dangerous territory.<sup>14</sup>

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<sup>13</sup> David Von Drehle, Katy Steinmetz, Alex Altman, Elizabeth Dias, and Sam Frizell. “The Battle of Indiana,” *Time*, Vol. 185 no. 13, Published April 13, 2015, pg. 28-35, EBSCOhost, <http://eds.a.ebscohost.com.libproxy.txstate.edu/eds/detail/detail?vid=2&sid=030f3952-7cf1-4b07-9f1c-975f48d8ab1f%40sessionmgr4009&bdata=JnNpdGU9ZWZlWxpdmUmc2NvcGU9c2l0ZQ%3d%3d#AN=101859116&db=rgm>. Please see Addendum 1 for a copy of the editorial.

<sup>14</sup> Brian Slodysko, “Indiana bill targets transgender bathroom use,” *South Bend Tribune*, Associated Press, Published December 26, 2015, [https://www.southbendtribune.com/news/local/indiana-bill-targets-transgender-bathroom-use/article\\_500bb3da-ab29-11e5-9a30-fb9e6cb2f89a.html](https://www.southbendtribune.com/news/local/indiana-bill-targets-transgender-bathroom-use/article_500bb3da-ab29-11e5-9a30-fb9e6cb2f89a.html).

State Senator Jim Jones authored Senate Bill 35, accompanied by State Senators Michael Young, and James Smith, all Republican legislators. Republican State Senators James Buck, Brent Waltz, and Dennis Kruse coauthored the bill. The bill, in its short life, never passed the Indiana Senate, and thus never went to the Indiana House of Representatives.<sup>15</sup>

The Indiana Senate has 50 members, and its House of Representatives consists of 100 members. The Indiana General Assembly (both the Senate and the House) is only in session in the months of January through March or April, depending on the year, and is in session every year. During the 2016 legislative year, Republicans held a trifecta in the government, as they controlled the House, the Senate, and the Office of the Governor. In simpler terms, the state government was theirs to completely run with little to no opposition from the Democrats. That does not mean the Democrats did not put up a challenge; they did.<sup>16</sup>

It is quite evident that, if the Republican Party wanted to pass the bill, it most certainly could have. Republicans controlled all aspects of the political process, which would have enabled them to pass legislation at will. However, the bill did not even make it past committee. It did not even have a vote, it seems. In perspective, when looking at other bills proposed all across the United States, this bill did very poorly.

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<sup>15</sup> Sen. James Tones, Sen. R. Michael Young, and Sen. James Smith. Indiana General Assembly, *Senate Bill 35*, 2016 Indiana Legislative Session, Last Action: January 7, 2016. <https://iga.in.gov/legislative/2016/bills/senate/35#document-b2bc65f9>; For a copy of Senate Bill 35 in its entirety please see Addendum 2.

<sup>16</sup> Ballotpedia, "Indiana General Assembly," Ballotpedia.org, Ballotpedia, Accessed February 2, 2018. [https://ballotpedia.org/Indiana\\_General\\_Assembly](https://ballotpedia.org/Indiana_General_Assembly).

At the time, Indiana had a variety of bills proposed to address the issues at hand. Ranging from Senate Bill 35 to Senate Bill 170,<sup>17</sup> which would have added civil protection to sexual orientation and gender identity. Indiana faced what many other states faced as well: a storm of unprecedented proportions over a subject which many at the time had feared.<sup>18</sup>

In a state where many conservative elements wished to see this pass, it appeared as if the response from past events seemed to have some effect on this bill, at least on surface level analysis. Of course, it is impossible to know what actually happened behind the scenes or to know what people said behind closed doors. But at the time most bills proposed on the subject failed to pass. Whether it was that they were too extreme or whether many people feared the public reaction if it passed, both seem plausible causes. As stated by Brian Slodysko of the Associated Press in the *South Bend Tribune*, “The issue is particularly charged in Indiana, where tensions have run high since spring when lawmakers faced backlash for religious objections law that critics said would sanction discrimination against gay people on religious grounds. Lawmakers changed the law; but ever since gay rights supporters, including the state’s business establishment, have called on them to go further.”<sup>19</sup> It seems that the situation was still incredibly tense; and, in the

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<sup>17</sup> Dan Carden, “Variety of LGBT proposals set to be considered at the Statehouse,” *The Times (Munster, IN)*, EBSCOhost, Published January 11, 2016. [http://eds.a.ebscohost.com.libproxy.txstate.edu/eds/detail/detail?vid=0&sid=eacf04ce-45bc-48e4-8562-aaf09567162b%40sessionmgr4008&bdata=JnNpdGU9ZWZlWxpdmUmc2NvcGU9c2l0ZQ%3d%3d#AN=2W61403463138&db=n5h\\_](http://eds.a.ebscohost.com.libproxy.txstate.edu/eds/detail/detail?vid=0&sid=eacf04ce-45bc-48e4-8562-aaf09567162b%40sessionmgr4008&bdata=JnNpdGU9ZWZlWxpdmUmc2NvcGU9c2l0ZQ%3d%3d#AN=2W61403463138&db=n5h_)

<sup>18</sup> Sen. Ron Alting, Indiana General Assembly, *Senate Bill 170*, 2016 Indiana Legislative Session, Last Action: January 6, 2016. [https://iga.in.gov/legislative/2016/bills/senate/170\\_](https://iga.in.gov/legislative/2016/bills/senate/170_)

<sup>19</sup> Slodysko, “Indiana bill targets transgender bathroom use.”

wake of the religious protections bill, a bathroom bill would essentially add fuel to a fire many people were hoping would go out on its own.

### **The State of North Carolina**

If there is a specific example synonymous with the term “bathroom bill,” the story of the North Carolina’s iteration would fit the bill. The storm created by this state and House Bill 2 would metaphorically be the “perfect storm” of rare proportions. This is because out of all the examples of bathroom bills which have occurred around the United States, House Bill 2 of the State of North Carolina was the only one which passed, and the consequences of such an action proved quite significant and detrimental to both the reputation and the economy of the state.

House Bill 2 passed on March 23, 2016, and was signed by Governor Pat McCrory that same day. This bill would fit into the first type of bathroom bills, as it restricts the use of restroom facilities in both governmental and educational institutions, although it does include a preemption clause in response to local non-discrimination ordinances, which would also mean it fits under the second type.<sup>20</sup> The bill is more commonly referred as the “Public Facilities Privacy & Security Act,” and its main co-sponsors include Representative Dan Bishop, Rep. Paul Stam, Rep. Julia C. Howard, and Rep. Bob Steinburg.<sup>21</sup>

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<sup>20</sup> Tal Kopan, *North Carolina Legislature passes controversial transgender bill*, CNN Wire, *Opposing Viewpoints in Context*, EBSCOhost, March 24, 2016. <http://link.galegroup.com.libproxy.txstate.edu/apps/doc/A447258427/OVIC?u=txshracd2550&xid=244f631d>.

<sup>21</sup> Representative Dan Bishop, Rep. Paul Stam, Rep. Julia C. Howard, and Rep. Bob Steinburg North Carolina General Assembly, *House Bill 2 / S.L. 2016-3*, North Carolina General Assembly,

The text of the bill is essentially the same as other bills which have been proposed elsewhere. The bill defines “biological sex,” regulates facility usage in public/government facilities, provides a clause for some exceptions, and goes on to preempt local ordinances. Overall, the bill is fairly stereotypical when concerning such legislation.<sup>22</sup>

The North Carolina General Assembly convenes once every two years and runs throughout the two years, with the in-session time frames normally occurring in the spring. The North Carolina Senate consists of 50 members and the House of Representatives consists of 120 members. During the 2016 legislative year, the Republican Party controlled the state senate, the state house, and the governorship, like Indiana, holding a trifecta in the government.<sup>23</sup>

As with other states with similar ambitions, North Carolina Republicans were in a position to pass the bill with little to no immediate political pushback, assuming the necessary votes and political entities were on board for the passage of the bill. Considering the fact that unlike their counterparts in other states they actually managed to pass a bathroom bill, North Carolina proves to be a suitable case study for the effects of such legislation and its aftermath.

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Last Action: March 23, 2016.

<https://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?BillID=H2&Session=2015E2>

<sup>22</sup> Please see Addendum 3 for a copy of Senate Bill 35 in its entirety.

<sup>23</sup> Ballotpedia, “North Carolina Elections, 2014,” [Ballotpedia.org](https://ballotpedia.org/North_Carolina_elections_2014#State_House), Ballotpedia, Accessed March 5th, 2018. [https://ballotpedia.org/North\\_Carolina\\_elections\\_2014#State\\_House](https://ballotpedia.org/North_Carolina_elections_2014#State_House); “Governor of North Carolina,” Ballotpedia.org, Ballotpedia, Accessed March 5th, 2018. [https://ballotpedia.org/Governor\\_of\\_North\\_Carolina](https://ballotpedia.org/Governor_of_North_Carolina); “North Carolina State Senate,” Ballotpedia.org, Ballotpedia, Accessed March 5th, 2018. [https://ballotpedia.org/North\\_Carolina\\_State\\_Senate](https://ballotpedia.org/North_Carolina_State_Senate); “North Carolina House of Representatives,” Ballotpedia.org, Ballotpedia, Accessed March 5th, 2018. [https://ballotpedia.org/North\\_Carolina\\_House\\_of\\_Representatives](https://ballotpedia.org/North_Carolina_House_of_Representatives)

The saga of House Bill 2 begins about a month before the bill was signed into law, although precursor details extend years in advance. Charlotte's City Council held a public hearing about the implementation of LGBT protections and adding LGBT persons as a protected class against discrimination. This resulted in legal protections passing in a vote, drawing the ire of the state lawmakers who had previously and fervently come out against any such moves related to the issue.<sup>24</sup>

Lawmakers, in response to the developments, convened a special session of the General Assembly; and, in the course of one day, passed House Bill 2. Five days later, the American Civil Liberties Union (ACLU) sued the State of North Carolina, arguing that the law violated the Equal Protection Clause of the Fourteenth Amendment.

