

1-1 By: Kolkhorst, et al. S.B. No. 6  
 1-2 (In the Senate - Filed January 5, 2017; January 24, 2017,  
 1-3 read first time and referred to Committee on State Affairs;  
 1-4 March 9, 2017, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 8, Nays 1; March 9, 2017,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17		X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 6 By: Hughes

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to regulations and policies for entering or using a  
 1-22 bathroom or changing facility; authorizing a civil penalty.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. LEGISLATIVE FINDINGS; PURPOSE. The legislature  
 1-25 finds that:

1-26 (1) in an effort to comply with the legislature's duty  
 1-27 under Section 1, Article VII, Texas Constitution, to provide for  
 1-28 the general diffusion of knowledge and an efficient system of  
 1-29 public schools, potentially harmful and distracting environments  
 1-30 should be barred;

1-31 (2) the federal government's mandate requiring Texas  
 1-32 public schools to provide students access to restrooms, showers,  
 1-33 and dressing rooms based on an individual student's internal sense  
 1-34 of gender is alarming and could potentially lead to boys and girls  
 1-35 showering together and using the same restroom should such guidance  
 1-36 be followed;

1-37 (3) children receiving an education in Texas public  
 1-38 schools and open-enrollment charter schools are entitled to a safe  
 1-39 and secure learning environment, including when using intimate  
 1-40 facilities controlled by a school; and

1-41 (4) it is the public policy of this state that  
 1-42 residents have a reasonable expectation of privacy when using  
 1-43 intimate facilities controlled by a school district,  
 1-44 open-enrollment charter school, state agency, or political  
 1-45 subdivision and that protecting the safety, welfare, and well-being  
 1-46 of children in public schools, children in open-enrollment charter  
 1-47 schools, and all Texas residents in intimate facilities controlled  
 1-48 by state agencies or political subdivisions is of the utmost  
 1-49 priority and moral obligation of this state.

1-50 SECTION 2. The heading to Chapter 250, Local Government  
 1-51 Code, is amended to read as follows:

1-52 CHAPTER 250. MISCELLANEOUS REGULATORY AUTHORITY [~~OF~~  
 1-53 ~~MUNICIPALITIES AND COUNTIES~~]

1-54 SECTION 3. Chapter 250, Local Government Code, is amended  
 1-55 by adding Section 250.008 to read as follows:

1-56 Sec. 250.008. REGULATIONS RELATING TO CERTAIN BATHROOM OR  
 1-57 CHANGING FACILITIES PROHIBITED. (a) For the purposes of this  
 1-58 section, "bathroom or changing facility" means a facility where a  
 1-59 person may be in a state of undress, including a restroom, locker  
 1-60 room, changing room, or shower room.

2-1 (b) A political subdivision may not adopt or enforce an  
2-2 order, ordinance, or other measure that relates to the designation  
2-3 or use of a private entity's bathroom or changing facility or that  
2-4 requires the entity to adopt, or prohibits the entity from  
2-5 adopting, a policy on the designation or use of the entity's  
2-6 bathroom or changing facility.

2-7 SECTION 4. Subchapter Z, Chapter 271, Local Government  
2-8 Code, is amended by adding Section 271.909 to read as follows:

2-9 Sec. 271.909. CONSIDERATION OF CERTAIN POLICIES  
2-10 PROHIBITED. (a) For the purposes of this section, "bathroom or  
2-11 changing facility" has the meaning assigned by Section 250.008.

2-12 (b) In awarding a contract for the purchase of goods or  
2-13 services, a political subdivision may not consider whether a  
2-14 private entity competing for the contract has adopted a policy  
2-15 relating to the designation or use of the entity's bathroom or  
2-16 changing facility.

2-17 SECTION 5. Subtitle A, Title 9, Health and Safety Code, is  
2-18 amended by adding Chapter 769 to read as follows:

2-19 CHAPTER 769. PUBLIC SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOMS AND  
2-20 CHANGING FACILITIES

2-21 SUBCHAPTER A. GENERAL PROVISIONS

2-22 Sec. 769.001. DEFINITIONS. In this chapter:

2-23 (1) "Biological sex" means the physical condition of  
2-24 being male or female, which is stated on a person's birth  
2-25 certificate.

