Legislative Report:
H.B. 2 "Repeal"

Prepared by North Carolina State AFL-CIO
James Andrews, President

April 2017
MaryBe McMillan, Secretary-Treasurer

House Bill 142 / S.L. 2017-4 replaced the infamous H.B. 2, but what else did it do?

"Working people in North Carolina deserve discrimination-free workplaces, higher wages, and paid sick leave. Cities and counties that want to provide such protections to workers should be allowed to do so." -- MaryBe McMillan, Secretary-Treasurer (3/30/17)

As most everyone knows, the infamous HB 2 was recently repealed by the legislature and replaced with new legislation. The repeal and replacement bill was quickly signed by Governor Cooper. The direct impetus was that the NCAA had set a deadline for such a repeal if our state wanted to be considered as host to any of that organization's activities over the next few years. The repeal worked to that end, as the NCAA has indicated (although with reservations) that it will now consider our state as a host going forward.

Some of our good friends in the legislature voted for the repeal, agreeing with Governor Cooper that it was an important step that improves the law and that the overall package was the best that could be done given current political circumstances. Other good friends in the legislature voted against the repeal, maintaining that the replacement legislation was not a full repeal, perpetuated discrimination, and was, over all, unacceptable. We certainly would have preferred full repeal.

A number of our members have asked us what the repeal legislation, known as HB 142, actually provides. We will attempt to briefly explain our understanding below.

You will recall that HB 2 primarily did four things:

1. HB 2 mandated that all public bathroom facilities discriminate against transgendered persons;
2. HB 2 prohibited county and municipal entities from imposing any requirement pertaining to employee compensation on any private employer, including government contractors;
3. HB 2 made suing for employment discrimination in state courts more difficult; and
4. HB 2 prohibited county and municipal entities from enacting their own regulations limiting discriminatory practices in private employment and in places of public accommodation.

We caution that legislation, and particularly legislation passed hurriedly, as was HB 142, is often ambiguous. That is the case here.

The repeal legislation had four sections.

Section 1 repealed HB 2.

Section 2 provided that all state entities, including cities, counties, and local boards of education, are "preempted" from regulating access to restrooms, showers or changing facilities, except in accordance with an Act of the General Assembly.

Section 3 provided that no local government can enact or amend an "ordinance regulating

private employment practices or regulating public accommodations."

Section 4 provided that Section 3 will expire on December 1, 2020.

The repeal legislation thus eliminated HB 2's requirement that all transgender persons use facilities designated for the gender on their birth certificates. However, no city, town, or other entity can enact their own ordinances regulating restroom use - or any other public accommodations. Thus, while the state-mandated discrimination included in HB 2 has been eliminated, Charlotte, as an example, would be prohibited from passing the non-discrimination ordinance that led to HB 2.

HB 142's language prohibiting local governments from enacting or amending ordinances "regulating private employment practices" is much more ambiguous than the comparable language in HB 2. Some believe that the term "employment practices" refers only to ordinances about employment discrimination. Some believe cities and counties are also prohibited from passing wage or benefit ordinances for four years. Others believe that any ordinances that were enacted before HB 142 can continue to have legal effect. Still others believe that, given prior legislation and court decisions, cities and counties cannot now or even after four years pass any such ordinances or make any such conditions a requirement in contracts with contractors. Time will tell; the ambiguities may well be resolved only by litigation.

The provisions in HB 2 that made bringing discrimination cases in state court more difficult were repealed, and the law in this area is as before HB 2.

Lastly, nothing prohibits the legislature from changing anything in HB 142 at any time before, or after, December 1, 2020.

Contacting the NC State AFL-CIO

By Phone:	919-833-6678 (Office) 919-523-2835 (Secretary-Treasurer McMillan)
By Fax:	919-828-2102
By Email:	info@aflcionc.org
On the Web:	aflcionc.org
Facebook:	**facebook.com/ncstateaflcio**
Twitter:	**@ncstateaflcio**
By Mail:	NC State AFL-CIO P.O. Box 10805 Raleigh, NC 27605
In Person:	1408 Hillsborough St Raleigh, NC 27605