

MEMORANDUM

July 11, 2022

TO: Health & Human Services and Government Operations and Fiscal Policy

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 4-22, Human Rights and Civil Liberties – Public Accommodations – Gender Inclusive Restrooms

PURPOSE: Worksession – Committee recommendation expected

Expected Attendees:

James Stowe, Office of Human Rights (Invited)
David Gise, Department of General Services (Invited)
Rick Merck, Division Chief of Commercial Division, Department of Permitting Services
Raymond Crowell, Department of Human and Health Services (Invited)

Bill 4-22, Human Rights and Civil Liberties – Public Accommodations – Gender Inclusive Restrooms sponsored by Lead Sponsor Councilmember Katz, Co-Lead-Sponsor Council Vice-President Glass with Co-Sponsors Councilmembers Jawando, Friedson, Council President Albornoz, Navarro, Hucker, Riemer, and Rice was introduced on February 15, 2022. A public hearing was held on March 8 at which four speakers testified on the bill.

Bill 4-22 would:

- (1) require gender-inclusive restrooms in certain places of public accommodation and County-owned buildings; and
- (2) generally amend the law regarding prohibited discrimination in public accommodations.

PURPOSE

The purpose 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. This bill would help to decrease barriers, encourage full community inclusion, and strengthen dignity and personal safety for everyone.

BACKGROUND

In 2007, the Council enacted Bill 23-07, Non-Discrimination – Gender Identity, which prohibits discrimination in housing, employment, public accommodations, cable television

service, and taxicab service on the basis of gender identity. Bill 23-07 amended Section 27-6 and defined “gender identity” as:

Gender identity means an individual’s actual or perceived gender, including a person’s gender-related appearance, expression, image, identity, or behavior, whether or not those gender-related characteristics differ from the characteristics customarily associated with the person’s assigned sex at birth.

As it relates to public accommodations¹, Bill 23-07 also established gender identity² as a protected class under the County anti-discrimination law and prohibits the unfair practice of an individual to the full enjoyment of accommodations, for example, a restaurant owner could not refuse to serve an individual because of their gender identity. Even though gender identity was included as a protected class, the legislation did not specifically prohibit discrimination in the use and availability of the public restroom. Therefore, restrooms in places of public accommodations could still separate facilities for males or females without violating county or state law.³

Washington D.C. (2006), Baltimore City (2019), the City of Salisbury (2020), and Howard County (2021) have all enacted local legislation that prohibits single-occupant restrooms from being restricted to one specific sex or gender identity.

BILL DESCRIPTION

Under Bill 4-22, it would require existing or newly constructed single-user restrooms in places of public accommodations or County-owned buildings to allow restroom use by individuals of any gender and require “gender-inclusive” signage. Bill 4-22 defines, gender-inclusive signage as:

Gender-inclusive signage means 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.

If a business or County building does not have an existing single-user restroom, the law *does not* require that an all-gender-inclusive restroom be made available. Rather, the law requires that at least one single-user restroom available for use must not be restricted from one gender or the other. Single-user public restroom facilities without appropriate signage will require new signs to be displayed.

Further, the Bill defines “public single-user” 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.” Restrooms that include one toilet must be made available for use by any gender or gender identity. In the alternative, a multi-stall restroom with more than one stall and each stall locks, but the restroom door does not lock, can be restricted to one gender or the other – male or

¹ Under County Code § 27-10, the law provides the different types of public accommodations.

² County Code § 27-11

³ Md. Code Ann., State Gov’t § 20-901 (b)(1)

female. So even if the stall doors have locks, the restroom itself is not a “single-user” because it is available to more than one individual.

The legislation does not apply to private restrooms in a residence; a hospital; inn, hotel, motel, or an establishment that provides lodging for transient guests; or restrooms that are only accessible from a private room or office.

The requirements of the bill would be enforced by 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. A violation of the requirement would constitute a Class A violation.

PUBLIC HEARING

At the public hearing held on March 8, four speakers testified in support of the bill. Ezra Towne stated, “...the single-occupancy public bathrooms, when available, are a huge relief to transgender, gender non-conforming and gender-expansive adults and children[...]it would also benefit disabled folks, parents/guardians of young children, caretakers for seniors with mobility challenges and/or dementia, and people of color who are disproportionately frowned upon when using gendered facilities that do not match others’ perception of their gender...” ©15.

