

BILL ANALYSIS

Senate Research Center
85R15242 LED-D

C.S.S.B. 6
By: Kolkhorst
State Affairs
3/8/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 6 makes several changes in the law designed to increase privacy and protections in bathrooms, changing rooms, and locker rooms.

SECTION 2 of the bill preempts a political subdivision such as a county or municipality from adopting or enforcing an ordinance that would establish a policy relating to who may use a private entity's bathroom or changing facility. This would apply to a business or non-profit and would prevent any local government from designating who may use a bathroom, regardless of what that designation may contain.

SECTION 3 of the bill prohibits any political subdivision from considering an entity's bathroom designation policy when awarding a contract for the purchase of goods or services. Every company, regardless of their bathroom designation policy, will still be eligible to apply for state contracts.

SECTION 4 of the bill requires each school district, public university, state agency, county, municipality, special district, and open-enrollment charter school to adopt a bathroom designation policy based on a person's biological sex. This SECTION allows a public building, school, or charter school to provide an accommodation to a student upon request due to any special circumstance. The bill also includes several exceptions to the biological designation, allowing a person to enter a bathroom of the opposite biological sex for a custodial purpose, to render medical assistance, or to assist a student or disabled individual. Furthermore, a child under the age of 8 may enter a bathroom of the opposite sex with a person who is caring for them. SECTION 4 also allows a private entity who is contracting with a governmental entity for the use of a government facility to determine their own bathroom policy.

The bill imposes a civil penalty on any school or public entity that violates the requirement to maintain a separate bathroom designation based on biological sex. Once the attorney general receives a complaint that a school or public entity has violated that requirement, they are subject to a civil penalty between \$1000-\$1500 for the first violation and between \$10,000 and \$10,500 for each subsequent violation. The bill allows any citizen to file a complaint about a school or public entity that is in violation of the statute, is aware of the violation, and has not cured the violation within three days. The Office of the Attorney General (OAG) must investigate any complaint it receives and allows them to pursue a fine if the school or entity does not cure after 15 days of receiving notice from OAG. The draft also contains a limited waiver of sovereign immunity to allow these penalties to be collected.

Finally, SECTION 5 of the filed version of the bill contains a penalty enhancement for a list of crimes that commonly occur in bathrooms. This SECTION increases the punishment for these crimes that occur in a bathroom to the punishment prescribed for the next category of offense, and imposes a mandatory minimum sentence of 15 years for any offense that is already a first degree felony. The SECTION is removed in the substitute (see below).

The committee substitute for S.B. 6 makes several changes:

1. The substitute adds intent language as a new SECTION 1 in order to reinforce that the bill is intended to protect the safety and privacy of our schoolchildren and citizens in our schools and public buildings.

2. It also makes several changes that remove the requirement that a school board or public entity adopt a policy designating separate facilities. This is designed to prevent our local communities from being torn apart by this divisive issue. See:

- Page 4, line 21, removes “shall adopt a policy” and replaces with “shall require.”
- Page 5 , lines 8-9, makes conforming change to reflect that schools no longer have to adopt a policy.
- Page 6, line 3, removes “shall adopt a policy” and replaces with “shall require” in same manner as in Subchapter B.
- Page 6, line 18, removes reference to a policy adopted to conform with earlier change.
- Page 6, lines 22-23, makes conforming change to reflect that public entities no longer have adopt a policy.

3. Next, the substitute adds a new Subsection (b) to added Section 769.153, Health and Safety Code, requiring any entity that receives a request for information from the attorney general to provide the information.

- This is meant to prevent any local government or school district from impeding an investigation by the attorney general while also providing them with advance notice of whether or not they intend to cure.
- See: Page 8, lines 20-27 adds new Subsection (b)

4. The substitute also adds new Section 769.155 that clarifies that a public entity does not have a cause of action related to compliance with this chapter against any person.

- This is designed to preempt litigation against a person who makes a complaint.
- See: Page 10, lines 14-27

5. Finally, the committee substitute strikes SECTION 5 of the filed version of the bill. That SECTION provided penalty enhancements for a litany of crimes committed in a bathroom.

- After consultation with several stakeholders, we felt that this SECTION and other similar penalty enhancements did not fit with the other SECTIONS of the draft.

C.S.S.B. 6 amends current law relating to regulations and policies for entering or using a bathroom or changing facility and authorizes a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. LEGISLATIVE FINDINGS; PURPOSE. Sets forth certain legislative findings.

SECTION 2. Amends the heading to Chapter 250, Local Government Code, to read as follows:

CHAPTER 250. MISCELLANEOUS REGULATORY AUTHORITY

SECTION 3. Amends Chapter 250, Local Government Code, by adding Section 250.008, as follows:

Sec. 250.008. REGULATIONS RELATING TO CERTAIN BATHROOM OR CHANGING FACILITIES PROHIBITED. (a) Defines "bathroom or changing facility."

(b) Prohibits a political subdivision from adopting or enforcing an order, ordinance, or other measure relating to the designation or use of a private entity's bathroom or changing facility or that requires the entity to adopt, or prohibits the

entity from adopting, a policy on the designation or use of the entity's bathroom or changing facility.

SECTION 4. Amends Subchapter Z, Chapter 271, Local Government Code, by adding Section 271.909, as follows:

Sec. 271.909. CONSIDERATION OF CERTAIN POLICIES PROHIBITED. (a) Defines "bathroom or changing facility."

(b) Prohibits a political subdivision, in awarding a contract for the purchase of goods or services, from considering whether a private entity competing for the contract has adopted a policy relating to the designation or use of the entity's bathroom or changing facility.