House Bill 2 officially lasted one year and seven days. During the timeframe between its passage and repeal, North Carolina faced severe criticism from a wide variety of sources. Less than one month after its implementation, PayPal canceled plans for the creation of an operations center in Charlotte. A few days later, Bruce Springsteen cancelled a concert in Greensboro in protest of the bill.<sup>25</sup>

In the wake of the aftermath, politicians within the state attempted to back-peddle somewhat while also attempting to hold their ground. In response to concerns over overt discrimination within the government, the Governor issued an executive order adding "...sexual orientation and gender identity to the protected classes among state employees, but leaves the bulk of HB2 intact."<sup>26</sup>

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<sup>24</sup> Greg Lacour, "HB2: How North Carolina Got Here (Updated)," *Charlotte Magazine*, Charlotte Magazine. March 30, 2017. <http://www.charlottemagazine.com/Charlotte-Magazine/April-2016/HB2-How-North-Carolina-Got-Here/>.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.



A week after, the 4th U.S. Circuit Court of Appeals ruled in favor of transgender individuals and their choice to use their preferred restroom (being they were able to use the restroom of their choice), effectively bringing the state law in contention with the federal judiciary and its ruling.

In the beginning of May 2016, the White House and the U.S. Justice Department issued a formal response to the bill that the federal government would protect transgender Americans. The Justice Department also formally sued the State of North Carolina, claiming that the bill violates “three specific federal civil rights laws, including Title IX.”

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Even as legal action was underway against the state, more national organizations continued to protest the bill. The National Basketball Association and National Collegiate Athletic Association moved games from North Carolina to other states. Deutsche Bank, following PayPal’s move, did the same and stopped an expansion to the state. In total, in the year that the bill was in place, the State of North Carolina is estimated to have lost \$3.7 billion in future lost economic potential by 2028, a report which takes into account the sum of expected profits from organizations and entities that left the state as well as lost business and tourist revenue.<sup>28</sup>

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<sup>27</sup> Ibid; Week in Politics: White House Responds To North Carolina Bathroom Bill." All Things Considered, May 13, 2016. Literature Resource Center (accessed March 5, 2018). <http://link.galegroup.com.libproxy.txstate.edu/apps/doc/A455341583/LitRC?u=txshracd2550&sid=LitRC&xid=af531459>.

<sup>28</sup> Bontemps, Tim. "After change to 'bathroom bill,' NBA to revisit North Carolina for All-Star Game." *Washington Post*, April 7, 2017. *Biography in Context* (accessed March 5, 2018). <http://link.galegroup.com.libproxy.txstate.edu/apps/doc/A488808216/BIC1?u=txshracd2550&xid=d0a2f422>.

While \$3.7 billion is a sizeable number, it is still relatively insignificant to the \$6 -7 trillion in estimated state GDP (gross domestic product) generated in the next 12 years (it would be less than 1% of the expected growth). Further, the relative non-economic worth of such a move could prove to be much bigger, such as perceived reputation and stigma.<sup>29</sup>

As 2016 rounded up, North Carolina saw another wave of elections. For a historical swing state, the bill proved to be troubling and somewhat consequential in the long run. Both the Senate and the House of Representatives kept their Republican majority, and the state voted Republican in the 2016 Presidential election. But the true cost of the bill ended up being paid by the Governor who supported it. The Republican Governor Pat McCrory was voted out of office in favor of Roy Cooper, the Democratic candidate. In a historic first in the state, a party shift was noted at both the state and federal level, and less than ten thousand voters decided it.<sup>30</sup>

As 2017 dawned, state lawmakers convened in session once again. After a year of turmoil and political thunderstorms, they repealed House Bill 2. The new law essentially removes restrictions on bathroom usage, but keeps in effect the part that the state alone can make laws concerning regulation of said facilities, while also creating implementing a suspension on local nondiscrimination ordinances until 2020. To many, this was not the preferred solution, but it a step in the right direction.<sup>31</sup>

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<sup>29</sup> The NCAA would later return to North Carolina in response to the bill's repeal.

<sup>30</sup> Berman, Mark, "North Carolina's bathroom bill cos the state at least \$3.7 billion, new analysis finds," *The Washington Post*, March 27<sup>th</sup>, 2017, Accessed March 5<sup>th</sup>, 2018. [https://www.washingtonpost.com/news/post-nation/wp/2017/03/27/north-carolinas-bathroom-bill-cost-the-state-at-least-3-7-billion-new-analysis-finds/?utm\\_term=.5f293d223483](https://www.washingtonpost.com/news/post-nation/wp/2017/03/27/north-carolinas-bathroom-bill-cost-the-state-at-least-3-7-billion-new-analysis-finds/?utm_term=.5f293d223483).

<sup>31</sup> Phillips, Amber, "Why North Carolina abruptly flip-flopped on its 'bathroom bill'." *Washington Post*, March 31, 2017. *Opposing Viewpoints in Context* (accessed March 5, 2018).

In later 2017, the state settled a lawsuit with the American Civil Liberties Union in which the Governor would propose a consent decree to allow transgender people to use public restrooms which align with their gender identity. Governor Cooper later signed an executive order enacting sweeping protections for government employees on many bases, including sexual orientation and gender identity.<sup>32</sup>

The Republican Party both passed and repealed House Bill 2; that much is certain. While the economic and political ramifications of the bill probably will be felt for years to come, the lawmakers attempted damage control for their actions. That, to many, is a start. The failure of House Bill 2 is largely claimed by those who had the most stake in it. To those who it meant the most, it was championed as an expansion of people's protections and liberties. To those which had the most to lose from it, it was also a fight for their own personal freedoms.<sup>33</sup>

Yet, if there is one defining common factor, it was the economic costs of the bill. As stated by Amber Phillips of *The Washington Post*, "The economic pressure on the state became so impossible for even supporters of the law to ignore." Between losing out on major events, corporate expansions, or outside investments, no matter how minute in the long run, to Republicans who run off of a pro-business platform, the bill was

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<http://link.galegroup.com.libproxy.txstate.edu/apps/doc/A487959634/OVIC?u=txshracd2550&xid=d4921d18>.

<sup>32</sup> Fausset, Richard. "Deal on North Carolina Bathroom Law Would Expand Transgender Protections," *The New York Times*, October 18, 2017, Accessed March 8<sup>th</sup>, 2018. <https://www.nytimes.com/2017/10/18/us/north-carolina-bathroom-bill.html>, ; "Bathroom Law Repeal Leaves Few Pleased in North Carolina," *The New York Times*, March 20<sup>th</sup>, 2017, Accessed March 8<sup>th</sup>, 2018. <https://www.nytimes.com/2017/03/30/us/north-carolina-senate-acts-to-repeal-restrictive-bathroom-law.html>.

<sup>33</sup> Colin Campbell, "Rep. Dan Bishop: Leader of House Bill 2," *The Charlotte Observer*, April 23, 2016, Accessed March 5, 2018. <http://www.charlotteobserver.com/news/politics-government/article73581522.html>.

hypocritical. The many stragglers who still supported the bill felt as if they were sold out by their comrades and the Governor. Perhaps the split within the Republican Party itself, between idealists and pro-business interests, is the factor here. Either way, the damage was done to party, politics, and economy, one which some will never forget.<sup>34</sup>

## **The State of Texas**

While the State of Texas may be one of the more recent examples of attempts to pass a bathroom bill, it likely will not be the last. The 2017 Legislative Session highlights one story out of many. It is almost certain that such issues will appear not only within Texas once more, but in other states as well. With that, Texas' bathroom bill is a story of multiple parts, each interlocking with other political issues which rocked the state in a timeframe spanning a few months. This is not to say that other states' issues were "simple" or not as complex, but it is just meant to highlight the attempts to get something passed by both state representatives and senators, not to mention other outside political interests, which dabbled within the system during this event.

The attempts by Texas to pass a bathroom bill can be separated into two parts, correlating with the 85th Regular Legislative Session in Spring 2017, and the 85th Special Legislative Session, which occurred in the summer. The latter session occurred because of special circumstances, which will later be documented.

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<sup>34</sup> Phillips, Amber. "Why North Carolina abruptly flip-flopped on its 'bathroom bill'." *Washington Post*, March 31, 2017. *Opposing Viewpoints in Context* (accessed March 5, 2018). <http://link.galegroup.com.libproxy.txstate.edu/apps/doc/A487959634/OVIC?u=txshracd2550&xid=d4921d18>.