Lee Blinder, Executive Director of Trans Maryland, testified this bill would equitize bathroom access for all Montgomery County residents. According to U.S. Trans Survey, recent data shows Black trans people face an almost 3x higher risk of abuse in places of public accommodations than White trans people. Blinder also raised that Montgomery County can compete for business with nearby states and jurisdictions that have already codified laws on this matter, which include, Washington D.C., Philadelphia, Baltimore City, City of Salisbury, and Howard County. ©17.

Holly Mancuso, a county resident, provided testimony that Bill 4-22 would advance equity, inclusion, and accountability, and reaffirm the County’s commitment to the health, safety, and well-being of all residents.

Blake Mihm, a county employee, supports the bill’s efforts to also require County buildings to provide signage for bathrooms that would accommodate use for gender-inclusive and transgender people; currently, the County does not provide access to single-user restrooms with no gender-related signage. ©18.

The Council did not receive testimony in opposition to the bill.

ISSUES FOR THE COMMITTEE’S CONSIDERATION

1. What is the fiscal impact statement for Bill 4-22?

According to the Office of Management and Budget (OMB), the amount of revenue generated by this Bill would depend on the number of civil violations assessed against a business owner, which cannot be readily estimated at this time but are assumed to be minimal. A Class A violation carries the following civil fines: \$500 for an initial offense, and \$750 for each repeated offense.

The Department of General Services (DGS) estimates the cost for each sign is approximately \$25. The number of existing County facilities⁴ that have a single-user restroom and would require new signage is unknown – an audit or survey by DGS would be needed to provide an exact count. However, due to the nominal costs for the sign, OMB does not believe the Bill would have a significant impact on County expenditures.

2. What is the economic statement and Racial Equity and Social Justice Impact Statement by OLO?

OLO anticipates a favorable impact for Bill 4-22 because it would diminish health inequities by gender identity and disability status and expand the number of gender-inclusive restrooms in the County. The Bill would also narrow racial and social inequities for transgender and non-binary persons of color who are often at the greatest risk for discrimination, harassment, and violence. In addition, OLO anticipates that Bill 4-22 will benefit a vast range of residents who are parents, persons with disabilities, and the elderly. Therefore, OLO anticipates that Bill 4-22 would advance racial equity and social justice in the County. ©12.

3. Enforcement by DPS, HHS, and any other agency as designated by the County Executive

Generally, under Chapter 27, discriminatory acts or violations are enforced by the Office of Human Rights and are typically complaint-based. The administrative process provides for investigation, initial determination, a hearing, a decision, and the right to appeal.

However, Bill 4-22, as introduced, would bill require enforcement by 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. A violation of the requirement would constitute a Class A violation. DPS or HHS can provide effective enforcement because the agencies typically conduct routine building inspections, and further if a complaint is received by the public, the agencies are able to make on-site visits to places of business to determine whether a violation exists.

4. Clarifying Amendments

i. Strike the term “water closet” and replace it with “toilet”

In accordance with the Plain Language Drafting guidelines adopted by the Council, Council staff recommends the Committee amend the definition for *public single-user restroom* and replace the term “water closet” with “toilet.” A water closet is an archaic, dated term that is no longer widely used, while the term toilet is plain language and commonly used.

Amend line 16, as follows:

⁴ DGS estimates there are a total of 400 existing County facilities. Some facilities may or may not have a public single user restroom.

Public single-user restroom means a single-occupancy restroom for public use with at least one [[water closet]] toilet and an entry door that can be locked from the inside by the occupant. A public single-user restroom does not include a private restroom in a residence, hospital, inn, hotel, motel, or restrooms that are only accessible from a private room or office.

Decision Point: Whether the Committee should amend the definition of a public single-user restroom?

ii. Add language to clarify a single-user restroom is an exception to the County’s public accommodation law.

The County’s public accommodation law in §27-10 applies “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...” ©19. However, the law excludes “...accommodations that are distinctly private or personal.” See Section 27-10(c). Presumably, this was meant to refer to restrooms—particularly restrooms that can accommodate more than one user at a time, not necessarily single restrooms.

The Office of County Attorney (OCA) suggested the bill should clarify that Section § 27-10 be amended to state “Except as provided in § 27-11B . . .” [this] would clarify that a restroom other than single-user restrooms remains outside the scope of the County’s public accommodations law. Compare Md. Code Ann., State Gov’t § 20-901 (b)(1) (the state public accommodations law does not prohibit the state or a county “from providing separate facilities for males and females in government-owned or government-operated public institutions”). **Council staff agrees with OCA’s recommendation.**

Amend line 2, as follows:

27-10. Scope.