SECTION 5. Amends Subtitle A, Title 9, Health and Safety Code, by adding Chapter 769, as follows:

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 769.001. DEFINITIONS. Defines "biological sex," "institution of higher education," "multiple-occupancy bathroom or changing facility," "open-enrollment charter school," "political subdivision," "school district," "single-occupancy bathroom or changing facility," and "state agency."

SUBCHAPTER B. PUBLIC SCHOOLS

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

Sec. 769.052. ACCOMMODATIONS AUTHORIZED. Provides that this subchapter does not prohibit a school district or open-enrollment charter school from providing an accommodation, including a single-occupancy bathroom or changing facility or the controlled use of a faculty bathroom or changing facility, on request due to special circumstances. Prohibits the school district or open-enrollment charter school from providing an accommodation that allows a person to use a multiple-occupancy bathroom or changing facility accessible to students that is designated for the biological sex opposite to the person's biological sex.

Sec. 769.053. EXCEPTIONS. Provides that a designation of a multiple-occupancy bathroom or changing facility under Section 769.051 does not apply to a person entering a multiple-occupancy bathroom or changing facility designated for the biological sex opposite to the person's biological sex for certain custodial, maintenance, or assistance purposes.

SUBCHAPTER C. PUBLIC BUILDINGS

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

Sec. 769.102. ACCOMMODATIONS AUTHORIZED. Provides that this subchapter does not prohibit a political subdivision or state agency from providing an accommodation, including a single-occupancy bathroom or changing facility, on request due to special circumstances. Prohibits the political subdivision or state agency from providing an accommodation that allows a person to use a multiple-occupancy bathroom or changing facility designated for the biological sex opposite to the person's biological sex.

Sec. 769.103. PRIVATE LEASES AND CONTRACTS. Provides that a private entity that leases or contracts to use a building owned or leased by this state or a political subdivision is not subject to Section 769.101. Prohibits a state agency or political subdivision from requiring the private entity to adopt, or from prohibiting the private entity from adopting, a policy on the designation or use of bathrooms or changing facilities located in the building.

Sec. 769.104. EXCEPTIONS. Provides that a designation of a multiple-occupancy bathroom or changing facility under Section 769.101 does not apply to a person entering a multiple-occupancy bathroom or changing facility designated for the biological sex opposite to the person's biological sex for certain custodial, maintenance, or assistance purposes, or to a child who is younger than eight years of age entering a multiple-occupancy bathroom or changing facility designated for the biological sex opposite to the child's biological sex and is accompanying a person caring for the child.

SUBCHAPTER D. ENFORCEMENT

Sec. 769.151. CIVIL PENALTY. (a) Provides that a school district, open-enrollment charter school, state agency, or political subdivision that violates this chapter is liable for certain civil penalties depending on whether it is a first or subsequent violation.

(b) Provides that each day of a continuing violation constitutes a separate violation.

Sec. 769.152. COMPLAINT; NOTICE. (a) Authorizes a citizen of this state to file a complaint with the attorney general that a school district, open-enrollment charter school, state agency, or political subdivision is in violation of this chapter only if the citizen provides the applicable entity with a written notice that describes the violation and the applicable entity does not cure the violation before the end of the third business day after the date of receiving the written notice.

(b) Requires that a filed complaint include a copy of the written notice and a signed statement by the citizen describing the violation and indicating that the citizen provided the required notice.

Sec. 769.153. DUTIES OF ATTORNEY GENERAL: INVESTIGATION AND NOTICE. (a) Requires the attorney general, before bringing a suit against a school district, open-enrollment charter school, state agency, or political subdivision for a violation of this chapter, to investigate a filed complaint to determine whether legal action is warranted.

(b) Requires the school district, open-enrollment charter school, state agency, or political subdivision that is the subject of the complaint to provide to the attorney general any information the attorney general requests in connection with the complaint, including supporting documents related to the complaint and a statement regarding whether the entity has complied or intends to comply with this chapter.

(c) Requires the attorney general, if the attorney general determines that legal action is warranted, to provide the appropriate officer of the school district, open-enrollment charter school, state agency, or political subdivision charged with the violation a written notice that contains certain information and requirements.

Sec. 769.154. COLLECTION OF CIVIL PENALTY; MANDAMUS. (a) Authorizes the attorney general if, after receipt of notice under Section 769.153(c), the school district, open-enrollment charter school, state agency, or political subdivision has not cured the violation on or before the 15th day after the date the notice is provided, to sue to collect the civil penalty provided by Section 769.151.

(b) Authorizes the attorney general, in addition to filing suit, to also file a petition for a writ of mandamus or apply for other appropriate equitable relief.

(c) Authorizes a suit or petition to be filed in a district court in Travis County or in a county in which the principal office of the school district, open-enrollment charter school, state agency, or political subdivision is located.

(d) Authorizes the attorney general to recover reasonable expenses incurred in obtaining relief, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(e) Requires a civil penalty collected by the attorney general to be deposited to the credit of the compensation to victims of crime fund established under Subchapter B (Crime Victims' Compensation), Chapter 56 (Rights of Crime Victims), Code of Criminal Procedure.

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

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

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

(d) Provides that this section does not prohibit a suit or petition by the attorney general under Section 769.154.

Sec. 769.156. SOVEREIGN IMMUNITY WAIVED. Provides that sovereign immunity to suit is waived and abolished to the extent of liability created by this subchapter.

SECTION 6. Severability clause.

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

SECTION 8. Makes application of Section 271.909, Local Government Code, as added by this Act, prospective.

SECTION 9. Effective date: September 1, 2017.