

SENATE BILL REPORT

SB 6443

As Failed Senate, February 10, 2016

Title: An act relating to the human rights commission's rule-making authority.

Brief Description: Concerning human rights commission rules on gender segregated facilities.

Sponsors: Senators Ericksen, Bailey, Padden, O'Ban, Angel, Becker, Braun, Miloscia, Warnick, Dammeier, Honeyford, Hewitt, Roach and Benton.

Brief History:

Committee Activity: Commerce & Labor: 1/27/16, 1/27/16 [DP, DNP].
Failed Senate: 24-25.

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; King and Warnick.

Minority Report: Do not pass.

Signed by Senators Hasegawa, Ranking Minority Member; Conway and Keiser.

Staff: Susan Jones (786-7404)

Background: The Washington State Human Rights Commission (Commission) consists of five members appointed by the Governor with the advice and consent of the Senate. The Commission may adopt, amend, and rescind suitable rules to carry out the provisions of chapter 49.60 RCW, the Law Against Discrimination.

The Commission has adopted a rule, WAC 162-32-060, on gender-segregated facilities as follows:

1. Facility use. All covered entities shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing rooms, and homeless or emergency shelters, that are consistent with that individual's gender expression or gender identity. In such facilities where undressing in the presence of others occurs, covered entities shall allow access to and use of a facility consistent with that individual's gender expression or gender identity.
2. Cannot require use inconsistent with gender expression or gender identity. A covered entity shall not request or require an individual to use a gender-segregated facility that

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

is inconsistent with that individual's gender expression or gender identity, or request or require an individual to use a separate or gender-neutral facility.

- a. If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender expression or gender identity, the person expressing discomfort should be directed to a separate or gender-neutral facility, if available.
 - b. Any action taken against a person who is using a restroom or other gender-segregated facility, such as removing a person, should be taken due to that person's actions or behavior while in the facility, and must be unrelated to gender expression or gender identity. The same standards of conduct and behavior must be consistently applied to all facility users, regardless of gender expression or gender identity.
3. Provision of options encouraged. Whenever feasible, covered entities are encouraged to provide options for privacy, such as single-use gender-neutral bathrooms or private changing areas, that are available to any individual desiring privacy.

Summary of Bill: The Commission must repeal WAC 162-32-060 on gender-segregated facilities in its entirety. The Commission may not initiate any rule-making procedure that involves the subject of gender segregated facilities.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The bill is simple. It repeals the rule. Parents have a right to expect that men use the men's restroom and women use the women's restrooms as well as the locker rooms. Washington would be the only state to have this rule. The rule-making process was flawed and should have had more input. The rule was adopted by the Commission which is not elected by the people. The rule itself is flawed. The health clubs and school districts should be able to have their own rules. The rule fails on process, substance, and impact on business, youth, and families. People need protection from sexual predators. Women have fought for their safety for a long time. Now there is no place to be free from concern. The WAC flung the door open to deviant men. No one can prove how they feel. This matter is too critically important to be decided by a small number of people in the dark. The WAC does not protect the disabled who are most vulnerable to assault and will have an impact on those without a voice. The goal should be to help those abused and traumatized. The WAC is in conflict with training provided to foster parents. The state is willing to harm the majority for a vocal minority. The government has betrayed people and made them feel powerless; taking away free speech. The bill gives back the right to feel safe. Businesses can no longer help their customers feel safe and deal with issues on their own. This makes some young people feel very uncomfortable in the use of locker rooms. This would provide feeding grounds for sexual predators. They choose places where people are most vulnerable to prey on them. Every daughter has the right to grow up without fear. There was no conversation about this WAC.

CON: This is not a simple bill and creates lack of clarity in the law of discrimination related to sexual orientation and gender identity. The Commission has had guidance on these issues for a number of years. There was a lot of notice statewide about the proposed WAC. Colorado, DC and 17 states have similar laws. There needs to be more education about transgender persons. Transgender persons can suffer from depression and anxiety. How can you explain to a transgender child that they cannot use the bathroom of the gender they identify with? If the bill passes, it will allow for harassment and discrimination of transgender persons. Transgender persons have been using these bathrooms for years and there has not been an increase in sexual assaults. The majority of sexual assaults are committed by someone known to the victims. Transgender people are part of every community. Transgender women are women and using men's bathrooms puts them at risk. The bill attacks transgender children and puts burdens back on businesses. That a child would be inspected is unconscionable. For the last 10 years, the law has protected transgender rights and the ability to use bathrooms of choice. This bill takes away protections and targets transgender persons. Since 2006, transgender persons have been able to use bathrooms based on their identity without incident. They need protection and safety.

Persons Testifying: PRO: Senator Doug Ericksen, Prime Sponsor; Tam Gronewold; Angela Connelly, Washington Women's Network; Philip Wilson; Kaeley Triller; Erich Jaber; Paul MacLurg; Starre Bennett; Hannah Jaber, Mike Gordon.

CON: David Ward, Legal Voice; Ryan Trainer; Kathryn Mahan; Aidan Key, Gender Diversity; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; Jennifer Popkin; Tyler Stewart; Dmitri Keating, Old Town Bicycle; Betsy White.

Persons Signed In To Testify But Not Testifying: PRO: Ric Fritz, Pastor; J. Paul Wagemann; Dan Bogar, Mr. Dan Bogar; Krystle Pyette; Donna Hagar, Keep Locker Rooms Safe; Lisa Ruzicka, Keep Locker Rooms Safe; SueAnne Kolby, Keep Locker Rooms Safe; Lisa Ponraj; Scott Simmons, Advocates of Natural Rights; Gretchen Flores, Keep Locker Rooms Safe; Coleen Gaynor, Sunday school teacher; Ruth Stuart; Edmund Mondoux, Keep Locker Rooms Safe; James Jackson; Richard Stuart, citizen; Michael Keith, New Hope Community Church; Tony Flores, Keep Locker Rooms Safe; Samuel Flores, Keep Locker Rooms Safe; Karen Meyer; Chaplain Ed Densmore, Rainier Chapel; Brett Vinson; Carrie Graciano, Faith Community Church; Suzanne Searles; Zion Baker; Steven Malmquist; Chris Shreve; Matthew Miles; Mary Slifer, 38 Year member of The YMCA; Douglas Moran, Kevin Lea, Pastor, Calvary Church of Port Orchard; Loretta Byrnes; Jeran Munday; Antia Plaschka; Lori Larsen; Bruce Stabbert, Fellowship Bible Church of Tacoma; Richard Johnson, Concerned grandfather; Marlyn Jensen; Greg Francis; Rick Bauer; Holly Cervantes.

CON: Lisa Keating; Brooke Hall, Transgender Parents of Washington; Duane Wilkerson, Pierce County AIDS Foundation; Victoree Jamiel Stevens; Dominique Stephens, Queer Black Alliance of the South Sound; Jan Shannon; Marsha Botzer; Kathryn Kravit-Smith; Karen Davis; Cheryl Cristello; Laurel Ramseyer; Steven Gardner; Ben Charles, Crazy Faith; Courtney Schrieve, Mother; Michael Woodward, Gender Odyssey, Inc.; Mitchell Hunter.