* * *

(c) Except as provided in Section 27-11B, [[This]] this division does not apply to accommodations that are distinctly private or personal.

Decision Point: Whether the Committee should amend the scope of the County’s public accommodation law to exclude single-user restrooms?

Next Steps: Whether to recommend Bill 4-22 for final action, as amended by the joint committee?

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Bill No. 4-22
Concerning: Human Rights and Civil Liberties – Public Accommodations – Gender Inclusive Restrooms
Revised: 02/11/2022 Draft No. 3
Introduced: February 15, 2022
Expires: August 15, 2023
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Katz; Co-Lead-Sponsor Council Vice-President Glass
Co-Sponsors: Councilmembers Jawando, Friedson, Council President Albornoz, Navarro, Hucker, Riemer, and Rice

AN ACT to:

- (1) require gender-inclusive restrooms in certain places of public accommodation and County-owned buildings; and
- (2) generally amend the law regarding discrimination in public accommodations.

By adding

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Section 27-11B

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 27-11B is added as follows:

27-11B. Gender-Inclusive Single-User Restrooms.

(a) Definitions.

In this Section, the following terms have the meanings indicated:

Gender-inclusive signage means 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.

Place of public accommodation has the meaning stated in Section 27-10.

Public single-user restroom means 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. A public single-user restroom does not include a private restroom in a residence, hospital, inn, hotel, motel, or restrooms that are only accessible from a private room or office.

(b) Gender-inclusive public single-user restrooms – required. A public single-user restroom, existing or newly-built, in a place of public accommodation or County-owned building, must be:

- (1) made available for use by individuals of any gender; and**
- (2) identified with gender-inclusive signage.**

(c) Enforcement and Penalties.

(1) Who may enforce. The following have the authority to enforce this Section:

- (A) The Department of Permitting Services;**
- (B) The Department of Health and Human Services; and**
- (C) any other agency designated by the Chief Administrative Officer.**

27 (2) A person authorized to enforce this Section must not issue a
28 citation unless the violation still exists 30 days after an initial
29 notice of violation.

30 (3) A violation of this Section is a Class A violation.

LEGISLATIVE REQUEST REPORT

Bill 4-22

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

DESCRIPTION:	Bill 4-22 would require gender-inclusive restrooms in certain places of public accommodation and County-owned buildings, as well as generally amend the law regarding discrimination in public accommodations.
PROBLEM:	County law does not specifically prohibit discrimination on the basis of gender identity in a place of accommodation as it relates to the availability and use of a public restroom. Currently, an owner of a business or County-owned building can restrict a single-occupant restroom to one specific gender – male or female.
GOALS AND OBJECTIVES:	The purpose 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. This Bill would help to decrease barriers, encourage full community inclusion, and strengthen dignity and personal safety.
COORDINATION:	Office of Legislative Oversight (OLO)
FISCAL IMPACT:	To be provided
ECONOMIC IMPACT:	To be provided
RACIAL EQUITY AND SOCIAL JUSTICE IMPACT:	To be provided
EVALUATION:	To be done.
EXPERIENCE ELSEWHERE:	Baltimore City, Howard County, City of Salisbury, MD; California; Austin, TX; Philadelphia, PA; Seattle, WA; and Washington DC.
SOURCE OF INFORMATION:	Ludeen McCartney-Green, Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	A violation of this Section is a Class A violation.

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Fiscal Impact Statement
Bill 4-22, Human Rights and Civil Liberties – Public Accommodations –
Gender Inclusive Restrooms

1. Legislative Summary.

Bill 4-22 requires a public single-user restroom in each place of public accommodation or County-owned building. Such a restroom must be made available for use by individuals for any gender and be identified with gender-inclusive signage. The Bill may be enforced by the Department of Permitting Services, the Department of Health and Human Services, and any other designated agency. A violation of the Bill is a Class A violation.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

A Class A violation carries the following civil fines: \$500 for an initial offense, and \$750 for each repeated offense. The amount of revenue generated by the Bill would depend on the number of civil violations, which cannot be reliably estimated at this time, but are assumed to be minimal. This Bill will have no significant impact on County expenditures.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Bill 4-22 is not expected to significantly impact County expenditures over the six-year period. The amount of potential revenues generated by this Bill over the next six years will be contingent on the number of civil violations issued, which are difficult to project at this time.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Bill 4-22 does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

Bill 4-22 is not expected to require additional staff time to implement.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Bill 4-22 is not expected to require additional staff to implement.