The Texas Legislature, unlike a majority of other states, only convenes once every two years, and then takes about a year and a half off between sessions. This means that a normal Legislative Session only runs between the months of January and May every two years, with the possibility of a Special Session as ordered by the Governor. The House of Representatives consists of 150 members, while the Texas Senate has 31 members. The Speaker of the House presides over the House of Representatives, who at the time of the bathroom bill was Rep. Joe Straus, a Republican. The Lieutenant Governor heads the Texas Senate, who at the time was (and still is at the time of this paper) Lt. Gov. Dan Patrick (Republican). The Governor was (and is still) Governor Greg Abbott, also a Republican. This means that like Indiana and North Carolina, Texas was also governed by a Republican trifecta.<sup>35</sup>

The two major Texas bathroom bills, which this thesis looks at, are Senate Bill 6 of the 85th Legislative Session and Senate Bill 3 of the 85th Special Legislative Session, both authored by State Senator Lois Kolkhorst (Republican), with a long list of coauthors. Senate Bill 6 follows closely with North Carolina's bill, almost word-by-word. This means that the proposed law was both a Type 1 and Type 2 bill, regulating bathroom usage at various state agencies and facilities as well as preventing local ordinances, statutes, etc. on the subject. Like previous bills before it, this one during legislative debate was amended heavily by various factions. Senate Bill 3 is more aligned with the Type 3 in its aim to regulate facilities in use by state sanctioned educational institutions,

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<sup>35</sup> Ballotpedia, "Texas State Legislature," Batllotpedia.org, Ballotpedia, Accessed March 5th, 2018. [https://ballotpedia.org/Texas\\_State\\_Legislature\\_](https://ballotpedia.org/Texas_State_Legislature_)

but also included provisions for usage by outside entities dictating that they themselves would not fall under such regulations.<sup>36</sup>

Finally, along with these two bills, numerous other bathroom bills were proposed by various legislators. These included House Bills 46 and 50 of the Special Legislative Session, both authored by Representatives Ron Simmons, Drew Springer, and Jodie Laubenberg, with Travis Clardy and Dan Flynn among other authors for House Bill 50, and a long list of other coauthors for each bill.<sup>37</sup>

The 2017 Texas Regular Legislative Session as well as the Special Session proved to highlight the aspirations and divisions within the Republican Party. Unlike North Carolina, which passed its bathroom bill in one day, the Texas Legislature could not pass its own, let alone in one day. This is due to the actions of various individuals within the political process, as well as backlash against the state for its actions in even attempting such a feat.

Lieutenant Governor Dan Patrick championed the bills, a self-proclaimed social conservative within the Republican Party. It is more than likely because of him that both Senate Bill 6 and Senate Bill 3 were able to pass the Texas Senate. On the other side of the Legislature, stood Speaker Joe Straus, a moderate in respect to the ideological mean of the Texas Republican party. Speaker Straus, a businessman, fervently opposed both bills, never allowing them to be voted on in the House. It is unknown as to whether the

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<sup>36</sup> Senator Lois Kolkhorst, *Senate Bill 6*; The Legislature of the State of Texas, *Senate Bill 3*, 85th Special Legislative Session, Document: 85S1 1077 JCG-D. Last Action: August 15, 2017.

<sup>37</sup> Ron Simmons, Jodie Laubenberg, and Drew Springer, et al. (Reps), The Legislature of the State of Texas, *House Bill 46*; Ron Simmons, Drew Springer, Jodie Laubenberg, Travis Clardy, Dan Flynn, et al. (Reps), The Legislature of the State of Texas, *House Bill 50*, 85th Special Legislative Session, Last Action: July 20, 2017; For full copies of the bills, please see Addendum 4 for Senate Bill 6 and Addendum 5 for Senate Bill 3.

bills would have passed if Speaker Straus had allowed a vote on them, but more than likely, because of his actions, the bills never made it to the metaphorical finish line at Governor Abbott's desk.<sup>38</sup>

The story of the bills begin with Senate Bill 6, in the first of the two legislative sessions. The bill was introduced by Senator Kolkhorst and supported by Lt. Gov. Dan Patrick, and immediately, brought about a firestorm of public criticism. The bill was proposed in the wake of the North Carolina bill, and a few months before North Carolina repealed it.<sup>39</sup>

On March 13, 2017 the bill was placed on the intent calendar, and in two days, came under scrutiny and deliberation by the Senate. It ultimately passed on March 15 after being read the required three times.<sup>40</sup> It passed by a vote of 21 to 10. Various state senators gave statements about the bill, expressing their opposition in the midst of the criticism presented to the State Affairs Committee hearing of the bill.<sup>41</sup> Yet, even though the bill was passed, the House of Representatives never voted on it due to the actions of Speaker Straus. (As noted, this will likely not be the last time Texas will see a bill as such.)

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<sup>38</sup> American-Statesmen Staff, "No. 4 story of the year: Texas Legislature fails to pass bathroom bill," *The Austin-American Statesmen*, Published December 28<sup>th</sup>, 2017. Accessed March 5<sup>th</sup>, 2018. <https://www.statesman.com/news/story-the-year-texas-legislature-fails-pass-bathroom-bill/YWBBNzNiINIR6gPDFsRjaK/>.

<sup>39</sup> Ibid.

<sup>40</sup> Texas Legislature Online. "Senate Bill 6 History," *Texas Legislature Online*, Accessed March 5<sup>th</sup>, 2018. <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=85R&Bill=SB6>.

<sup>41</sup> Texas Legislature Senate Journal, "Statement Regarding Senate Bill 6," *The Texas State Senate Journal*, March 15, 2017, Pg. 531, Accessed March 5, 2017. <http://www.journals.senate.state.tx.us/sjrn/85r/pdf/85RSJ03-15-F.PDF#page=3>.

At the end of the 85<sup>th</sup> Legislative Session, it became apparent that something critical had been forgotten and left out of the session: Sunset Legislation. Sunset Legislation refers to bills which review various state agencies and departments operating in the state of Texas, looking at their efficiency, costs, etc. These agencies are reviewed by the Texas Sunset Advisory Commission. If an agency does not meet the Commission's requirements, it can be closed down.

What happened in the 85th Legislative Session was that certain critical agencies were not reviewed by the legislative branch before the session ended, particularly the Texas Medical Board, which in the scope of all agencies, is critically important to the functioning of the Texas healthcare economy. If the legislature did not pass enabling laws, the agency essentially would expire.<sup>42</sup>

This prompted Governor Abbott to call a Special Session so that these agencies can be "passed." Seeing as a special session is particularly costly to the state, the Governor attempted to make the session worthwhile, declaring 19 additional items for debate for the Senate and House of Representatives to look at, including the bathroom bill, which many hoped had ended with the previous session.<sup>43</sup>

To many, this meant a return to the madness which plagued the regular session. To others, this was their second chance. The Special Session convened in mid-July, 2017, and it would last a month. Very quickly, the sunset legislation passed and, immediately

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<sup>42</sup> Samuels, Alex. "Here's everything you need to know about the must-pass 'sunset' bills." *The Texas Tribune*. Published June 6, 2017. Accessed March 5, 2018. <https://www.texastribune.org/2017/06/06/heres-everything-you-need-know-about-must-pass-sunset-bills/>.

<sup>43</sup> Svitek, Patrick, "Gov. Abbott calls special session on bathrooms, abortion, school finance," *The Texas Tribune*. Published June 6, 2017. Accessed March 5, 2018. <https://www.texastribune.org/2017/06/06/abbott-special-session-announcement/>.



after, the other nineteen issues were brought to the table. As stated earlier, the major bathroom bill for the Special Session was Senate Bill 3, while House Bills 46 and 50 were also proposed as alternatives.

In the initial phases of the legislative process, the public has the chance to weigh in on bills during committee hearing. Within this timeframe for the bathroom bill, thousands of people came to speak their minds to the committee. All ten hours of committee hearing time were filled up, with people lining up through the halls of the capitol. Even after this outcry, the Senate State Affairs Committee passed the bill, and moved for a vote by the entire Senate, where it passed.<sup>44</sup>

During this time, outside forces started to mobilize in an attempt to bring the bill to a halt. Businesses such as IBM, Amazon, and Apple, came out against the bill. IBM even sent lobbyists to Texas in an effort to kill it.<sup>45</sup> Studies came out stating that the bill could cost Texas \$3.3 billion in annual lost tourism revenue, with 35,000 jobs being lost as well. Cities around Texas stated that the bill would adversely affect tourism and event revenue greatly. Similar to that which happened in Indiana and North Carolina, the same was being threatened against Texas.<sup>46</sup>

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<sup>44</sup> Ura, Alex and Emma Platoff, "Senate committee passes 'bathroom bill' after 10 hours of testimony," *The Texas Tribune*, Published July 21, 2017, Accessed March 5, 2018. <https://www.texastribune.org/2017/07/21/watch-hundreds-texas-testify-bathroom-bill/>.

<sup>45</sup> Phippen, J. Weston, "The Businesses Against the Texas Bathroom Bill," *The Atlantic*, Published July 17, 2017, Accessed March 5, 2018, <https://www.theatlantic.com/news/archive/2017/07/business-against-texas-bathroom-bill/533928/>.

