


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: April 14, 2016

TO: Honorable Members of the Rules, Elections,
Intergovernmental Relations, and Neighborhoods Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File: 16-0379
Assignment No: 16-04-0305

SUBJECT: Resolution (Bonin-Wesson-O'Farrell) proposing that the City of Los Angeles refrain from conducting business with the State of North Carolina until House Bill 2 is repealed.

CLA RECOMMENDATION: That the City Council, with the concurrence of the Mayor, adopt Resolution (Bonin-Wesson-O'Farrell) to instruct all departments to refrain from conducting business with the State of North Carolina, including participation in any conventions or other business that would require expenditure of City resources, until such time that House Bill 2 is repealed.

SUMMARY

Introduced on April 1, 2016, Resolution (Bonin-Wesson-O'Farrell) notes that the State of North Carolina recently enacted House Bill 2 (HB 2), a measure that effectively eliminates that state's protections against discrimination based on sexual orientation, and places certain restrictions on transgender individuals. According to the North Carolina House Judiciary Committee's analysis, this bill makes a State declaration that "the regulation of discriminatory practices in a place of public accommodation an issue of general statewide concern, and supersede and preempt ordinances, regulations, resolutions, or policies adopted or imposed by any unit of local government or other political subdivision regulating or imposing any requirements on employers relating to regulation of discriminatory practices in a place of public accommodation."

HB 2 measure included the following two provisions:

- North Carolina state law, prior to enactment of HB 2, declared that the "State will protect and safeguard the right and opportunities of all persons to employment without discrimination on the basis of race, religion, color, national origin, age, **sex**, or handicap by employers of 15 or more." HB 2 changed the law to declare protections based on "**biological sex**."
- HB 2 also added a North Carolina state requirement that all single-sex multiple occupancy bathroom and changing facilities may only be used by individuals based on their biological sex.

BACKGROUND

Various motions and resolutions introduced by the Los Angeles City Council over the years have expressed the City of Los Angeles' strong commitment to support policies that protect against any form of discrimination based on race, ethnicity, national origin, religion, sexual orientation, and disability. The City has also expressed strong support for past legal efforts and economic sanctions against governments and measures that promote inequitable treatment, or discrimination based on race, ethnicity, sexual orientation or any other form of discrimination such as the 1986 boycott

against apartheid in South Africa, the 1992 boycott against Colorado Amendment 2 which promoted discrimination against the Lesbian Gay Bisexual and Transgender (LGBT) community, and California Proposition 187 which denied public education, non-emergency health care and public services to undocumented immigrants.

Approval of Resolution (Bonin-Wesson-O'Farrell) would be consistent with prior Council actions and stated Council policies.

BILL STATUS

HB 2 was introduced on March 23, 2016 at a Second Special Session of the North Carolina legislature. By the end of the day, the measure passed the policy committee and floor processes of both the House and Senate and was signed into law by the Governor. (Note: According to news reports and the voting record, Senate Democrats refused to vote on this measure and walked out before the vote was taken).



Roy R. Morales
Analyst

- Attachment: 1. Resolution (Bonin-Wesson-O'Farrell)
2. North Carolina House Bill 2, as enacted.

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies to or pending before a local, state or federal government body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the City of Los Angeles has historically supported policies that prohibit discrimination based on ethnicity, national origin, religion, sexual orientation, and disability; and

WHEREAS, in 2016, North Carolina adopted House Bill (HB) 2, which overturned existing state protections against discrimination on the basis of sexual orientation and institutes a number of unique new restrictions on transgender people; and

WHEREAS, the law makes clear local measures can't protect people on the basis of sexual orientation or gender identity, or require businesses to provide higher minimum wages or paid sick leave; and

WHEREAS, HB 2 blocks workers from suing in state courts over workplace discrimination based on race, religion, color, national origin, age, sex or handicap, directing complaints instead to a state commission; and

WHEREAS, under HB 2, North Carolinians are legally barred from any bathroom or locker room that does not match the gender assigned on their birth certificate, putting transgender men and women in an impossible situation; and

WHEREAS, discrimination should have no place in politics; and


WHEREAS, HB 2 does not reflect the values of the City of Los Angeles, let alone the views that a majority of North Carolinians or our country share; and