9. An estimate of costs when an additional appropriation is needed.

See the response to Question #2.

10. A description of any variable that could affect revenue and cost estimates.

The revenue would be impacted by enactment of this Bill if it resulted in a complaint-based investigation of violations.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

See the response to Question #10.

12. If a bill is likely to have no fiscal impact, why that is the case.

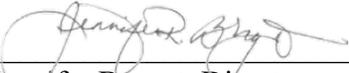
The impact is minimal to enforce this Bill.

13. Other fiscal impacts or comments.

Not applicable.

14. The following contributed to and concurred with this analysis:

Angela Dizelos, Department of General Services
Jason Rundell, Department of Health and Human Services
Ehsan Motazedi, Department of Permitting Services
Lindsay Lucas, Office of Management and Budget



Jennifer Bryant, Director
Office of Management and Budget

3/18/22

Date

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.”

Economic Impact Statement

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DISCUSSION ITEMS

Not applicable

WORKS CITED

Chaney, Elizabeth, Diana Sanchez, and Melanie Maimon. "[Stigmatized Identity-Cues in Consumer Spaces.](#)" *Journal of Consumer Psychology* 29, no. 1 (2019): 130-141.

Gillett, Rachel and Skye Gould. "[The most transgender-friendly companies in America.](#)" Business Insider. July 10, 2015.

McCartney-Green, Ludeen to County Council. [Memorandum](#). Bill 4-22, Human Rights and Civil Liberties – Public Accommodations – Gender Inclusive Restrooms. February 10, 2022.

Montgomery County Code. [Sec. 1-19, Fines and Penalties.](#)

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements.](#)

Montgomery County Code. [Sec. 27-10, Scope.](#)

Montgomery County Council. [Bill 4-22, Human Rights and Civil Liberties – Public Accommodations – Gender Inclusive Restrooms.](#) Introduced on February 15, 2022.

National Center for Transgender Equality. [The Report of the 2015 U.S. Transgender Survey.](#) December 2016.

U.S. Bureau of Economic Analysis. [RIMS II: An essential tool for regional developers and planners.](#) December 2013.

Youngblood, Rachel. "[Find Gender-neutral Restrooms at 160,000+ Businesses on Yelp.](#)" Yelp. June 23, 2017.

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.

Racial Equity and Social Justice (RESJ) 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 anticipates that Bill 4-22 requiring County-office buildings and public accommodations to convert single-user restrooms to gender-inclusive restrooms could narrow health inequities by gender identity, race, ethnicity, and disability. As such, OLO anticipates a favorable impact of Bill 4-22 on racial equity and social justice.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of racial equity and social justice (RESJ) impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 4-22

“As more people start to identify as transgender and non-conforming, access to public facilities free from harassment and discrimination has become a pressing concern.”³ The purpose of Bill 4-22 is to increase restroom access to persons regardless of gender, gender identity, or expressions as well as to increase restroom access to people with disabilities and children who rely on caregivers, especially from different genders.

Bill 4-22 requires single-user restrooms located in public accommodations or County-owned buildings to provide signage that identifies single-user restrooms as all-gender restrooms.⁴ The Bill would also require new buildings to include single user gender-inclusive restrooms. The Bill, however, would not require existing public accommodations without single-user restrooms to establish gender inclusive restrooms. The Bill also exempts private restrooms in residences, hospitals, hotels, motels, inns and other establishments that provide lodging for transient guests and restrooms that are only accessible from a private room or office.

Bill 4-22 was introduced to the Council on February 15, 2022. Bill 4-22 is consistent with Bill 23-07, Non-Discrimination – Gender Identity, that established gender identity as a protected class under the County’s anti-discrimination law. Under Bill 4-22, the Department of Permitting Services, the Department of Health and Human Services, or any other agency designated by the Chief Administrative Officer would be responsible for enforcing its requirements. Violation of Bill 4-22’s requirements would be considered a Class A violation.