<sup>46</sup> Ura, Alex, "New study renews fears about Texas bathroom bill's financial impacts," *The Texas Tribune*, Published April 17, 2017, Accessed March 5, 2018. <https://www.texastribune.org/2017/04/17/opponents-texas-bathroom-bill-give-lift-new-economic-fallout-figures/>; Montgomery, David, "Texas Transgender Bathroom Bill Falters Amid Mounting Opposition," *The New York Times*, Published August 5, 2017, Accessed March 5, 2018 <https://www.nytimes.com/2017/08/08/us/time-is-running-out-on-texas-bathroom-bill.html>.

With the bill passing the Senate, it went to the House of Representatives, where like Senate Bill 6 before it, it stalled. Speaker Straus refused to let the bill be voted on. His actions brought threats of repercussions from Texas Republicans. Around this time the issue became national and the efforts of Speaker Straus came into the public light. With his actions, came consequences. Straus' own constituents effectively gave him a vote of no confidence, with other state lawmakers asking him to step down from his position, even at times threatening his job. Mr. Straus was quoted at one point by *New Yorker*, stating "I'm disgusted by all this. Tell the lieutenant governor I don't want the suicide of a single Texan on my hands."<sup>47</sup> Speaker Straus, referred to in the *New York Times* as the last great Bush-era Texan moderate politician, effectively put himself into harm's way to prevent what he believed to be a disaster.<sup>48</sup>

As the Special Session came to a close, it seemed clear that the bill would end with it. The stalemating House of Representatives never voted on a bathroom bill. Even if it had, it is questionable as to whether it would have passed. Many blamed Speaker Straus for the failure of the bill, let alone the fact that the Special Session only passed some of designated issues.<sup>49</sup>

Whether or not the State of Texas will see another bathroom bill in a different session is questionable, but probable. With time, the issue could "simmer down" and

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<sup>47</sup> Rocha, Alana, "New Yorker's Lawrence Wright: Here's what Speaker Straus told me on 'bathroom bill,'" *The Texas Tribune*, Published July 5, 2017, Accessed March 5, 2017. <https://www.texastribune.org/2017/07/05/lawrence-wright-straus-bathroom-bill-comment/>.

<sup>48</sup> Fernandez, Manny and David Montgomery, "Bathroom Bill Tests Clout of Rare Moderate in Increasingly Conservative Texas," *The New York Times*, Published July 18, 2017. Accessed March 5, 2018. <https://www.nytimes.com/2017/07/18/us/bathroom-bill-texas-abbott-straus.html>.

<sup>49</sup> *The Texas Tribune*, "Here's what happened to Texas Gov. Greg Abbott's agenda during the special session," Published August 16, 2017, Accessed March 15, 2018. <https://apps.texastribune.org/special-session-issues/>.

become a moot point. But until then, the Texan Republican Party is facing a crisis of ideology, as it has become uncertain if pro-business moderates and social conservatives are able to work together anymore.

In the meantime, the 2018 elections are coming into full-swing, and Speaker Straus has decided to not run for re-election, bringing his seat and chair into contention. This may open the gateway for another attempt by Republicans to pass the bill; andv if the Speakership is filled by someone who supports it, the bill may very well pass when the Legislature reconvenes in 2019.

## **Analysis**

Looking at the states of Indiana, North Carolina, and Texas, it is reasonably safe to say that the failure of “bathroom bills” is due to their contentiousness and general trend of outspoken public criticism against them. But with more in-depth analysis, it is seemingly much more complex than what is initially suggested.

To begin with, there are some things that can only be explained by mere speculation. There is no way to know what happened behind closed doors, what people said to each other while veiled in privacy. But there are some truths to the bills so far: bathroom bills are proposed by social conservatives. In the three states that have been examined, all of them held Republican trifectas when they attempted to pass the bills. And all of them had some sort of economic penalties that were either threatened or used against the state. With their economic effects, the bills also received enormous public outcry. A very vocal populace consisting of both local and national entities came out against the bills, and civil activism was indeed prevalent against all bills.

The bills failed because of their lack of support or their effects on the state. Which leads to the question, which contributed more to their failure: public outcry, economic ramifications, or political opponents? The honest answer is that there was no defining motive as to why the bills failed. The economic ramifications make the most sense in terms of logic, but the arguments for the public outcry and political brinksmanship also have heft.

To begin with, the economic arguments make the most sense logically because they play on the natural ideological divide within the Republican Party. As seen with the examples from all states, they cause a rift within the party along the divide between market liberals and social conservatives. The moderate side of the Republican Party, being the pro-business/social moderates, stood up against the social conservatives, as seen by the actions of Speaker Straus from Texas. In the case of North Carolina, the social conservatives felt betrayed by their colleagues when the bill was mostly repealed. In the case from Indiana, the actions concerning RFRA. (Religious Freedom Restoration Act) prompted a similar response in the state.

The economic argument makes sense, plain and simple. In a political society heavily invested in the promotion of business within its domain, a bathroom bill would be shooting oneself in the foot while also insulting your economic base wholesale. On a basic cost/benefit analysis, the answer is quite clear; the price was too steep to be paid.

On the contrary, the public relations argument falls on the same ears. How can a representative represent their constituents when they themselves do not support an initiative? All three states met significant civil activism against the bills. These bills, their supporters, and the Republican were essentially demonized by the public through

protests, petitions, media stories, and general national outrage. These bills were tested via trial by fire, and they all ended up burning.

In the cases of North Carolina and Texas, the legislators who initially supported the bills, or at least voted for them, ended up pulling out. It is hard to say whether or not they lost their appetite for the legislation in the storm of media relations or whether they had a change of heart without actually questioning the people involved. Odds are there are examples of both.

Lastly, there is the question as to whether or not these bills are just battlefields on the great game of politics. Politicians could just be using these bills as a means to propel themselves into the national spotlight. The saying does go “even bad publicity is still publicity.” It is without a doubt that these bills did bring national attention to certain individuals, but this idea does disregard any ideological grounds. While some individuals may or may not have strategized their actions this way, again, it is a fairly uncertain stance. Odds are people do believe in these bills, especially since they have cost people their jobs.

There is also the question, on the side, about their influence on each other. North Carolina will, until another state corroborates their effects, remain the basis as to what may happen if one of these bills pass. While Indiana was not affected by North Carolina’s influence due to chronology, Texas was certainly influenced by the reactions North Carolina’s bill received. North Carolina was held up as the standard of expectations, what happened to North Carolina would happen to Texas if the bill was passed. Even the bills between the two states were similar in language. Texas was essentially a second attempt from North Carolina’s perspective, one which again failed.

With these facts in mind, again, it is not quite evident as to whether there was any singular killing blow against these bills. It can all be summed up to public reaction swaying legislators against the bills, public reaction being the economic and social consequences. Logically speaking, the economic arguments make sense, but the might of public outcry does indeed sway people. The implications from this are evident. If these bills are going to pass, they are going to need almost total majority support from every apparatus of society. Anything less and any bills would probably fall apart sooner or later. As in the cases of Indiana, North Carolina, and Texas, they failed to garner enough vocal support of the bill. At times the debates felt silly, almost as if they were a public debacle. But at the end of the day, these bills will affect the very livelihoods of Americans; and with that, they should be taken with incredible seriousness.

## **Conclusion**

For a recent phenomenon in the United States, bathroom bills are quite interesting to analyze. Like many other issues of their day, they stem from current arguments and social changes. In this case, they seem to be a conservative answer to a policy development implemented by the federal government. Whether or not they will politically make a difference in the long run remains to be seen, as odds are they are a popular issue and push button topic. In due time, there will be another issue that will garner the public's attention, one which people will protest quite vivaciously, one which will rally the politicians and their party or divide another's, and one which like this will likely fade into history.

Whether or not these bills will have any prolonged effect other than the relatively immediate economic and social one remains to be seen. In due time they could become a notable issue once more, and with that the political cycle will probably repeat itself: bill is proposed, bill is argued, public outcries, bill is debated, bill passes or fails, etc. While this may seem like a cynical viewpoint, it is what is happening with bathroom bills. Their failure lies with their effects, on both economics, society, and culture.

In the near future, odds are these bills will become an issue once more. What will happen with them will prove interesting. How they will affect the economies in the states, localities, or nations which they are proposed will fall along cultural patterns, whether the populace will outright accept them or look upon them with disgust. Either way, their time is not quite over, and as the United States continues to enter an era of increased political polarity, this issue could very well be the start of something else.

## **Future Research Proposals**

In an effort to develop the ideas in this paper, further research may be conducted in an attempt to highlight the growing ideological divide within the Republican Party at large, especially in the climate and aftermath of the Trump Administration and its effect on the U.S. political system. Due to the time constraints and nature of this document, interviews of individuals close to the debates of these bills would serve great purpose in the fleshing out and corroboration of ideas made in this paper, all in accordance and cleared by a university's Institutional Review Board. These people would include legislative aides, State Representatives, Senators, lobbyists, etc. Furthermore, research may be necessary on the actions of other states with proposed legislation, and more research would yield valuable insight into the stories behind these bills.



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## **Addenda**

**Addendum 1:** Editorial: “Gov. Pence, fix ‘religious freedom’ law now,” *Indianapolis Star*, by the Star Editorial. Published March 31, 2015.

<https://www.indystar.com/story/opinion/2015/03/30/editorial-gov-pence-fix-religious-freedom-law-now/70698802/>.

We are at a critical moment in Indiana's history.

And much is at stake.