2-26 (2) "Institution of higher education" has the meaning  
2-27 assigned by Section 61.003, Education Code.

2-28 (3) "Multiple-occupancy bathroom or changing  
2-29 facility" means a facility designed or designated for use by more  
2-30 than one person at a time, where a person may be in a state of  
2-31 undress in the presence of another person, regardless of whether  
2-32 the facility provides curtains or partial walls for privacy. The  
2-33 term includes a restroom, locker room, changing room, or shower  
2-34 room.

2-35 (4) "Open-enrollment charter school" means a school  
2-36 that has been granted a charter under Subchapter D, Chapter 12,  
2-37 Education Code.

2-38 (5) "Political subdivision" means a governmental  
2-39 entity of this state that is not a state agency and includes a  
2-40 county, municipality, special purpose district or authority, and  
2-41 junior college district. The term does not include a school  
2-42 district.

2-43 (6) "School district" means any public school district  
2-44 in this state.

2-45 (7) "Single-occupancy bathroom or changing facility"  
2-46 means a facility designed or designated for use by only one person  
2-47 at a time, where a person may be in a state of undress, including a  
2-48 single toilet restroom with a locking door that is designed or  
2-49 designated as unisex or for use based on biological sex.

2-50 (8) "State agency" means a department, commission,  
2-51 board, office, council, authority, or other agency in the  
2-52 executive, legislative, or judicial branch of state government that  
2-53 is created by the constitution or a statute of this state, including  
2-54 an institution of higher education.

2-55 SUBCHAPTER B. PUBLIC SCHOOLS

2-56 Sec. 769.051. SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOM OR  
2-57 CHANGING FACILITY. A school district or open-enrollment charter  
2-58 school shall require that each multiple-occupancy bathroom or  
2-59 changing facility accessible to students and located in a school or  
2-60 school facility be designated for and used only by persons based on  
2-61 the person's biological sex.

2-62 Sec. 769.052. ACCOMMODATIONS AUTHORIZED. This subchapter  
2-63 does not prohibit a school district or open-enrollment charter  
2-64 school from providing an accommodation, including a  
2-65 single-occupancy bathroom or changing facility or the controlled  
2-66 use of a faculty bathroom or changing facility, on request due to  
2-67 special circumstances. The school district or open-enrollment  
2-68 charter school may not provide an accommodation that allows a  
2-69 person to use a multiple-occupancy bathroom or changing facility

3-1 accessible to students that is designated for the biological sex  
 3-2 opposite to the person's biological sex.

3-3 Sec. 769.053. EXCEPTIONS. A designation of a  
 3-4 multiple-occupancy bathroom or changing facility under Section  
 3-5 769.051 does not apply to a person entering a multiple-occupancy  
 3-6 bathroom or changing facility designated for the biological sex  
 3-7 opposite to the person's biological sex:

3-8 (1) for a custodial purpose;

3-9 (2) for a maintenance or inspection purpose;

3-10 (3) to render medical or other emergency assistance;

3-11 (4) to accompany a student needing assistance in using  
 3-12 the facility, if the assisting person is:

3-13 (A) an employee or authorized volunteer of the  
 3-14 school district or open-enrollment charter school; or

3-15 (B) the student's parent, guardian, conservator,  
 3-16 or authorized caregiver;

3-17 (5) to accompany a person other than a student needing  
 3-18 assistance in using the facility; or

3-19 (6) to receive assistance in using the facility.

3-20 SUBCHAPTER C. PUBLIC BUILDINGS

3-21 Sec. 769.101. SINGLE-SEX MULTIPLE-OCCUPANCY BATHROOM OR  
 3-22 CHANGING FACILITY. A political subdivision or state agency with  
 3-23 control over multiple-occupancy bathrooms or changing facilities  
 3-24 in a building owned or leased by this state or the political  
 3-25 subdivision, as applicable, shall require that each  
 3-26 multiple-occupancy bathroom or changing facility located in the  
 3-27 building be designated for and used only by persons of the same  
 3-28 biological sex.