RESJ Impact Statement

Bill 4-22

BATHROOMS, GENDER INCLUSIVITY, AND SOCIAL INCLUSION

The Haas Institute notes “restroom access has played a central role in many significant civil rights movements.”⁵ Analogous to the desegregation of public pools and beaches, they note the resistance to desegregate public restrooms also figures prominently in the struggle for civil rights for African Americans. Overall, they find that bathroom access has played a key role in discrimination faced by many marginalized groups. They also find that “fears around diverse bathroom use speak to larger visions of society as it serves as a site for the regulation of social inclusion.”⁶ The consequences of gendered public restrooms is significant, especially for transgender and gender non-conforming persons. Researchers have found that transgender and gender non-conforming persons trying to access public restroom facilities that correspond with their gender identity regularly experience exclusionary practices, intimidation, harassment and on occasion, overt violence.⁷ Further, additional studies demonstrate that race and ethnicity can contribute to incidents of discrimination and harassment among transgender and non-binary persons.⁸

As a result of increased risk of harassment and violence, transgender and non-binary persons can experience anxieties over public bathroom use that increase their risk for health issues such as urinary tract infections and mental health concerns.⁹ Best practices for mitigating this risk to ensure that all people have access to public bathroom facilities that are free of harassment and intimidation is to create gender-inclusive bathrooms.¹⁰ Gender-inclusive restrooms can also benefit parents, persons with disabilities, the elderly and anyone else who might require assistance from a caretaker and thus benefit from a larger and more private restroom space.¹¹ Collectively, populations that could benefit from Bill 4-22 account for a significant share of County residents since:

- Parents with children under the age of 18 account for 32 percent of County residents;¹²
- People over the age of 65 account for 16 percent of County residents;¹³
- Persons with disabilities account for 8 percent of County residents;¹⁴ and
- Transgender people likely account for 2 percent of Generation Z adults in the County born between 1997 and 2003,¹⁵ and up to one percent of all adults in the County.¹⁶

ANTICIPATED RESJ IMPACTS

OLO anticipates a favorable impact of Bill 4-22 on diminishing health inequities by gender identity and disability status as it will expand the number of gender-inclusive restrooms in the County. Expanding the number of gender-inclusive public restrooms will confer health benefits to users and demonstrate the County’s commitment to decreasing barriers, encouraging full community inclusion, and strengthening dignity and personal safety.¹⁷

In addition to transgender and non-binary persons, OLO anticipates that Bill 4-22 will benefit parents, persons with disabilities, and older residents. The Bill could also narrow racial and social inequities as transgender and non-binary persons of color are often at greatest risk for discrimination, harassment, and violence when accessing gendered public restrooms. As such, OLO anticipates that Bill 4-22 will advance racial equity and social justice in Montgomery County.

RECOMMENDED AMENDMENTS

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.¹⁸ OLO finds that Bill 4-22 is likely to advance racial equity and social justice. As such, this RESJ statement does not offer recommendations.

RESJ Impact Statement

Bill 4-22

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than 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

Elaine Bonner-Tompkins, OLO Senior Legislative Analyst, drafted this RESJ impact statement.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools <https://www.racialequitytools.org/glossary>

² Ibid

³ Eric Peterson, “Creating Bathroom Access and a Gender Inclusive Society” Haas Institute for a Fair and Inclusive Society at U.C. Berkeley, Policy Brief, September 2018

⁴ Montgomery County Council, Bill 4-22, Human Rights and Civil Liberties – Public Accommodations – Gender Inclusive Restrooms – Introduced, February 15, 2022

⁵ Peterson

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² American Community Survey, 2019 1 Year Estimates, Table S0201

¹³ Ibid

¹⁴ Ibid

¹⁵ Estimates from 2020 National Gallup Poll based on 15,000 interviews, cited by Samantha Smith, “1 in 6 Gen Z adults are LGBTQ. And this number could grow.” The Washington Post, February 24, 2021

¹⁶ Calculation based off of 2020 National Gallup Poll finding (cited by Julianne McShane, “A record number of U.S. adults identify as LGBTQ. Gen Z is driving the increase.” The Washington Post, February 17, 2022) that 7.1 percent of adults in 2020 identify as LGBTQ. Since 10 percent of Gen Z LGBTQ adults identify as transgendered, then OLO calculate that 10 percent of all LGBTQ adults also identify as transgender (0.7 percent of adults).