Our image. Our reputation as a state that embraces people of diverse backgrounds and makes them feel welcome. And our efforts over many years to retool our economy, to attract talented workers and thriving businesses, and to improve the quality of life for millions of Hoosiers.

All of this is at risk because of a new law, the Religious Freedom Restoration Act, that no matter its original intent already has done enormous harm to our state and potentially our economic future.

The consequences will only get worse if our state leaders delay in fixing the deep mess created.

Half steps will not be enough. Half steps will not undo the damage.

Only bold action — action that sends an unmistakable message to the world that our state will not tolerate discrimination against any of its citizens — will be enough to reverse the damage.

Gov. Mike Pence and the General Assembly need to enact a state law to prohibit discrimination in employment, housing, education and public accommodations on the basis of a person's sexual orientation or gender identity.

Those protections and RFRA can co-exist. They do elsewhere.

Laws protecting sexual orientation and gender identity are not foreign to Indiana.

Indianapolis, for example, has had those legal protections in place for nearly a decade. Indy's law applies to businesses with more than six employees, and exempts religious organizations and nonprofit groups.

The city's human rights ordinance provides strong legal protection — and peace of mind — for LGBT citizens; yet, it has not placed an undue burden on businesses.

Importantly, passage of a state human rights law would send a clear message that Indiana will not tolerate discrimination. It's crucial for that message to be communicated widely.

On a practical level, by basing the state law on a 10-year-old ordinance, the General Assembly could move quickly to adopt the measure without fear of unintended consequences. If lawmakers can't act in the next month, the governor should call a special session immediately after the regular session ends in April to take up human rights legislation.

Why not simply repeal RFRA? First, it appears to be politically unacceptable for the governor and many Republican lawmakers.

Second, there are Hoosiers who support RFRA out of a genuine desire to protect religious freedom. To safeguard that essential freedom, 19 states and the federal government have adopted RFRA laws, largely without controversy. But states like Illinois not only protect religious freedom through RFRA but also provide gay and lesbian residents with protected legal status.

Third, repeal might get rid of the heat but it would not do what is most important — to move the state forward.



We urge Gov. Pence and lawmakers to stop clinging to arguments about whether RFRA really does what critics fear; to stop clinging to ideology or personal preferences; to focus instead on fixing this.

Governor, Indiana is in a state of crisis. It is worse than you seem to understand.

You must act with courage and wisdom. You must lead us forward now. You must ensure that all Hoosiers have strong protections against discrimination.

The laws can co-exist. And so can we.

**#WeAreIndiana:** Join the hashtag, the social movement. We encourage Hoosiers of all types — business leaders and owners, thought leaders, organizations, everyday people — to spread the message of who we are and what we want the world to know: Indiana embraces everyone and we do not discriminate.

**Addendum 2:** Senate Bill 35, Indiana General Assembly. Pages are scanned in to prevent formatting errors.

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Introduced Version

## SENATE BILL No. 35

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 20-26-19; IC 35-31.5-2; IC 35-43-2.5.

**Synopsis:** Single sex facilities. Provides that student facilities in school buildings must be designated for use by female students or male students, and may be used only by the students of the biological gender for which the facility is designated. Makes it a Class A misdemeanor if: (1) a male knowingly or intentionally enters a single sex public facility that is designed to be used by females; or (2) a female knowingly or intentionally enters a single sex public facility that is designed to be used by males.

**Effective:** July 1, 2016.

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### Tomes

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January 5, 2016, read first time and referred to Committee on Public Policy.

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2016

IN 35—LS 6107/DI 107

Introduced

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## SENATE BILL No. 35

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 20-26-19 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

**Chapter 19. School Facilities**

**Sec. 1. This chapter applies to a public school, including a charter school.**

**Sec. 2. As used in this chapter, "biological gender" refers to the physical condition of being male or female, as determined by an individual's chromosomes and identified at birth by the individual's anatomy.**

**Sec. 3. As used in this chapter, "student facility" means a locker room, restroom, or shower room that is:**

- (1) designated for student use; and**
- (2) accessible by multiple students at the same time.**

**Sec. 4. (a) Each student facility within a school building must be designated for use by only female students or only male students.**

**(b) A student facility designated solely for:**

2016

IN 35—LS 6107/DI 107





(1) female students may be used only by students of female biological gender; and

(2) male students may be used only by students of male biological gender.

Sec. 5. In any school setting in which a student may be in a state of full or partial undress in the presence of other students, school personnel shall ensure that separate, private areas are provided for use by only female students and only male students based upon the students' biological genders.

SECTION 2. IC 35-31.5-2-130.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 130.5. "Female", for purposes of IC 35-43-2.5, has the meaning set forth in IC 35-43-2.5-2.

SECTION 3. IC 35-31.5-2-191.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 191.5. "Male", for purposes of IC 35-43-2.5, has the meaning set forth in IC 35-43-2.5-3.

SECTION 4. IC 35-31.5-2-305.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 305.5. "Single sex public facility", for purposes of IC 35-43-2.5, has the meaning set forth in IC 35-43-2.5-4.

SECTION 5. IC 35-43-2.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

**Chapter 2.5. Single Sex Public Facility Trespass**

**Sec. 1. This section does not apply to:**

- (1) a person who is a student at a school;
- (2) a person less than eighteen (18) years of age; or
- (3) a facility in a private residence.

**Sec. 2. As used in this section, "female" means an individual who:**

- (1) was born female at birth; or
- (2) has at least one (1) X chromosome and no Y chromosome.

**Sec. 3. As used in this section, "male" means an individual who:**

- (1) was born male at birth; or
- (2) has at least one (1) X chromosome and at least one (1) Y chromosome.

**Sec. 4. As used in this section, a "single sex public facility" means a locker room, restroom, or shower room that is:**

- (1) in a place of public accommodation;
- (2) accessible by multiple people at the same time; and



- 1 (3) designated for use by only males or only females.
- 2 Sec. 5. A:
- 3 (1) male who knowingly or intentionally enters a single sex
- 4 public facility that is designed to be used by females; or
- 5 (2) female who knowingly or intentionally enters a single sex
- 6 public facility that is designed to be used by males;
- 7 commits single sex public facility trespass, a Class A misdemeanor.
- 8 Sec. 6. It is a defense to a prosecution under this chapter if a
- 9 person enters a single sex public facility:
- 10 (1) for custodial purposes;
- 11 (2) to render medical assistance; or
- 12 (3) to accompany a child less than eight (8) years of age.





**Addendum 3:** House Bill 2, North Carolina General Assembly. Pages are scanned to prevent formatting errors.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SECOND EXTRA SESSION 2016

**H.B 2**  
**Mar 23, 2016**  
**HOUSE PRINCIPAL CLERK**

H

D

HOUSE BILL DRH40005-TC-1B (03/22)

Short Title: Public Facilities Privacy & Security Act. (Public)

Sponsors: Representatives Bishop, Stam, Howard, and Steinburg (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND  
3 CHANGING FACILITIES IN SCHOOLS AND PUBLIC AGENCIES AND TO CREATE  
4 STATEWIDE CONSISTENCY IN REGULATION OF EMPLOYMENT AND PUBLIC  
5 ACCOMMODATIONS.

6 Whereas, the North Carolina Constitution directs the General Assembly to provide for  
7 the organization and government of all cities and counties and to give cities and counties such  
8 powers and duties as the General Assembly deems advisable in Section 1 of Article VII of the  
9 North Carolina Constitution; and

10 Whereas, the North Carolina Constitution reflects the importance of statewide laws  
11 related to commerce by prohibiting the General Assembly from enacting local acts regulating  
12 labor, trade, mining, or manufacturing in Section 24 of Article II of the North Carolina  
13 Constitution; and

14 Whereas, the General Assembly finds that laws and obligations consistent statewide for  
15 all businesses, organizations, and employers doing business in the State will improve intrastate  
16 commerce; and

17 Whereas, the General Assembly finds that laws and obligations consistent statewide for  
18 all businesses, organizations, and employers doing business in the State benefit the businesses,  
19 organizations, and employers seeking to do business in the State and attracts new businesses,  
20 organizations, and employers to the State; Now, therefore,  
21 The General Assembly of North Carolina enacts:

22  
23 **PART I. SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING**  
24 **FACILITIES**

25 **SECTION 1.1.** G.S. 115C-47 is amended by adding a new subdivision to read:  
26 "(63) To Establish Single-Sex Multiple Occupancy Bathroom and Changing  
27 Facilities. – Local boards of education shall establish single-sex multiple  
28 occupancy bathroom and changing facilities as provided in G.S. 115C-521.2."

29 **SECTION 1.2.** Article 37 of Chapter 115C of the General Statutes is amended by  
30 adding a new section to read:

31 **"§ 115C-521.2. Single-sex multiple occupancy bathroom and changing facilities.**

32 (a) **Definitions.** – The following definitions apply in this section:

33 (1) Biological sex. – The physical condition of being male or female, which is  
34 stated on a person's birth certificate.

35 (2) Multiple occupancy bathroom or changing facility. – A facility designed or  
36 designated to be used by more than one person at a time where students may be





1 in various states of undress in the presence of other persons. A multiple  
2 occupancy bathroom or changing facility may include, but is not limited to, a  
3 school restroom, locker room, changing room, or shower room.

