

BIRMINGHAM BUSINESS JOURNAL

Will social legislation hurt Alabama's bid for more business? Experts say bathroom bill could cost the state jobs



Some experts say social legislation like the bathroom bill could cost Alabama thousands of jobs.

Mar 2, 2017, Tim Steere, Digital Producer, *Birmingham Business Journal*

Another war between the states.

That's how John Boyd, principal of independent site selection firm The Boyd Co., describes ongoing fights in state capitals that threaten to undermine states' economic development efforts.

It's a fight that Alabama has plenty of experience with over the years, from controversial immigration laws to a series of fruitless legal fights with the federal government over social issues like same-sex marriage.

The battle is heating up once again in Montgomery during this year's session, which features a controversial bathroom bill focused on organizations with transgender-friendly policies.

Similar bills in states like North Carolina had a significant detrimental effect on business and economic development, and many Alabama business groups are coming out in force against the bill, fearing Alabama will suffer similar consequences.

They have argued that future jobs and the state's reputation are in jeopardy.

But will Alabama's history – and potential future – of socially motivated legislation hurt its chances to improve its economy?

Site selectors say it's a legitimate concern in a world where many businesses and entrepreneurs – particularly in certain fields Birmingham is recruiting - are becoming more socially conscious.

"We call it the second war between the states," Boyd said. "The last thing lawmakers should do is make it more difficult for state economic development apparatuses to do their jobs."

What Alabama can learn from North Carolina

North Carolina lawmakers took steps last year to define how transgender individuals can use public restrooms, requiring people to use public restrooms that match the sex on their birth certificate, regardless of gender identity.

The state was met with a swift flurry of backlash from gay and transgender rights groups, along with a wave of boycotts and protests. But what followed had a far more lasting effect than any picketer or advocate could have accomplished on the ground: major companies and sports organizations began to pull plans for events and expansions in North Carolina, costing the state millions.

The NBA pulled its 2016 All-Star Game from Charlotte as a result of the law. Then, Atlantic Coast Conference announced it would move all its championships from North Carolina. Experts say those moves alone pulled hundreds of millions from the state's economy.

And, even though Alabama's bathroom bill is different than North Carolina's, the Tar Heel State's experience is one reason Alabama business leaders are heavily opposed to the bill, which was prefiled by Sen. Phil Williams, R-Rainbow City, after the conclusion of the 2016 legislative session.

The bill attempts to introduce a gender-focused approach to bathroom use among businesses with transgender-friendly restroom policies.

Williams' bill says companies with bathrooms or changing facilities open to people "irrespective of their gender," must have those areas "staffed by an attendant stationed at the door of each

restroom to monitor the appropriate use of the restroom and answer any questions or concerns by users.”

That attendant can be anyone employed by the business and must have an official role designed to handle any concerns or questions from the general public.

Though Williams said his bill won't produce a situation where companies have an employee “policing” bathroom use or have an adverse effect on the state's business climate, many experts say Alabama is playing with fire.

Social legislation and companies' criteria

While conservative state legislatures are placing an enhanced focus on gender- and religion-focused bills, corporations have social legislation near the bottom of their priority list when they are choosing sites behind must-haves like workforce, incentives and infrastructures.

But site selectors say social issues are considered by many companies – especially business-to-consumer companies - and that's a factor that could cost Alabama if the bill passes.

“Alabama would lose thousands of jobs,” said Dennis Donovan, a site selection adviser at WDG Consulting LLC. “There is no question whatsoever.”

Donovan said companies are primarily looking at two things when considering a particular state: recruiting and retaining a high-quality workforce, and maintaining and enhancing a favorable reputation.

“It doesn't mean (Alabama) won't attract new businesses, but companies are viewing this as anti-gay and anti-transgender, and that's just not a label the company is willing to risk,” Donovan said. “We have a considerable amount of clients that would likely take Alabama off their list. It depends on the company and facility, but the really visible companies will not go there.”

But a survey from Site Selection Magazine suggests other factors outweigh social legislation when companies are making their decisions.

Each year, Site Selection surveys corporate site selectors about what they consider to be the most important site location criteria as they weigh location options for new or expanded facilities. In 2016, for the first time, the magazine included “social legislation” as a factor for selectors to include in ranking their top 10.

“We did not get as specific as ‘bathroom laws,’ assuming they would know to include those in that category along with marijuana legalization and other such societal measures enacted by some states,” said Mark Arend, editor of Site Selection. “Of the criteria put forward to rank - there were about 15, I believe – social legislation did not make the top 10. The survey indicated

that factors such as workforce skills, incentives, transportation infrastructure, workforce development, higher education resources and others are what site selectors evaluate.”

The same survey is used in-part to determine the magazine’s overall business climate rankings for each state. North Carolina finished second in the overall business climate ranking. Alabama was ranked ninth.

“With a very small, hard-to-quantify exception, companies are looking for the right combination of key business climate factors that will help them be successful in a location long term,” Arend said. “And, they have installed bathroom facilities, such as single-use bathrooms, that accommodate their entire workforce.”

The future of Alabama’s bill

Alabama is one of several states with bathroom bills prefiled before their legislative sessions, including Washington, Texas, Virginia, South Carolina and Missouri, among others.

