

Economic Impact Statement

Office of Legislative Oversight

Bill 4-22

Human Rights and Civil Liberties – Public Accommodations – Gender Inclusive Restrooms

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 4-22 would have a net negative impact on economic conditions in the County in terms of the Council's priority indicators. By requiring public single-user restrooms in places of public accommodation and County-owned buildings to have gender-inclusive signage, some private organizations would incur minor operating costs from purchasing and replacing restroom signage. While some County-based sign making companies likely would benefit from these transactions, OLO expects the net impact of the change in law to be negative because many private organizations likely would purchase mass-produced gender-inclusive restroom signage through online retail stores. It is also worth noting that establishing the new regulation would contribute to the cumulative, yet unquantifiable, cost of County regulations on local private organizations.

BACKGROUND

Bill Description

The goal of Bill 4-22 is “to increase accessibility for anyone to use a single-user restroom regardless of gender, gender identity, or expression and benefit people with disabilities who have caregivers of different gender or parents with children of different gender who may require assistance using a public restroom.”¹ The Bill would attempt to achieve this goal by requiring public single-user restrooms,² existing or newly-built, in certain places of public accommodation and County-owned buildings to be “(1) made available for use by individuals of any gender; and (2) identified with gender-inclusive signage”³ (hereinafter the “gender-inclusive restrooms requirement”).⁴

¹ McCartney-Green to County Council, Memorandum, February 10, 2022.

² Bill 4-22 defines “public single-user restroom” as “a single-occupancy restroom for public use with at least one water closet and an entry door that can be locked from the inside by the occupant.” This definition excludes private restrooms in residences, hospitals, inns, hotels, motels, and restrooms only accessible from a private room or office.

³ Bill 4-22

⁴ Bill 4-22. “Public single-user restroom” is defined as “a single-occupancy restroom for public use with at least one water closet and an entry door that can be locked from the inside by the occupant.” This definition excludes private restrooms in residences, hospitals, inns, hotels, motels, and restrooms only accessible from a private room or office. The Bill defines “gender-inclusive signage” as “a sign or display identifying a restroom that does not indicate a specific gender, such as ‘restroom’ or ‘bathroom’, or a symbol indicating the restroom’s availability for use by any individual regardless of gender or gender identity.”

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The Director of the Department of Permitting Services, the Department of Health and Human Services, or any other agency as designated by the Chief Administrative Officer would be charged with enforcing the gender-inclusive restrooms requirement.⁵ Any violations would constitute a Class A violation.⁶

Primary Economic Stakeholders

The primary economic stakeholders of the change in law would be:

- **Owners and tenants of places of public accommodation with one or more public single-user restrooms that do not meet the gender-inclusive restrooms requirement.** Given the broad definition of “place of public accommodation” in the County Code⁷ and national data from 2017 indicating that a minority of businesses on Yelp have gender neutral restrooms,⁸ OLO anticipates that many private and non-profit organizations in the County would be required to purchase and install gender-inclusive signage on their public single-user restrooms. However, OLO does not know the number of places of public accommodation with public single-user restrooms, which are distinct from public multi-user restrooms and private restrooms for employees.
- **County-based sign making companies and other businesses that make and/or install gender-inclusive signage at places of public accommodation or County-owned buildings that otherwise would not do so in the absence of enacting the gender-inclusive restrooms requirement.** It is worth noting that not all future sales of gender-inclusive signage to places of public accommodation or County-owned buildings could be attributed to the change in law. One local sign maker informed OLO that sales for gender-inclusive restroom signage in the County has been increasing in recent years, particularly for new office buildings. Indeed, incentives for companies to enhance

⁵ Ibid.

⁶ Class A Violations carry a maximum criminal penalty of a \$1000 fine and 6-month jail term, and a maximum civil penalty of \$500 for an initial offense and \$750 for a repeat offense. Montgomery County Code, Sec. 1-19.

⁷ As defined in Sec. 27-10 of the County Code, place of public accommodation refers to:

“every public accommodation of any kind in the County whose facilities, accommodations, services, commodities, or use are offered to or enjoyed by the general public either with or without charge, such as: (1) restaurants, soda fountains, and other eating or drinking places, and all places where food is sold for consumption either on or off the premises; (2) inns, hotels, and motels, whether serving temporary or permanent patrons; (3) retail stores and service establishments; (4) hospitals, health care institutions, domiciliary care homes, nursing homes, personal care homes, and clinics; (5) motion picture, stage, and other theaters and music, concert, or meeting halls; (6) circuses, exhibitions, skating rinks, sports arenas and fields, amusement or recreation parks, picnic grounds, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool rooms, and swimming pools; (7) public conveyances, such as automobiles, buses, taxicabs, trolleys, trains, limousines, boats, airplanes, and bicycles; (8) utilities, such as water and sewer service, electricity, telephone, and cable television; (9) streets, roads, sidewalks, other public rights-of-way, parking lots or garages, marinas, airports, and hangars; and (10) places of public assembly and entertainment of every kind.”