4 (3) Single occupancy bathroom or changing facility. – A facility designed or  
5 designated to be used by only one person at a time where students may be in  
6 various states of undress. A single occupancy bathroom or changing facility  
7 may include, but is not limited to, a single stall restroom designated as unisex  
8 or for use based on biological sex.

9 (b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Local boards of  
10 education shall require every multiple occupancy bathroom or changing facility that is designated  
11 for student use to be designated for and used only by students based on their biological sex.

12 (c) Accommodations Permitted. – Nothing in this section shall prohibit local boards of  
13 education from providing accommodations such as single occupancy bathroom or changing  
14 facilities or controlled use of faculty facilities upon a request due to special circumstances, but in  
15 no event shall that accommodation result in the local boards of education allowing a student to use  
16 a multiple occupancy bathroom or changing facility designated under subsection (b) of this section  
17 for a sex other than the student's biological sex.

18 (d) Exceptions. – This section does not apply to persons entering a multiple occupancy  
19 bathroom or changing facility designated for use by the opposite sex:

20 (1) For custodial purposes.

21 (2) For maintenance or inspection purposes.

22 (3) To render medical assistance.

23 (4) To accompany a student needing assistance when the assisting individual is an  
24 employee or authorized volunteer of the local board of education or the  
25 student's parent or authorized caregiver.

26 (5) To receive assistance in using the facility.

27 (6) To accompany a person other than a student needing assistance.

28 (7) That has been temporarily designated for use by that person's biological sex."

29 SECTION 1.3. Chapter 143 of the General Statutes is amended by adding a new

30 Article to read:

31 "Article 81.

32 "Single-Sex Multiple Occupancy Bathroom and Changing Facilities.

33 **"§ 143-760. Single-sex multiple occupancy bathroom and changing facilities.**

34 (a) Definitions. – The following definitions apply in this section:

35 (1) Biological sex. – The physical condition of being male or female, which is  
36 stated on a person's birth certificate.

37 (2) Executive branch agency. – Agencies, boards, offices, departments, and  
38 institutions of the executive branch, including The University of North Carolina  
39 and the North Carolina Community College System.

40 (3) Multiple occupancy bathroom or changing facility. – A facility designed or  
41 designated to be used by more than one person at a time where persons may be  
42 in various states of undress in the presence of other persons. A multiple  
43 occupancy bathroom or changing facility may include, but is not limited to, a  
44 restroom, locker room, changing room, or shower room.

45 (4) Public agency. – Includes any of the following:

46 a. Executive branch agencies.

47 b. All agencies, boards, offices, and departments under the direction and  
48 control of a member of the Council of State.

49 c. "Unit" as defined in G.S. 159-7(b)(15).

50 d. "Public authority" as defined in G.S. 159-7(b)(10).

51 e. A local board of education.



- 1                   f.     The judicial branch.  
2                   g.     The legislative branch.  
3                   h.     Any other political subdivision of the State.  
4           (5)    Single occupancy bathroom or changing facility. – A facility designed or  
5                   designated to be used by only one person at a time where persons may be in  
6                   various states of undress. A single occupancy bathroom or changing facility  
7                   may include, but is not limited to, a single stall restroom designated as unisex  
8                   or for use based on biological sex.  
9           (b)    Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Public agencies  
10                  shall require every multiple occupancy bathroom or changing facility to be designated for and only  
11                  used by persons based on their biological sex.  
12           (c)    Accommodations Permitted. – Nothing in this section shall prohibit public agencies  
13                  from providing accommodations such as single occupancy bathroom or changing facilities upon a  
14                  person's request due to special circumstances, but in no event shall that accommodation result in  
15                  the public agency allowing a person to use a multiple occupancy bathroom or changing facility  
16                  designated under subsection (b) of this section for a sex other than the person's biological sex.  
17           (d)    Exceptions. – This section does not apply to persons entering a multiple occupancy  
18                  bathroom or changing facility designated for use by the opposite sex:  
19                  (1)    For custodial purposes.  
20                  (2)    For maintenance or inspection purposes.  
21                  (3)    To render medical assistance.  
22                  (4)    To accompany a person needing assistance.  
23                  (5)    That has been temporarily designated for use by that person's biological sex."  
24

## PART II. STATEWIDE CONSISTENCY IN LAWS RELATED TO EMPLOYMENT AND CONTRACTING

SECTION 2.1. G.S. 95-25.1 reads as rewritten:

"§ 95-25.1. Short title and legislative purpose; local governments preempted.

(a) This Article shall be known and may be cited as the "Wage and Hour Act."  
(b) The public policy of this State is declared as follows: The wage levels of employees, hours of labor, payment of earned wages, and the well-being of minors are subjects of concern requiring legislation to promote the general welfare of the people of the State without jeopardizing the competitive position of North Carolina business and industry. The General Assembly declares that the general welfare of the State requires the enactment of this law under the police power of the State.

(c) The provisions of this Article supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement upon an employer pertaining to compensation of employees, such as the wage levels of employees, hours of labor, payment of earned wages, benefits, leave, or well-being of minors in the workforce. This subsection shall not apply to any of the following:

- (1) A local government regulating, compensating, or controlling its own employees.  
(2) Economic development incentives awarded under Part 2H of Article 10 of Chapter 143B of the General Statutes.  
(3) Economic development incentives awarded under Article 1 of Chapter 158 of the General Statutes.  
(4) A requirement of federal community development block grants.  
(5) Programs established under G.S. 153A-376 or G.S. 160A-456."

SECTION 2.2. G.S. 153A-449(a) reads as rewritten:



**SECTION 2.3.** G.S. 160A-20.1(a) reads as rewritten:

### PART III. PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS

**"§ 143-422.2. Legislative declaration.**

(c) The General Assembly declares that the regulation of discriminatory practices in employment is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement upon an employer pertaining to the regulation of discriminatory practices in employment, except such regulations applicable to personnel employed by that body that are not otherwise in conflict with State law."

**"§ 143-422.3. Investigations; conciliations.**

**SECTION 3.3.** Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Equal Access to Public Accommodations.



**"§ 143-422.10. Short title.**

This Article shall be known and may be cited as the Equal Access to Public Accommodations Act.

**"§ 143-422.11. Legislative declaration.**

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodation free of discrimination because of race, religion, color, national origin, or biological sex, provided that designating multiple or single occupancy bathrooms or changing facilities according to biological sex, as defined in G.S. 143-760(a)(1), (3), and (5), shall not be deemed to constitute discrimination.

(b) The General Assembly declares that the regulation of discriminatory practices in places of public accommodation is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement pertaining to the regulation of discriminatory practices in places of public accommodation.

**"§ 143-422.12. Places of public accommodation – defined.**

For purposes of this Article, places of public accommodation has the same meaning as defined in G.S. 168A-3(8), but shall exclude any private club or other establishment not, in fact, open to the public.

**"§ 143-422.13. Investigations; conciliations.**

The Human Relations Commission in the Department of Administration shall have the authority to receive, investigate, and conciliate complaints of discrimination in public accommodations. Throughout this process, the Human Relations Commission shall use its good offices to effect an amicable resolution of the complaints of discrimination. This Article does not create, and shall not be construed to create or support, a statutory or common law private right of action, and no person may bring any civil action based upon the public policy expressed herein."

**PART IV. SEVERABILITY**

**SECTION 4.** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. If any provision of this act is temporarily or permanently restrained or enjoined by judicial order, this act shall be enforced as though such restrained or enjoined provisions had not been adopted, provided that whenever such temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

**PART V. EFFECTIVE DATE**

**SECTION 5.** This act is effective when it becomes law and applies 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 into on or after that date. The provisions of Sections 2.1, 2.2, 2.3, 3.1, 3.2, and 3.3 of this act supersede and preempt any ordinance, resolution, regulation, or policy adopted prior to the effective date of this act that purports to regulate a subject matter preempted by this act or that violates or is not consistent with this act, and such ordinances, resolutions, regulations, or policies shall be null and void as of the effective date of this act.

**Addendum 4:** Senate Bill 6, Texas State Legislature. Pages are scanned in to prevent formatting errors.

By: Kolkhorst, et al.

S.B. No. 6

A BILL TO BE ENTITLED

AN ACT

relating to regulations and policies for entering or using a bathroom or changing facility; authorizing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. LEGISLATIVE FINDINGS; PURPOSE. The legislature finds that:

(1) in an effort to comply with the legislature's duty under Section 1, Article VII, Texas Constitution, to provide for the general diffusion of knowledge and an efficient system of public schools, potentially harmful and distracting environments should be barred;

(2) the federal government's mandate requiring Texas public schools to provide students access to restrooms, showers, and dressing rooms based on an individual student's internal sense of gender is alarming and could potentially lead to boys and girls showering together and using the same restroom should such guidance be followed;

(3) children receiving an education in Texas public schools and open-enrollment charter schools are entitled to a safe and secure learning environment, including when using intimate facilities controlled by a school; and

(4) it is the public policy of this state that residents have a reasonable expectation of privacy when using intimate facilities controlled by a school district,



1 open-enrollment charter school, state agency, or political  
2 subdivision and that protecting the safety, welfare, and well-being  
3 of children in public schools, children in open-enrollment charter  
4 schools, and all Texas residents in intimate facilities controlled  
5 by state agencies or political subdivisions is of the utmost  
6 priority and moral obligation of this state.