Eva Kendrick, the Alabama state manager for the Human Rights Campaign - the nation’s largest LGBTQ civil rights advocacy group – said Alabama lawmakers had the chance to abandon the effort last year.

“What is fascinating about last year is Alabama was the only state in our region that didn’t pass any anti-LGBTQ legislation and that’s a reputation all of our legislators and business leaders should be looking to keep intact,” Kendrick said. “Any bill like SB1 is going to cause the same effect when it comes to Alabama’s reputation with businesses looking for new opportunities.”

Williams, in a January interview with the Birmingham Business Journal, said businesses won’t be affected by the legislation if they do not have an official bathroom policy. He said he chose to draft the bill in light of constituent concerns, with top two items consistently brought to his attention being bathroom legislation and health insurance premium costs.

“My concern with the bill was to look at it from the angle that every citizen has an inherent right to privacy embedded in our laws,” Williams said. “Looking at it that way, how does it jive with a corporate or public entity with a complete disregard for the security and privacy rights for the other citizens? I think what you’ll find is unless there’s a business that’s created an official policy of transgender use of a restroom, they won’t be impacted.”

And despite the bill’s language requiring an attendant in place at a restroom, Williams said the bill is an attempt to further define privacy laws already in existence.

“The whole idea there is if you’re going to have that policy, there’s got to be somebody at that information desk and have a point person to address the concerns,” he said. “I’m not making new law, I’m codifying what exists within Alabama law already.”

The bill creates civil penalties, including fines, for those who violate the law. Public institutions that leave bathrooms unattended could be hit with fines ranging from \$2,000 to \$3,500, along with potential lawsuits.

For businesses operating in Alabama with specific transgender policies, Williams' bill could potentially create a situation in which those entities must use employees as bathroom attendants or launch public relations efforts – both of which could increase their costs. Unlike North Carolina's bill, however, the bill doesn't preclude cities or counties from passing contradictory ordinances of their own.

Also, in North Carolina's case, the controversial HB2 was formulated in response to a municipal nondiscrimination ordinance passed in Charlotte. State lawmakers called a special session a month later to effectively quash the ordinance.

"A week and half before that took effect, the legislature had a special session, went in, and passed the law," said Erik Spanberg, a senior reporter at our sister publication in Charlotte. "Nobody knew what was coming or how it would work."

Since Alabama SB1 has been on the table since last year, many of the state's business groups had time to mount opposition to the bill. Groups including the Business Council of Alabama and several chambers of commerce, including the Birmingham Business Alliance, are against the bill.

"The BBA believes that legislation like Alabama SB1 would be detrimental to our collective economic development work statewide," Hilson said. "Therefore, we oppose any effort that would give this legislation more life."

Similar bills have failed in other states, with officials concerned over how such legislation could potentially affect economic development prospects.

Last year, Georgia Gov. Nathan Deal vetoed an anti-LGBTQ religious freedom bill, citing concerns the state would lose out on major economic drivers like the NFL or Disney, both of which threatened to pull operations from the Peach State.

Boyd said he would tell other Republican governors to follow Deal's lead.

"Nathan Deal wisely encouraged the Georgia legislature not to go down this job-killing path," Boyd said. "It has become a major site selection driver and that's because of the nature of the 24/7 news cycle and the increased importance of branding."

And that branding is changing, Boyd said. Major manufacturers are now viewing themselves as increasingly tech-oriented entities – a space typically occupied by progressive, employee-conscious companies. That shift means more employers have more to lose in terms of branding and a state's social environment.

Birmingham, which is aiming to boost its profile in the technology and innovation worlds, would be one of the hardest hit along those lines.

States like Indiana have demonstrated the ability to compromise on the matter.

When Indiana's lawmakers moved to pass the Religious Freedom Restoration Act in 2014, former Indiana Gov. Mike Pence moved to revise the law, which critics feared would allow businesses to discriminate against the LGBTQ community.

Pence's actions, Boyd said, demonstrated an ability to work out a somewhat milder proposal, versus former North Carolina Gov. Pat McCrory's decision to double-down on the state's original bathroom bill.

And states looking to pass legislation of the sort are actually opening doors for smaller, but still business-friendly areas like Billings, Montana, Boyd said. Billings, a city of roughly 109,000 with an emerging energy industry, has the potential to lure businesses away from Texas as Lone Star lawmakers ready a bathroom bill of their own.

"Gov. Abbot is not aggressively promoting a religious freedom bill, but in Texas, the lieutenant governor drives what comes forward and it's his mission to do bathroom bill," Boyd said. "Billings is soon getting a direct flight to Dallas and that, coupled with a bathroom bill, will give them leverage to get some back offices from Dallas. It's socially progressive, but still pro-business and tax friendly."

Still, Williams believe he has the support to move forward with the legislation, regardless of corporate concerns.

"Alabama is one of the most business friendly states in the nation," he said. "The very idea that corporations would choose not to come here, I don't find that plausible. I have no illusions. I recognize some of my peers in the legislature have expressed interest in the bill, some will be opposed and others won't have the stomach for the fight."