

Constituent Universities

Appalachian
State University

East Carolina
University

Elizabeth City
State University

Fayetteville State
University

North Carolina
Agricultural and
Technical State
University

North Carolina
Central University

North Carolina
State University
at Raleigh

University of
North Carolina
at Asheville

University of
North Carolina
at Chapel Hill

University of
North Carolina
at Charlotte

University of
North Carolina
at Greensboro

University of
North Carolina
at Pembroke

University of
North Carolina
at Wilmington

University of
North Carolina
School of the Arts

Western Carolina
University

Winston-Salem
State University

Constituent High School

North Carolina
School of Science
and Mathematics

An Equal Opportunity/
Affirmative Action Employer

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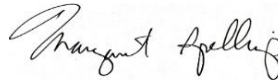
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MEMORANDUM

TO: Chancellors

FROM: Margaret Spellings



DATE: April 5, 2016

SUBJECT: Guidance - Compliance with the Public Facilities Privacy & Security Act

The General Assembly and Governor McCrory enacted the Public Facilities Privacy & Security Act (the "Act," copy attached) on March 23, 2016. This memorandum responds to requests for guidance from UNC system institutions concerning the Act's requirements.

The Act amends the state's public policy statement regarding nondiscrimination, and provides that it supersedes nondiscrimination regulations imposed upon employers and public accommodations by political subdivisions of the state, including local governments. The Act does not limit the ability of local governments and universities to adopt policies with respect to their own employees. The Act requires multiple occupancy bathrooms and changing facilities in government buildings to be designated for and only used by persons based on biological sex.

1. *Does the Act require the University to change its nondiscrimination policies?*

Answer: No. The Act does not require University institutions to change their nondiscrimination policies, and those policies should remain in effect.

2. *What are the University's obligations under the Act relating to bathrooms and changing facilities?*

Answer: University institutions must require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.

3. *How should University institutions meet their obligations related to bathrooms and changing facilities?*

Answer: University institutions should take the following actions to fully meet their obligations under the Act:

- a. Designate and label multiple-occupancy bathrooms and changing facilities for single-sex use with signage.
- b. Provide notice of the Act to campus constituencies as appropriate.
- c. Consider assembling and making information available about the locations of designated single-occupancy bathrooms and changing facilities on campus.

UNC institutions already designate and label multiple-occupancy bathrooms and changing facilities for single-sex use with signage and should maintain these designations and signage. Institutions may provide accommodations such as single-occupancy bathrooms or changing facilities and may designate those facilities as gender-neutral.

4. Does the Act address enforcement of the bathroom and changing facility provisions?

Answer: The Act does not contain provisions concerning enforcement of the bathroom and changing facility requirements.

5. What is the status of the lawsuit filed against the Governor, the Attorney General, and the University and how will it affect the implementation of the Act?

Answer: The lawsuit is pending in federal court. The plaintiffs include a student, a faculty member, and a staff member from UNC system institutions. Once the lawsuit is formally served, the University will have several weeks to file a response. The lawsuit alleges that the Act violates rights to equal protection, due process, and privacy protected by the United States Constitution and discriminates on the basis of sex in violation of Title IX. The plaintiffs have asked the court to declare the Act unconstitutional and to stop the state from enforcing its provisions. The Attorney General has announced that he will not represent the Governor or the University in the lawsuit. The University will work with the Attorney General's office to make arrangements for counsel in the lawsuit. Like all public agencies, the University is required to fulfill its obligations under the law unless or until the court directs otherwise.

6. What should constituent institutions do if contacted by a federal regulatory agency concerning the Act and its implementation?

Answer: If your institution is contacted by a federal agency with questions about the Act, please notify the Division of Legal Affairs at UNC General Administration.

7. What is the effective date of the Act?

Answer: The Act took effect and became law on March 23, 2016.

8. Are there any other issues that institutions should consider?

Answer: State and federal law protect personal privacy and limit the personal information that may be requested and/or disclosed by the University concerning students, employees, visitors, patients, and others. In addition, constituent institutions must continue to operate in accordance with their nondiscrimination policies and must take prompt and appropriate action to prevent and address any instances of harassment and discrimination in violation of University policies.

If you have specific questions about your facilities and the Act, please address those with your campus legal counsel. We will continue to provide further guidance and information as appropriate.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 2016**

**HOUSE BILL 2
RATIFIED BILL**

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

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

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

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

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

The General Assembly of North Carolina enacts:

PART I. SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING FACILITIES

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

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

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

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

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

- (1) Biological sex. – The physical condition of being male or female, which is stated on a person's birth certificate.
- (2) Multiple occupancy bathroom or changing facility. – A facility designed or designated to be used by more than one person at a time where students may be in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a school restroom, locker room, changing room, or shower room.
- (3) Single occupancy bathroom or changing facility. – A facility designed or designated to be used by only one person at a time where students may be in various states of undress. A single occupancy bathroom or changing facility may include, but is not limited to, a single stall restroom designated as unisex or for use based on biological sex.

(b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Local boards of education shall require every multiple occupancy bathroom or changing facility that is



designated for student use to be designated for and used only by students based on their biological sex.

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

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

- (1) For custodial purposes.
- (2) For maintenance or inspection purposes.
- (3) To render medical assistance.
- (4) To accompany a student needing assistance when the assisting individual is an employee or authorized volunteer of the local board of education or the student's parent or authorized caregiver.
- (5) To receive assistance in using the facility.
- (6) To accompany a person other than a student needing assistance.
- (7) That has been temporarily designated for use by that person's biological sex."

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

"Article 81.

"Single-Sex Multiple Occupancy Bathroom and Changing Facilities.

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

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

- (1) Biological sex. – The physical condition of being male or female, which is stated on a person's birth certificate.
- (2) Executive branch agency. – Agencies, boards, offices, departments, and institutions of the executive branch, including The University of North Carolina and the North Carolina Community College System.
- (3) Multiple occupancy bathroom or changing facility. – A facility designed or designated to be used by more than one person at a time where persons may be in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a restroom, locker room, changing room, or shower room.
- (4) Public agency. – Includes any of the following:
 - a. Executive branch agencies.
 - b. All agencies, boards, offices, and departments under the direction and control of a member of the Council of State.
 - c. "Unit" as defined in G.S. 159-7(b)(15).
 - d. "Public authority" as defined in G.S. 159-7(b)(10).
 - e. A local board of education.
 - f. The judicial branch.
 - g. The legislative branch.
 - h. Any other political subdivision of the State.
- (5) Single occupancy bathroom or changing facility. – A facility designed or designated to be used by only one person at a time where persons may be in various states of undress. A single occupancy bathroom or changing facility may include, but is not limited to, a single stall restroom designated as unisex or for use based on biological sex.

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

(c) Accommodations Permitted. – Nothing in this section shall prohibit public agencies from providing accommodations such as single occupancy bathroom or changing facilities upon a person's request due to special circumstances, but in no event shall that accommodation result in the public agency allowing a person to use a multiple occupancy bathroom or

changing facility designated under subsection (b) of this section for a sex other than the person's biological sex.

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

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

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~~; ~~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 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:

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

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

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

PART III. PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS

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

"§ 143-422.2. Legislative declaration.

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

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

(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."

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

"§ 143-422.3. Investigations; conciliations.

The Human Relations Commission in the Department of Administration shall have the authority to receive charges of discrimination from the Equal Employment Opportunity Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this process, the agency shall use its good offices to effect an amicable resolution of the charges 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."

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

"Article 49B.

"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.

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

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____m. this _____ day of _____, 2016