7 SECTION 2. The heading to Chapter 250, Local Government  
8 Code, is amended to read as follows:

9 CHAPTER 250. MISCELLANEOUS REGULATORY AUTHORITY [~~OF~~  
10 ~~MUNICIPALITIES AND COUNTIES~~]

11 SECTION 3. Chapter 250, Local Government Code, is amended  
12 by adding Section 250.008 to read as follows:

13 Sec. 250.008. REGULATIONS RELATING TO CERTAIN BATHROOM OR  
14 CHANGING FACILITIES PROHIBITED. (a) For the purposes of this  
15 section, "bathroom or changing facility" means a facility where a  
16 person may be in a state of undress, including a restroom, locker  
17 room, changing room, or shower room.

18 (b) A political subdivision may not adopt or enforce an  
19 order, ordinance, or other measure that relates to the designation  
20 or use of a private entity's bathroom or changing facility or that  
21 requires the entity to adopt, or prohibits the entity from  
22 adopting, a policy on the designation or use of the entity's  
23 bathroom or changing facility.

24 SECTION 4. Subchapter 2, Chapter 271, Local Government  
25 Code, is amended by adding Section 271.909 to read as follows:

26 Sec. 271.909. CONSIDERATION OF CERTAIN POLICIES  
27 PROHIBITED. (a) For the purposes of this section, "bathroom or

1 changing facility" has the meaning assigned by Section 250.008.

2 (b) In awarding a contract for the purchase of goods or  
3 services, a political subdivision may not consider whether a  
4 private entity competing for the contract has adopted a policy  
5 relating to the designation or use of the entity's bathroom or  
6 changing facility.

7 SECTION 5. Subtitle A, Title 9, Health and Safety Code, is  
8 amended by adding Chapter 769 to read as follows:

9 CHAPTER 769. PUBLIC SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOMS AND  
10 CHANGING FACILITIES

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 769.001. DEFINITIONS. In this chapter:

13 (1) "Biological sex" means the physical condition of  
14 being male or female, which is stated on a person's birth  
15 certificate.

16 (2) "Institution of higher education" has the meaning  
17 assigned by Section 61.003, Education Code.

18 (3) "Multiple-occupancy bathroom or changing  
19 facility" means a facility designed or designated for use by more  
20 than one person at a time, where a person may be in a state of  
21 undress in the presence of another person, regardless of whether  
22 the facility provides curtains or partial walls for privacy. The  
23 term includes a restroom, locker room, changing room, or shower  
24 room.

25 (4) "Open-enrollment charter school" means a school  
26 that has been granted a charter under Subchapter D, Chapter 12,  
27 Education Code.



1           (5) "Political subdivision" means a governmental  
2 entity of this state that is not a state agency and includes a  
3 county, municipality, special purpose district or authority, and  
4 junior college district. The term does not include a school  
5 district.

6           (6) "School district" means any public school district  
7 in this state.

8           (7) "Single-occupancy bathroom or changing facility"  
9 means a facility designed or designated for use by only one person  
10 at a time, where a person may be in a state of undress, including a  
11 single toilet restroom with a locking door that is designed or  
12 designated as unisex or for use based on biological sex.

13           (8) "State agency" means a department, commission,  
14 board, office, council, authority, or other agency in the  
15 executive, legislative, or judicial branch of state government that  
16 is created by the constitution or a statute of this state, including  
17 an institution of higher education.

18           SUBCHAPTER B. PUBLIC SCHOOLS

19           Sec. 769.051. SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOM OR  
20 CHANGING FACILITY. A school district or open-enrollment charter  
21 school shall require that each multiple-occupancy bathroom or  
22 changing facility accessible to students and located in a school or  
23 school facility be designated for and used only by persons based on  
24 the person's biological sex.

25           Sec. 769.052. ACCOMMODATIONS AUTHORIZED. This subchapter  
26 does not prohibit a school district or open-enrollment charter  
27 school from providing an accommodation, including a

1 single-occupancy bathroom or changing facility or the controlled  
2 use of a faculty bathroom or changing facility, on request due to  
3 special circumstances. The school district or open-enrollment  
4 charter school may not provide an accommodation that allows a  
5 person to use a multiple-occupancy bathroom or changing facility  
6 accessible to students that is designated for the biological sex  
7 opposite to the person's biological sex.

8 Sec. 769.0525. PRIVATE LEASES AND CONTRACTS. A private  
9 entity that leases or contracts to use a building owned or leased by  
10 a school district or open-enrollment charter school is not subject  
11 to Section 769.051. A school district or open-enrollment charter  
12 school may not require the private entity to adopt, or prohibit the  
13 private entity from adopting, a policy on the designation or use of  
14 bathrooms or changing facilities located in the building.

15 Sec. 769.053. EXCEPTIONS. A designation of a  
16 multiple-occupancy bathroom or changing facility under Section  
17 769.051 does not apply to a person entering a multiple-occupancy  
18 bathroom or changing facility designated for the biological sex  
19 opposite to the person's biological sex:

20 (1) for a custodial purpose;  
21 (2) for a maintenance or inspection purpose;  
22 (3) to render medical or other emergency assistance;  
23 (4) to accompany a student needing assistance in using  
24 the facility, if the assisting person is:

25 (A) an employee or authorized volunteer of the  
26 school district or open-enrollment charter school; or

27 (B) the student's parent, guardian, conservator,



1 or authorized caregiver;

2 (5) to accompany a person other than a student needing  
3 assistance in using the facility; or

4 (6) to receive assistance in using the facility.

5 Sec. 769.054. CONSIDERATION OF CERTAIN POLICIES  
6 PROHIBITED. In awarding a contract for the purchase of goods or  
7 services, a school district or open-enrollment charter school may  
8 not consider whether a private entity competing for the contract  
9 has adopted a policy relating to the designation or use of the  
10 entity's bathrooms or changing facilities.

11 SUBCHAPTER C. PUBLIC BUILDINGS

12 Sec. 769.101. SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOM OR  
13 CHANGING FACILITY. A political subdivision or state agency with  
14 control over multiple-occupancy bathrooms or changing facilities  
15 in a building owned or leased by this state or the political  
16 subdivision, as applicable, shall require that each  
17 multiple-occupancy bathroom or changing facility located in the  
18 building be designated for and used only by persons of the same  
19 biological sex.

20 Sec. 769.102. ACCOMMODATIONS AUTHORIZED. This subchapter  
21 does not prohibit a political subdivision or state agency from  
22 providing an accommodation, including a single-occupancy bathroom  
23 or changing facility, on request due to special circumstances. The  
24 political subdivision or state agency may not provide an  
25 accommodation that allows a person to use a multiple-occupancy  
26 bathroom or changing facility designated for the biological sex  
27 opposite to the person's biological sex.



1       Sec. 769.103. PRIVATE LEASES AND CONTRACTS. A private  
2 entity that leases or contracts to use a building owned or leased by  
3 this state or a political subdivision is not subject to Section  
4 769.101. A state agency or political subdivision may not require  
5 the private entity to adopt, or prohibit the private entity from  
6 adopting, a policy on the designation or use of bathrooms or  
7 changing facilities located in the building.

8       Sec. 769.104. EXCEPTIONS. A designation of a  
9 multiple-occupancy bathroom or changing facility under Section  
10 769.101 does not apply to:

11       (1) a person entering a multiple-occupancy bathroom or  
12 changing facility designated for the biological sex opposite to the  
13 person's biological sex:

14               (A) for a custodial purpose;

15               (B) for a maintenance or inspection purpose;

16               (C) to render medical or other emergency  
17 assistance;

18               (D) to accompany a person needing assistance in  
19 using the facility; or

20               (E) to receive assistance in using the facility;

21 or

22       (2) a child who is:

23               (A) younger than 10 years of age entering a  
24 multiple-occupancy bathroom or changing facility designated for  
25 the biological sex opposite to the child's biological sex; and

26               (B) accompanying a person caring for the child.

27       Sec. 769.105. CONSIDERATION OF CERTAIN POLICIES

1 PROHIBITED. In awarding a contract for the purchase of goods or  
2 services, a political subdivision or state agency may not consider  
3 whether a private entity competing for the contract has adopted a  
4 policy relating to the designation or use of the entity's bathrooms  
5 or changing facilities.

6 SUBCHAPTER D. ENFORCEMENT

7 Sec. 769.151. CIVIL PENALTY. (a) A school district,  
8 open-enrollment charter school, state agency, or political  
9 subdivision that violates this chapter is liable for a civil  
10 penalty of:

11 (1) not less than \$1,000 and not more than \$1,500 for  
12 the first violation; and

13 (2) not less than \$10,000 and not more than \$10,500 for  
14 the second or a subsequent violation.

15 (b) Each day of a continuing violation of this chapter  
16 constitutes a separate violation.

17 Sec. 769.152. COMPLAINT; NOTICE. (a) A citizen of this  
18 state may file a complaint with the attorney general that a school  
19 district, open-enrollment charter school, state agency, or  
20 political subdivision is in violation of this chapter only if:

21 (1) the citizen provides the school district,  
22 open-enrollment charter school, state agency, or political  
23 subdivision a written notice that describes the violation; and

24 (2) the school district, open-enrollment charter  
25 school, state agency, or political subdivision does not cure the  
26 violation before the end of the third business day after the date of  
27 receiving the written notice.



