



North Carolina General Assembly
House Of Representatives

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COMMITTEES:

APPROPRIATIONS—EDUCATION
CHILDREN, YOUTH, AND FAMILIES
EDUCATION K-12
ELECTIONS
FINANCE
JUDICIARY II
REGULATORY REFORM
RULES

April 8, 2016

Dear Council Members,

Many questions have been raised concerning the effect of [Session Law 2016-3 \(House Bill 2\)](#), *Public Facilities Privacy & Security Act*, specifically as it relates to the economy, Title IX funding and Military and Veterans Affairs.

The Charlotte ordinance was scheduled to go into effect on April 1st. The Charlotte ordinance violated (1) the privacy of those who work, reside in and visit the City of Charlotte and every business throughout the state that does business with Charlotte (2) and the religious liberties of small business and nonprofits in Charlotte. The Charlotte City Council exceeded its legal authority by trying to assume functions that had never been delegated to it by the General Assembly.

Our office received **OVER 4,300** emails asking me to pass legislation as soon as possible to address this ordinance. I was privileged to be a primary sponsor of the bill.

[Session Law 2016-3 \(House Bill 2\)](#), *Public Facilities Privacy & Security Act*, passed by a vote of **82-to-26 in the House** and a vote of **32-to-0 in the Senate**. The bill was ratified and signed by Governor McCrory the same day. The committee summary is available [here](#).

5 provisions are included in the law:

1. Require single sex multiple occupancy bathrooms and changing facilities in public schools and public agencies. The Charlotte ordinance tried to set restroom policy throughout the city even in private businesses. There are an estimated 20,000 private businesses and non-profits in Charlotte that would have been affected. The new law sets common sense policy for government facilities but leaves private business free (subject to laws of indecent exposure).
2. Supersedes and preempts local ordinances, regulations, or resolutions imposing any requirements on employers pertaining to compensation of employees, with certain exceptions.
3. Prohibits cities and counties from requiring private contractors to abide by regulations or controls on employment practices or mandate or prohibit provision of goods, services, or accommodations to any member of the public, except as required by State law.
4. Supersedes and preempts local ordinances, regulations, or resolutions that regulate or impose any requirement on employers pertaining to discriminatory practices in employment.

5. Creates a new public policy of the state opposing discrimination on the basis of race, religion, color, national origin, or biological sex in public accommodations.

This common sense law assures North Carolina residents, businesses and visitors that their reasonable expectation of privacy in public restrooms or changing facilities will be honored.

Our office has received these questions several times:

Q: How does SL 2016-3 enhance the economy?

A: Since 1835, the constitutional public policy of North Carolina has been that regulation of labor, trade, mining or manufacturing shall be decided at the state level rather than at the local level. Article II, Section 24(j) of the NC Constitution.

This is a great advantage to intrastate commerce for the same reasons that interstate commerce was greatly enhanced by the 1787 US Constitutional provision protecting interstate commerce from state or local interference. An efficient economy with minimal regulation and reasonable levels of taxation is the best recipe for job growth. In this case the City of Charlotte passed an ordinance (for which it had no statutory authority) telling thousands (probably tens of thousands) of Charlotte businesses, nonprofits and even churches how to organize their facilities and how to do business. It also affected hundreds of businesses around the state who might want to contract with the City. The Charlotte ordinance required such businesses to comply with the City's demands even in the business' facilities outside of Charlotte. This was an extreme case of "big government" overreach, which the state legislature had the power and duty to correct under Article VII, Section 1 of the Constitution.

Q: How does SL 2016-3 affect Title IX funding?

A: Liberal groups have been claiming that North Carolina schools and universities will lose around \$4.5 billion in Title IX funding due to the *Public Facilities Privacy & Security Act*. This claim is false.

Title IX ensures that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. §1681(a).

Under current law, neither states nor school districts will lose Title IX funding for enacting laws and policies that require students to use the restrooms and locker rooms of their biological sex.

Title IX and its regulations specifically allow schools to maintain separate facilities (including dormitories, restrooms and locker rooms) on the basis of sex without putting their funding at risk.

- Title IX states that “nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.” 20 U.S.C. § 1686.

- Title IX’s regulations further state that “[a] recipient may provide separate toilet, locker room, and shower facilities on the basis of sex.” 34 C.F.R. § 106.33.

Thus, schools may have separate restrooms, locker rooms, and showers for boys and girls without jeopardizing federal funding.

Every federal court to examine the issue so far has concluded that it does not violate Title IX to maintain separate restrooms and locker rooms on the basis of biological sex.

- “[T]he School Board did not run afoul of Title IX by limiting G.G. to the bathrooms assigned to his birth sex.” *G.G. v. Gloucester County School Board*, Federal Court for the Eastern District of Virginia (Sept. 17, 2015).
- “[T]he University’s policy of requiring students to use sex-segregated bathroom and locker room facilities based on students’ natal or birth sex, rather than their gender identity, does not violate Title IX’s prohibition of sex discrimination.” *Johnston v. University of Pittsburgh*, Federal Court for the Western District of Pennsylvania (Mar. 31, 2015).