¹⁷ McCartney-Green

¹⁸ Montgomery County Council, Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established

SILVER SPRING, MD 20902

Tuesday, March 8, 2022

Written Testimony Favorable to Bill4-22: Human Rights and Civil Liberties – Public Accommodations – Gender Inclusive Restrooms

Council President Hans Riemer, Council Vice-President Evan Glass, Bill Sponsor Councilmember Sidnet Katz, and esteemed member of the Montgomery County Council:

My name is Ezra Towne. I am speaking to you today as a Montgomery County advocate and activist, transmasculine nonbinary person, and a parent. My testimony today is favorable for Bill 4-22 on Gender Inclusive Restrooms. This legislation would require that certain single-occupancy restrooms be made available to persons of any gender identity and that any associated signage be gender-inclusive.

Gender-inclusive restrooms, sometimes referred to as “all gender restrooms” or “gender-neutral restrooms” benefit everyone who lives in, works in, and/or visits Maryland state, cities, and counties. Nevertheless, when a legislation like Bill 4-22 is introduced, homophobic and transphobic individuals make the argument that it will only really help transgender people – a relatively small portion of the population.

It IS true that single occupancy public bathrooms, when available, are a huge relief to transgender, gender non-conforming and gender expansive adults and children, even when the signage is gendered.

Other people that would significantly benefit from gender-inclusive single occupancy restrooms include: disabled folks, parents/guardians of young children, caretakers for seniors with mobility challenges and/or dementia, and people of color who are disproportionately frowned upon when using gendered facilities that do not match other’s perception of their gender.

However, the existence of single occupancy bathrooms is not enough to make using a public restroom feel safe for transgender, non-binary, and gender-diverse people.

Only signage which makes it clear that a single occupancy bathroom is gender inclusive - or available to anyone - will do that. I have many stories that illustrate why, but stick to just a few below.

EZRA MACLEOD TOWNE

SILVER SPRING, MD 20902

I am regularly stopped, stared at and/or verbally challenged when trying to access a vacant single occupancy restroom when the signage doesn't match my perceived gender. And it is just as often for reasons other than my non-binary gender identity.

As a parent, I can say that when your child finally admits they need to use the bathroom, they need to use it immediately. I shouldn't have to check if a single occupancy restroom matches my OR my child's gender. It's not fair to either of my children to have to "hold it" until the "correctly" gendered one is available - or have to change my child's diaper on the restroom floor because the men's restroom doesn't have a changing table.

As a person with disabilities that sometimes needs assistance in the bathroom, gendered single occupancy stalls are also stressful for both my spouse and I because we are perceived as differently gendered than one another. Not too long ago, my partner and I went to a fancy restaurant for our anniversary. I did not need assistance in the bathroom at that time but was walking with an ankle boot and a cane. A server impolitely ushered me away from a restroom designated for women to one designated for men on the other side of the restaurant - only to find that it was occupied.

Under the 2014 Fairness for All Marylanders Act (FAMA), Maryland greatly expanded protections for transgender individuals which included the use of locker rooms and other public accommodations. **In keeping with the intent of Montgomery County's 2007 Bill 23-07**, which established gender identity as a protected class under the County anti-discrimination law and prohibits the unfair practice of an individual to the full enjoyment of accommodations. Unfortunately, 2007's Bill 23-07 did not specifically prohibit discrimination in the use and availability of the public restroom. Bill 4-22 seeks to rectify that discrepancy and reduce the stigma and violence experienced by the transgender community in public restrooms.

Last but not least, gender inclusive single occupant restrooms are simply good business sense. Restaurant customers to order dessert, or another drink at the bar. Out of consideration for the mental and physical health, as well as the equitable treatment of transgender and/or disabled individuals, **I urge you to vote in favor of Bill 4-22: Human Rights and Civil Liberties - Public Accommodations - Gender Inclusive Restrooms.**

Sincerely,
Mx. Ezra Towne
District 18, Wheaton



Bill 4-22
Montgomery County Council
March 8, 2022
Position: Support

Trans Maryland is a multi-racial, multi-gender community power building organization for Maryland's trans community, and we are proudly headquartered in Montgomery County. **We enthusiastically support Bill 4-22, Human Rights and Civil Liberties - Public Accommodations Gender Inclusive Restrooms.** This bill equitizes bathroom access for all Montgomery County residents county-wide. Montgomery County transgender (trans) and intersex communities face specific challenges when accessing basic bodily needs such as restrooms, healthcare, housing, and personal safety when moving about in public, and this bill lowers that barrier to access.