WHEREAS, the Human Rights Campaign and Equality North Carolina have organized a campaign with 80 signatories, including the CEOs of Facebook, Apple, Lyft, Google, Dropbox and Tumblr in opposition to HB 2; and

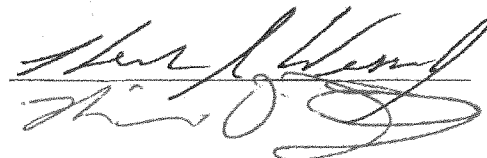
WHEREAS, civil liberties groups have also challenged the bill as unconstitutional, filing a federal lawsuit against the state;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by adoption of this Resolution, the City of Los Angeles shall refrain from conducting business with the State of North Carolina including participating in any conventions or other business that requires City resources, until such time that HB 2 is repealed.

PRESENTED BY:


 MIKE BONIN
 Councilmember, 11th District

SECONDED BY:



APR 0 2016



ORIGINAL

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 2016

SESSION LAW 2016-3
HOUSE BILL 2

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

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

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

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

16 Whereas, the General Assembly finds that laws and obligations consistent statewide for
17 all businesses, organizations, and employers doing business in the State benefit the businesses,
18 organizations, and employers seeking to do business in the State and attracts new businesses,
19 organizations, and employers to the State; Now, therefore,

20
21 The General Assembly of North Carolina enacts:

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

26 **SECTION 1.1.** G.S. 115C-47 is amended by adding a new subdivision to read:

27 "(63) To Establish Single-Sex Multiple Occupancy Bathroom and Changing
28 Facilities. – Local boards of education shall establish single-sex multiple
29 occupancy bathroom and changing facilities as provided in G.S. 115C-521.2."

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

32 **"§ 115C-521.2. Single-sex multiple occupancy bathroom and changing facilities.**

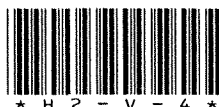
33 (a) Definitions. – The following definitions apply in this section:

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

36 (2) Multiple occupancy bathroom or changing facility. – A facility designed or
37 designated to be used by more than one person at a time where students may be
38 in various states of undress in the presence of other persons. A multiple
39 occupancy bathroom or changing facility may include, but is not limited to, a
40 school restroom, locker room, changing room, or shower room.

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

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



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

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

9 (1) For custodial purposes.

10 (2) For maintenance or inspection purposes.

11 (3) To render medical assistance.

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

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

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

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

18 **SECTION 1.3.** Chapter 143 of the General Statutes is amended by adding a new
19 Article to read:

20 "Article 81.

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

22 **"§ 143-760. Single-sex multiple occupancy bathroom and changing facilities.**

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

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

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

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

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

35 a. Executive branch agencies.

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

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

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

40 e. A local board of education.

41 f. The judicial branch.

42 g. The legislative branch.

43 h. Any other political subdivision of the State.

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

49 (b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Public agencies
50 shall require every multiple occupancy bathroom or changing facility to be designated for and only
51 used by persons based on their biological sex.

52 (c) Accommodations Permitted. – Nothing in this section shall prohibit public agencies
53 from providing accommodations such as single occupancy bathroom or changing facilities upon a
54 person's request due to special circumstances, but in no event shall that accommodation result in
55 the public agency allowing a person to use a multiple occupancy bathroom or changing facility
56 designated under subsection (b) of this section for a sex other than the person's biological sex.

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

59 (1) For custodial purposes.

- 1 (2) For maintenance or inspection purposes.
2 (3) To render medical assistance.
3 (4) To accompany a person needing assistance.
4 (4a) For a minor under the age of seven who accompanies a person caring for that
5 minor.
6 (5) That has been temporarily designated for use by that person's biological sex."
7

8 **PART II. STATEWIDE CONSISTENCY IN LAWS RELATED TO EMPLOYMENT AND**
9 **CONTRACTING**

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

11 "**§ 95-25.1. Short title and legislative purpose.**~~purpose; local governments preempted.~~

12 (a) This Article shall be known and may be cited as the "Wage and Hour Act."