⁸ Rachel Youngblood, “Find Gender-neutral Restrooms.”

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inclusive workplace conditions for employees and customers appear to be causing some private organizations to establish gender-inclusive restrooms on their own.⁹

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess Bill 4-22's impacts on County-based private organizations and residents in terms of the Council's priority economic indicators.¹⁰ In subsequent sections of this statement, OLO focuses on the Bill's potential impacts on **operating costs** and **business income** of the primary economic stakeholders previously identified. To assess Bill 4-22's impacts on these indicators, OLO performs a qualitative assessment based on:

- OLO correspondence with representatives from local sign making businesses and private organizations that would be subject to the gender-inclusive restrooms requirement; and
- a review of eligible signs on online retail stores.

VARIABLES

The primary variables that would affect the economic impacts of enacting Bill 4-22 are the following:

- Number of non-compliant public single-user restrooms
- Average cost of purchasing and installing a non-compliant restroom sign
- Percentage of signs made and installed by County-based businesses

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

OLO anticipates that enacting Bill 4-22 would have mixed impacts on certain private organizations in the County in terms of operating costs and business income, with an overall net negative impact.

Operating Expenses and Business Income: OLO expects the Bill to increase operating costs for places of public accommodation with public single-user restrooms that do not meet the gender-inclusive restrooms requirement. Depending on lease agreements, commercial property owners or tenants would be required to purchase and install

⁹ Kylie Lobell, "The Benefits of Offering Gender-Neutral Restrooms"; and Rachel Gillett and Skye Gould, "The most transgender-friendly companies."

¹⁰ Montgomery County Code, Sec. 2-81B.

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gender-inclusive signage for non-compliant restrooms. To attain a sense of the magnitude of costs, OLO spoke with several local sign makers and reviewed mass-produced gender-inclusive restroom signs sold on online retail stores. An eligible mass-produced sign could be purchased for as low as \$10 or less. However, certain facilities (e.g., office buildings) may require custom signs to match building décor. Purchasing a custom sign can cost as much as \$500, according to one local sign maker. Thus, OLO expects the purchasing cost per sign to range from approximately \$10 to \$500, with a median cost much closer to \$10 given the likelihood of many private organizations opting for mass-produced signs. In addition, private organizations would incur installation costs—for example, hiring a building maintenance worker to remove and replace non-compliant signs.

OLO expects the Bill to increase business income for certain sign making businesses based in the County. The need for places of public accommodation to comply with the gender-inclusive restrooms requirement likely would increase revenues for local sign making businesses from signage sales and installation, which, holding all else equal, would increase net business incomes.

Net Impact: While the gender-inclusive restrooms requirement likely would have mixed impacts on certain County-based private organizations, OLO anticipates that the net impact would be negative. It is likely that many organizations would purchase gender-inclusive restroom signage through online retailers given the availability of low-price compliant signage. If this occurs, the gender-inclusive restrooms requirement would result in an economic leakage from the County.¹¹

Other Potential Impacts: Establishing the gender-inclusive restrooms requirement may have two additional impacts. First, enacting Bill 4-22 would establish another regulation for private organizations to comply with. Doing so would contribute to the cumulative, yet unquantifiable, cost of County regulations on local private organizations.¹² Second, certain businesses may increase sales to transgender and non-binary individuals who previously avoided places of public accommodation without gender-inclusive restroom accommodations.¹³

Beyond these potential impacts, OLO does not expect Bill 4-22 to affect private organizations in terms of the Council's other priority indicators.

Residents

OLO does not anticipate that enacting Bill 4-22 would impact residents in the County in terms of the Council's priority economic indicators.

¹¹ Economic leakage refers to "[m]oney that no longer circulates in an economy because of savings, taxes, or imports." U.S. Bureau of Economic Analysis, *RIMS II*.

¹² There are no studies that estimate the cost of County regulations on businesses. For the cost of federal regulations, see Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms."

¹³ The 2015 U.S. Transgender Survey found that 20 percent of transgender respondents had not used at least one type of public accommodation in the past year because of fear of mistreatment. National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey*. See also Kimberly Chaney, et al, "Stigmatized Identity-Cues in Consumer Spaces."

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DISCUSSION ITEMS

Not applicable

WORKS CITED

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CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.