1        (b) A complaint filed under this section must include:  
2                (1) a copy of the written notice; and  
3                (2) the citizen's sworn statement or affidavit  
4 describing the violation and indicating that the citizen provided  
5 the notice required by this section.

6        Sec. 769.153. DUTIES OF ATTORNEY GENERAL: INVESTIGATION  
7 AND NOTICE. (a) Before bringing a suit against a school district,  
8 open-enrollment charter school, state agency, or political  
9 subdivision for a violation of this chapter, the attorney general  
10 shall investigate a complaint filed under Section 769.152 to  
11 determine whether legal action is warranted.

12        (b) The school district, open-enrollment charter school,  
13 state agency, or political subdivision that is the subject of the  
14 complaint shall provide to the attorney general any information the  
15 attorney general requests in connection with the complaint,  
16 including:

17                (1) supporting documents related to the complaint; and  
18                (2) a statement regarding whether the entity has  
19 complied or intends to comply with this chapter.

20        (c) If the attorney general determines that legal action is  
21 warranted, the attorney general shall provide the appropriate  
22 officer of the school district, open-enrollment charter school,  
23 state agency, or political subdivision charged with the violation a  
24 written notice that:

25                (1) describes the violation and location of the  
26 bathroom or changing facility found to be in violation;  
27                (2) states the amount of the proposed penalty for the

1 violation; and

2 (3) requires the school district, open-enrollment  
3 charter school, state agency, or political subdivision to cure the  
4 violation on or before the 15th day after the date the notice is  
5 received to avoid the penalty, unless the school district,  
6 open-enrollment charter school, state agency, or political  
7 subdivision was found liable by a court for previously violating  
8 this chapter.

9 Sec. 769.154. COLLECTION OF CIVIL PENALTY; MANDAMUS.

10 (a) If, after receipt of notice under Section 769.153(c), the  
11 school district, open-enrollment charter school, state agency, or  
12 political subdivision has not cured the violation on or before the  
13 15th day after the date the notice is provided under Section  
14 769.153(c)(3), the attorney general may sue to collect the civil  
15 penalty provided by Section 769.151.

16 (b) In addition to filing suit under Subsection (a), the  
17 attorney general may also file a petition for a writ of mandamus or  
18 apply for other appropriate equitable relief.

19 (c) A suit or petition under this section may be filed in a  
20 district court in:

21 (1) Travis County; or

22 (2) a county in which the principal office of the  
23 school district, open-enrollment charter school, state agency, or  
24 political subdivision is located.

25 (d) The attorney general may recover reasonable expenses  
26 incurred in obtaining relief under this section, including court  
27 costs, reasonable attorney's fees, investigative costs, witness



1 fees, and deposition costs.

2       (e) A civil penalty collected by the attorney general under  
3 this section shall be deposited to the credit of the compensation to  
4 victims of crime fund established under Subchapter B, Chapter 56,  
5 Code of Criminal Procedure.

6       Sec. 769.155. NO CAUSE OF ACTION. (a) A school district,  
7 open-enrollment charter school, state agency, or political  
8 subdivision does not have any cause of action related to compliance  
9 with this chapter.

10       (b) A court of this state does not have jurisdiction over a  
11 cause of action related to compliance with this chapter brought by a  
12 school district, open-enrollment charter school, state agency, or  
13 political subdivision.

14       (c) On the motion of any party or the court's own motion, a  
15 court shall dismiss a cause of action related to compliance with  
16 this chapter brought by a school district, open-enrollment charter  
17 school, state agency, or political subdivision.

18       (d) This section does not prohibit a suit or petition by the  
19 attorney general under Section 769.154.

20       Sec. 769.156. SOVEREIGN IMMUNITY WAIVED. Sovereign  
21 immunity to suit is waived and abolished to the extent of liability  
22 created by this subchapter.

23       SECTION 6. It is the intent of the legislature that every  
24 provision, section, subsection, sentence, clause, phrase, or word  
25 in this Act, and every application of the provisions in this Act to  
26 each person or entity, are severable from each other. If any  
27 application of any provision in this Act to any person, group of

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1 persons, or circumstances is found by a court to be invalid for any  
2 reason, the remaining applications of that provision to all other  
3 persons and circumstances shall be severed and may not be affected.

4       SECTION 7. Section 250.008, Local Government Code, as added  
5 by this Act, applies to an order, ordinance, or other measure  
6 adopted before, on, or after the effective date of this Act.

7       SECTION 8. Section 271.909, Local Government Code, as added  
8 by this Act, applies only to a contract awarded on or after the  
9 effective date of this Act.

10       SECTION 9. This Act takes effect September 1, 2017.



**Addendum 5:** Senate Bill 3, Texas State Legislature. Pages are scanned in to prevent  
formatting

By: Kolthorst, et al.

S.B. No. 3

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the regulation of certain facilities and activities of  
3 political subdivisions, including public school districts, and  
4 open-enrollment charter schools.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading to Chapter 250, Local Government  
7 Code, is amended to read as follows:

8 CHAPTER 250. MISCELLANEOUS REGULATORY AUTHORITY OF  
9 MUNICIPALITIES, ~~[AND]~~ COUNTIES, AND OTHER LOCAL GOVERNMENTS

10 SECTION 2. Chapter 250, Local Government Code, is amended  
11 by adding Section 250.009 to read as follows:

12 Sec. 250.009. REGULATION OF CERTAIN FACILITIES AND  
13 ACTIVITIES. (a) Each multiple-occupancy restroom, shower, and  
14 changing facility of a political subdivision, including a public  
15 school district, or an open-enrollment charter school must be  
16 designated for and used only by persons of the same sex as stated on  
17 a person's:

18 (1) birth certificate; or

19 (2) driver's license, personal identification  
20 certificate, or license to carry a handgun, issued to the person by  
21 the Department of Public Safety of the State of Texas.

22 (b) In an effort to ensure the right of each person to  
23 participate in athletic activities and have access to restrooms,  
24 locker rooms, showers, and changing facilities with privacy,

1 dignity, and safety, and except in accordance with federal law as  
2 enacted by Congress and interpreted in controlling federal case law  
3 and state law as enacted by the legislature and interpreted in  
4 controlling case law of this state, a political subdivision,  
5 including a public school district, or an open-enrollment charter  
6 school may not adopt or enforce an order, ordinance, policy, or  
7 other measure that:

8       (1) relates to the designation or use of a  
9 multiple-occupancy restroom, shower, or changing facility;

10       (2) requires a private entity to adopt, or prohibits  
11 the entity from adopting, a policy on the designation or use of the  
12 entity's multiple-occupancy restrooms, showers, or changing  
13 facilities; or

14       (3) allows a person whose birth certificate states  
15 their sex as male to participate in athletic activities designated  
16 for a person whose birth certificate states their sex as female.

17       (c) A private entity that leases or contracts to use a  
18 building owned or leased by a political subdivision, including a  
19 public school district, or an open-enrollment charter school is not  
20 subject to Subsection (a). A political subdivision, including a  
21 public school district, or an open-enrollment charter school may  
22 not require the private entity to adopt, or prohibit the private  
23 entity from adopting, a policy on the designation or use of  
24 restrooms, showers, or changing facilities located in the building.

25       (d) This section may be enforced only through an action  
26 instituted by the attorney general for mandamus or injunctive  
27 relief. The attorney general may recover costs and attorney's fees



1 related to enforcing this section.

2 (e) This section does not preclude a political subdivision,  
3 including a public school district, or an open-enrollment charter  
4 school from adopting an ordinance, order, policy, or other measure  
5 regarding the use of a restroom, shower, or changing facility by a  
6 person not of the designated sex to:

7 (1) assist in the restroom, shower, or changing  
8 facility:

9 (A) a person with a disability;

10 (B) a child under the age of eight; or

11 (C) an elderly person.

12 (2) be assisted in the restroom, shower, or changing  
13 facility, if the person is a person described by Subdivision  
14 (1)(A), (B), or (C);

15 (3) render medical or other emergency assistance; or

16 (4) maintain the restroom, shower, or changing  
17 facility when the restroom, shower, or changing facility is not in  
18 use.

19 (f) This section does not prohibit a political subdivision,  
20 including a public school district, or an open-enrollment charter  
21 school from providing an accommodation, including a  
22 single-occupancy restroom, shower, or changing facility or the  
23 controlled use of a faculty restroom, shower, or changing facility,  
24 on request due to special circumstances.

25 SECTION 3. Subchapter 2, Chapter 2252, Government Code, is  
26 amended by adding Section 2252.909 to read as follows:

27 Sec. 2252.909. CONSIDERATION OF CERTAIN POLICIES

S.B. No. 3

1 PROHIBITED. In awarding a contract for the purchase of goods or  
2 services, a political subdivision, including a public school  
3 district, or an open-enrollment charter school may not consider  
4 whether a private entity competing for the contract has adopted a  
5 policy relating to the designation or use of the entity's bathrooms  
6 or changing facilities.

7       SECTION 4. This Act takes effect immediately if it receives  
8 a vote of two-thirds of all the members elected to each house, as  
9 provided by Section 39, Article III, Texas Constitution. If this  
10 Act does not receive the vote necessary for immediate effect, this  
11 Act takes effect on the 91st day after the last day of the  
12 legislative session.