13 (b) The public policy of this State is declared as follows: The wage levels of employees,
14 hours of labor, payment of earned wages, and the well-being of minors are subjects of concern
15 requiring legislation to promote the general welfare of the people of the State without jeopardizing
16 the competitive position of North Carolina business and industry. The General Assembly declares
17 that the general welfare of the State requires the enactment of this law under the police power of
18 the State.

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

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

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

34 "(a) Authority. – A county may contract with and appropriate money to any person,
35 association, or corporation, in order to carry out any public purpose that the county is authorized
36 by law to engage in. A county may not require a private contractor under this section to abide by
37 ~~any restriction that the county could not impose on all employers in the county, such as paying~~
38 ~~minimum wage or providing paid sick leave to its employees, regulations or controls on the~~
39 ~~contractor's employment practices or mandate or prohibit the provision of goods, services, or~~
40 ~~accommodations to any member of the public as a condition of bidding on a contract, contract or a~~
41 ~~qualification-based selection, except as otherwise required or allowed by State law."~~

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

43 "(a) Authority. – A city may contract with and appropriate money to any person,
44 association, or corporation, in order to carry out any public purpose that the city is authorized by
45 law to engage in. A city may not require a private contractor under this section to abide by ~~any~~
46 ~~restriction that the city could not impose on all employers in the city, such as paying minimum~~
47 ~~wage or providing paid sick leave to its employees, regulations or controls on the contractor's~~
48 ~~employment practices or mandate or prohibit the provision of goods, services, or accommodations~~
49 ~~to any member of the public as a condition of bidding on a contract, contract or a~~
50 ~~qualification-based selection, except as otherwise required or allowed by State law."~~

51
52 **PART III. PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC**
53 **ACCOMMODATIONS**

54 **SECTION 3.1.** G.S. 143-422.2 reads as rewritten:

55 "**§ 143-422.2. Legislative declaration.**

56 (a) It is the public policy of this State to protect and safeguard the right and opportunity of
57 all persons to seek, obtain and hold employment without discrimination or abridgement on
58 account of race, religion, color, national origin, age, biological sex or handicap by employers
59 which regularly employ 15 or more employees.

1 (b) It is recognized that the practice of denying employment opportunity and
2 discriminating in the terms of employment foments domestic strife and unrest, deprives the State
3 of the fullest utilization of its capacities for advancement and development, and substantially and
4 adversely affects the interests of employees, employers, and the public in general.

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

12 **SECTION 3.2.** G.S. 143-422.3 reads as rewritten:

13 **"§ 143-422.3. Investigations; conciliations.**

14 The Human Relations Commission in the Department of Administration shall have the
15 authority to receive charges of discrimination from the Equal Employment Opportunity
16 Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by
17 Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this
18 process, the agency shall use its good offices to effect an amicable resolution of the charges of
19 discrimination. This Article does not create, and shall not be construed to create or support, a
20 statutory or common law private right of action, and no person may bring any civil action based
21 upon the public policy expressed herein."

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

24 "Article 49B.

25 "Equal Access to Public Accommodations.

26 **"§ 143-422.10. Short title.**

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

29 **"§ 143-422.11. Legislative declaration.**

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

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

42 **"§ 143-422.12. Places of public accommodation – defined.**

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

46 **"§ 143-422.13. Investigations; conciliations.**

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

53
54 **PART IV. SEVERABILITY**

55 **SECTION 4.** If any provision of this act or its application is held invalid, the
56 invalidity does not affect other provisions or applications of this act that can be given effect
57 without the invalid provisions or application, and to this end the provisions of this act are
58 severable. If any provision of this act is temporarily or permanently restrained or enjoined by
59 judicial order, this act shall be enforced as though such restrained or enjoined provisions had not

1 been adopted, provided that whenever such temporary or permanent restraining order or injunction
2 is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and
3 effect.
4

5 **PART V. EFFECTIVE DATE**

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

14 In the General Assembly read three times and ratified this the 23rd day of March, 2016.
15

16
17 s/ Daniel J. Forest
18 President of the Senate
19

20
21 s/ Tim Moore
22 Speaker of the House of Representatives
23

24
25 s/ Pat McCrory
26 Governor
27

28
29 Approved 9:57 p.m. this 23rd day of March, 2016