Gender non-conformity has existed since the beginning of time. Due to the violence of colonial systems, trans persons are subjected to violence at higher rates; this rate is even higher for Black and Brown nonbinary and gender expansive trans people. Black trans people face an almost 3x higher risk of abuse in places of public accommodations than white trans people, according to the latest US Trans Survey ([2015 US Transgender Survey](#)).

Nonbinary, gender non-conforming, gender expansive, and intersex people who do not have a binary gender presentation/expression (female or male) are often forced to choose a non-affirming (and potentially dangerous) restroom, or to incur health problems like urinary tract infections as a result of being precluded from using a public restroom. Being perceived as entering the "wrong" restroom is dangerous, increasing the likelihood of violence, and reinforces the minority stress disproportionately incurred by Montgomery County's trans communities.

Creating an inclusive and safe environment is essential to strengthening the economy of Montgomery County. This bill is crucial to ensuring Montgomery County can compete for business with nearby states and jurisdictions that have already codified law on this matter. Montgomery County has a chance to join forward thinking nearby jurisdictions in their policies to equitize bathroom access for all people. Those cities include Washington DC which codified this in 2006 and Philadelphia, PA in 2016. Additionally, Baltimore City codified this in 2019, the City of Salisbury did so in 2020, and Howard County codified in 2021. Montgomery County has a great opportunity to catch up to these leading jurisdictions with this legislation.

Equitizing access to bathrooms means those who need assistance from caretakers will not face scrutiny for going into the "wrong" restroom. Access to changing facilities for babies should be available to all, so people of all genders and gender expressions caring for a child can change their baby. This can include trans men who are fathers and caretakers, gay men (transgender or cisgender) who are parents, and grandparents of any gender who care for a baby. No parent or caretaker should have to change a baby on the floor because changing tables are only available in women's restrooms.

Trans Maryland asks that you support Bill 4-22. This crucial piece of legislation will benefit many current and future residents, in addition to those who travel to Montgomery County. For these reasons, **we urge a favorable report on Bill 4-22.**

Bill 4-22: Gender Inclusive Restrooms
Position: Favorable with Ammendments

My name is Blake Mihm and I use they/them or he/him pronouns. Thank you for allowing me to speak today about my support of Bill 4-22, for Gender Inclusive Restrooms. I work for the Montgomery County Department of Health and Human Services in HIV/STI prevention.

My job brings me all over the county as I serve my community. I am frequently in county buildings, and do not have a restroom to use because all the restrooms indicate a gender. Most of these buildings have single-occupant, private bathrooms, yet they have signage that indicates only one gender is allowed in the restroom. It is an awful feeling to know that I cannot access a bathroom during my workday without feeling fear of harassment and embarrassment. It is unfortunate that even in county buildings, there are no restrooms for employees and clients such as myself, despite the presence of single-stall restrooms. A simple change of signage would open these restrooms to everyone who needs them, including those in the disability community who require help in the restroom and people with young children. Making these restrooms inclusive to everyone is an easy change that will have a real beneficial impact on people like me everyday.

For the sake of clarity, I propose that the signs simply state what is available inside the restroom with words and pictures, such as toilet, urinal, or baby changing station. I suggest signs that simply say "toilet," "restroom," or "accessible restroom," and not signs that say things like "gender-neutral restroom." Language such as "gender-neutral" may be confusing to people who are not familiar with the term. It is simply a restroom, and does not need to say anything about what genders are allowed to use it.

Thank you for your time.
Blake Mihm

Sec. 27-10. Scope.

(a) This division applies 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.

(b) In this Chapter, “public accommodation” includes any service, program, or activity offered to or used by the general public.

(c) This division does not apply to accommodations that are distinctly private or personal. (Mont. Co. Code 1965, § 77-9; Ord. No. 6-43; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 2001 L.M.C., ch. 9, § 1; [2001 L.M.C., ch. 33](#), § 1; [2020 L.M.C., ch. 30](#), §1.)

Editor’s note—Section 27-10, formerly § 27-8, was renumbered, amended and retitled pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-10, relating to penalties, derived from Mont. Co. Code 1965, § 77-11; Ord. No. 6-57; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 3, was repealed by 2001 L.M.C., ch. 9, § 1.