Every time a school district or university has defended a student privacy policy in federal court it has won. The U.S. Department of Education seeks to bully schools and states into complying with its wrong interpretation of Title IX. When schools stand up to the Department, the Department loses in court.

No school district, university, or state has ever lost Title IX funding.

In the 40 years since Title IX was enacted, no educational institution or state has ever lost federal funding for noncompliance with Title IX. If the Department of Education threatens a school’s funding, that school is entitled to a hearing before an administrative law judge and review by a court. If a school fights and ultimately loses, the school is given 30 days to comply and keep its Title IX funding. 20 U.S.C. § 1682; 28 C.F.R. § 42.111.

Q: Doesn’t SL 2016-3 discriminate against Veterans and the Military?

A: Liberal groups have been circulating the claim that the *Public Facilities Privacy & Security Act*, discriminates against Veterans. Here is a list of benefits, protections, or preferences that the State offers for active military and veterans.

- **G.S. 17C-10.1** recognizes the experience of military service members for law enforcement certification.
- **G.S. 20-7(f) (3b)** modifies drivers license renewal provisions for the Armed Forces and reserve components.
- **G.S. 20-7 (q) and (q1)** provides a designation on drivers license for active duty and veteran military.
- **G.S. 20-37.13(c1) and (c2)** waives some qualifications for a commercial drivers license for military.

- **G.S. 93B-15.1** requires an occupational licensing board to issue a license to a military trained applicant if the applicant demonstrates military occupational specialty certification and experience in the field and passes a proficiency examination.
- **G.S. 95-28.4** A private, nonpublic employer may provide a preference to a veteran for employment. Spouses of honorably discharged veterans with a service-connected permanent and total disability may be preferred for employment. Granting this preference is not a violation of equal employment opportunity law.
- **G.S. 105-277.1C** provides for a disabled veteran property tax homestead exclusion.
- **G.S. 113-296** Disabled veteran sportsmen may participate in the disabled sportsman program.
- **G.S. 113-174.2(c)(6)** grants a lifetime fishing licenses for resident disabled veterans.
- **G.S. 116-143.3A** waives the 12-month residency requirement for veterans for tuition.
- **G.S. 116-209.54(b)(6)** extends eligibility for North Carolina National Guard tuition assistance to a program granting graduate certificates.
- **G.S. 122C-115.4** requires the behavioral health needs of members of the active and reserve components of the Armed Forces of the US, veterans and their family members to be met
- **Chapter 126, Article 13** provides Veterans preference for employment with the State.
- **G.S. 127A-202.1** provides employment protections to members of the North Carolina National Guard and of other states.
- **Chapter 127B, Article 2** pertains to *Discrimination Against Military Personnel* (**G.S. 127B-11** private, **G.S. 127B-12** public, **G.S. 127B-14** employer).
- **G.S. 128-15** provides employment preference for veterans and their spouses or surviving spouses.
- **Chapter 143B, Article 14, Part 2** provides scholarships for children of certain veterans.
- **Chapter 143B, Article 14, Part 3** creates and appoints the Governor's jobs for veterans committee
- **Chapter 143B, Article 14, Part 9** provides priority in employment assistance for veterans.
- **SL 2013-268** awards credit for prior work experience of veterans for the State Salary Schedules.

Another resource is the **2015 NC4VETS Guide**: <http://www.nc4vets.com/blog/resource-guide>.
 For further information, contact the NC Department of Military and Veterans Affairs at 844.624.8387.

Additional Budget Support For Veterans:

These allocations are located in the 2015 Conference Committee Report available [HERE](#).

Section F49 Resident Tuition for Certain Non-Resident Veterans

Provides funds to offset a reduction in tuition receipts as a result of granting certain non-resident veterans resident status for tuition purposes. The federal Veterans Access, Choice, and Accountability

Act of 2014 requires public institutions of higher education to charge certain non-resident veterans no more than the resident tuition and fee rates or risk losing approval to receive federal educational benefits.

This item funds the expected costs of compliance with that Act for the Community College System.

\$2,000,000 Recurring Funds (15-16)

\$2,000,000 Recurring Funds (16-17)

Section F69 Resident Tuition for Certain Non-Resident Veterans

Provides funds to offset a reduction in tuition receipts as a result of granting certain non-resident veterans resident status for tuition purposes. The federal Veterans Access, Choice, and Accountability Act of 2014 requires public institutions of higher education to charge certain non-resident veterans no more than the resident tuition and fee rates or risk losing approval to receive federal educational benefits. This item funds the expected costs of compliance with that Act for the UNC System.

\$9,300,762 Recurring Funds (15-16)

\$9,300,762 Recurring Funds (16-17)

Federal Law that prohibits discrimination against veterans

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is a federal law that prohibits discrimination against veterans, permits option of administrative enforcement or civil action in federal or state court, has NO statute of limitations and assigns burden of proof to employer to disprove discrimination.

I hope this information will be helpful to you as you continue to serve North Carolina. Please do not hesitate to reach out to my office if you have any further questions. Thank you for all of your hard work.

Sincerely, Rep. Paul Stam

A handwritten signature in cursive script that reads "Paul Stam".