3-29 Sec. 769.102. ACCOMMODATIONS AUTHORIZED. This subchapter  
 3-30 does not prohibit a political subdivision or state agency from  
 3-31 providing an accommodation, including a single-occupancy bathroom  
 3-32 or changing facility, on request due to special circumstances. The  
 3-33 political subdivision or state agency may not provide an  
 3-34 accommodation that allows a person to use a multiple-occupancy  
 3-35 bathroom or changing facility designated for the biological sex  
 3-36 opposite to the person's biological sex.

3-37 Sec. 769.103. PRIVATE LEASES AND CONTRACTS. A private  
 3-38 entity that leases or contracts to use a building owned or leased by  
 3-39 this state or a political subdivision is not subject to Section  
 3-40 769.101. A state agency or political subdivision may not require  
 3-41 the private entity to adopt, or prohibit the private entity from  
 3-42 adopting, a policy on the designation or use of bathrooms or  
 3-43 changing facilities located in the building.

3-44 Sec. 769.104. EXCEPTIONS. A designation of a  
 3-45 multiple-occupancy bathroom or changing facility under Section  
 3-46 769.101 does not apply to:

3-47 (1) a person entering a multiple-occupancy bathroom or  
 3-48 changing facility designated for the biological sex opposite to the  
 3-49 person's biological sex:

3-50 (A) for a custodial purpose;

3-51 (B) for a maintenance or inspection purpose;

3-52 (C) to render medical or other emergency  
 3-53 assistance;

3-54 (D) to accompany a person needing assistance in  
 3-55 using the facility; or

3-56 (E) to receive assistance in using the facility;  
 3-57 or

3-58 (2) a child who is:

3-59 (A) younger than eight years of age entering a  
 3-60 multiple-occupancy bathroom or changing facility designated for  
 3-61 the biological sex opposite to the child's biological sex; and

3-62 (B) accompanying a person caring for the child.

3-63 SUBCHAPTER D. ENFORCEMENT

3-64 Sec. 769.151. CIVIL PENALTY. (a) A school district,  
 3-65 open-enrollment charter school, state agency, or political  
 3-66 subdivision that violates this chapter is liable for a civil  
 3-67 penalty of:

3-68 (1) not less than \$1,000 and not more than \$1,500 for  
 3-69 the first violation; and

4-1 (2) not less than \$10,000 and not more than \$10,500 for  
4-2 the second or a subsequent violation.

4-3 (b) Each day of a continuing violation of this chapter  
4-4 constitutes a separate violation.

4-5 Sec. 769.152. COMPLAINT; NOTICE. (a) A citizen of this  
4-6 state may file a complaint with the attorney general that a school  
4-7 district, open-enrollment charter school, state agency, or  
4-8 political subdivision is in violation of this chapter only if:

4-9 (1) the citizen provides the school district,  
4-10 open-enrollment charter school, state agency, or political  
4-11 subdivision a written notice that describes the violation; and

4-12 (2) the school district, open-enrollment charter  
4-13 school, state agency, or political subdivision does not cure the  
4-14 violation before the end of the third business day after the date of  
4-15 receiving the written notice.

4-16 (b) A complaint filed under this section must include:

4-17 (1) a copy of the written notice; and

4-18 (2) a signed statement by the citizen describing the  
4-19 violation and indicating that the citizen provided the notice  
4-20 required by this section.

4-21 Sec. 769.153. DUTIES OF ATTORNEY GENERAL: INVESTIGATION  
4-22 AND NOTICE. (a) Before bringing a suit against a school district,  
4-23 open-enrollment charter school, state agency, or political  
4-24 subdivision for a violation of this chapter, the attorney general  
4-25 shall investigate a complaint filed under Section 769.152 to  
4-26 determine whether legal action is warranted.

4-27 (b) The school district, open-enrollment charter school,  
4-28 state agency, or political subdivision that is the subject of the  
4-29 complaint shall provide to the attorney general any information the  
4-30 attorney general requests in connection with the complaint,  
4-31 including:

4-32 (1) supporting documents related to the complaint; and

4-33 (2) a statement regarding whether the entity has  
4-34 complied or intends to comply with this chapter.

4-35 (c) If the attorney general determines that legal action is  
4-36 warranted, the attorney general shall provide the appropriate  
4-37 officer of the school district, open-enrollment charter school,  
4-38 state agency, or political subdivision charged with the violation a  
4-39 written notice that:

4-40 (1) describes the violation and location of the  
4-41 bathroom or changing facility found to be in violation;

4-42 (2) states the amount of the proposed penalty for the  
4-43 violation; and

4-44 (3) requires the school district, open-enrollment  
4-45 charter school, state agency, or political subdivision to cure the  
4-46 violation on or before the 15th day after the date the notice is  
4-47 received to avoid the penalty, unless the school district,  
4-48 open-enrollment charter school, state agency, or political  
4-49 subdivision was found liable by a court for previously violating  
4-50 this chapter.

4-51 Sec. 769.154. COLLECTION OF CIVIL PENALTY; MANDAMUS.

4-52 (a) If, after receipt of notice under Section 769.153(c), the  
4-53 school district, open-enrollment charter school, state agency, or  
4-54 political subdivision has not cured the violation on or before the  
4-55 15th day after the date the notice is provided under Section  
4-56 769.153(c)(3), the attorney general may sue to collect the civil  
4-57 penalty provided by Section 769.151.

4-58 (b) In addition to filing suit under Subsection (a), the  
4-59 attorney general may also file a petition for a writ of mandamus or  
4-60 apply for other appropriate equitable relief.

4-61 (c) A suit or petition under this section may be filed in a  
4-62 district court in:

4-63 (1) Travis County; or

4-64 (2) a county in which the principal office of the  
4-65 school district, open-enrollment charter school, state agency, or  
4-66 political subdivision is located.

4-67 (d) The attorney general may recover reasonable expenses  
4-68 incurred in obtaining relief under this section, including court  
4-69 costs, reasonable attorney's fees, investigative costs, witness

5-1 fees, and deposition costs.

5-2 (e) A civil penalty collected by the attorney general under  
5-3 this section shall be deposited to the credit of the compensation to  
5-4 victims of crime fund established under Subchapter B, Chapter 56,  
5-5 Code of Criminal Procedure.

5-6 Sec. 769.155. NO CAUSE OF ACTION. (a) A school district,  
5-7 open-enrollment charter school, state agency, or political  
5-8 subdivision does not have any cause of action related to compliance  
5-9 with this chapter.

5-10 (b) A court of this state does not have jurisdiction over a  
5-11 cause of action related to compliance with this chapter brought by a  
5-12 school district, open-enrollment charter school, state agency, or  
5-13 political subdivision.

5-14 (c) On the motion of any party or the court's own motion, a  
5-15 court shall dismiss a cause of action related to compliance with  
5-16 this chapter brought by a school district, open-enrollment charter  
5-17 school, state agency, or political subdivision.

5-18 (d) This section does not prohibit a suit or petition by the  
5-19 attorney general under Section 769.154.

5-20 Sec. 769.156. SOVEREIGN IMMUNITY WAIVED. Sovereign  
5-21 immunity to suit is waived and abolished to the extent of liability  
5-22 created by this subchapter.

5-23 SECTION 6. It is the intent of the legislature that every  
5-24 provision, section, subsection, sentence, clause, phrase, or word  
5-25 in this Act, and every application of the provisions in this Act to  
5-26 each person or entity, are severable from each other. If any  
5-27 application of any provision in this Act to any person, group of  
5-28 persons, or circumstances is found by a court to be invalid for any  
5-29 reason, the remaining applications of that provision to all other  
5-30 persons and circumstances shall be severed and may not be affected.

5-31 SECTION 7. Section 250.008, Local Government Code, as added  
5-32 by this Act, applies to an order, ordinance, or other measure  
5-33 adopted before, on, or after the effective date of this Act.

5-34 SECTION 8. Section 271.909, Local Government Code, as added  
5-35 by this Act, applies only to a contract awarded on or after the  
5-36 effective date of this Act.

5-37 SECTION 9. This Act takes effect September 1, 2017.

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