

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 38

Introduced by Senator Baca

December 7, 1998

~~An act to add Chapter 4.5 (commencing with Section 6400) to Division 7 of Title 1 of the Government Code, relating to~~
An act to add Article 4.1 (commencing with Section 65912.5) to Chapter 4 of Division 1 of Title 7 of the Government Code, relating to religious freedom.

LEGISLATIVE COUNSEL'S DIGEST

SB 38, as amended, Baca. Religious Freedom Protection Act.

The First Amendment to the United States Constitution provides that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise of religion and the California Constitution provides that the free exercise and enjoyment of religion without discrimination or preference is guaranteed.

This bill would enact the Religious Freedom Protection Act *to require that a land use law, regulation, or decision that has the effect of prohibiting or restricting the time, place, or manner of operation of a religious assembly or institution be subject to specified requirements. The bill would authorize any person to assert a violation of this provision as a claim or as a defense in a judicial proceeding, but would prohibit the imposition of monetary damages on any legislative body for land use laws, regulations, or decisions adopted prior to January 1, 2000.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Chapter 4.5 (commencing with Section~~
2 ~~6400) is added to Division 7 of Title 1 of the Government~~
3 ~~Code, to read:~~

4

5 ~~CHAPTER 4.5. RELIGIOUS FREEDOM PROTECTION ACT~~

6

7 ~~6400. This chapter shall be known and may be cited~~
8 ~~as the Religious Freedom Protection Act.~~

9 *SECTION 1. Article 4.1 (commencing with Section*
10 *65912.5) is added to Chapter 4 of Division 1 of Title 7 of*
11 *the Government Code, to read:*

12

13 *Article 4.1. Religious Freedom Protection Act*

14

15 *65912.5. This article shall be known and may be cited*
16 *as the Religious Freedom Protection Act.*

17 *65912.6. (a) A land use law, regulation, or decision*
18 *that has the effect of prohibiting or restricting the time,*
19 *place, or manner of operation of a religious assembly or*
20 *institution shall be subject to both of the following*
21 *requirements. Its adoption and application shall:*

22 *(1) Impose no greater limitation or restriction on*
23 *religious assemblies or institutions than nonreligious*
24 *assemblies or institutions that create similar impacts on*
25 *land use.*

26 *(2) If substantially burdening the free exercise of*
27 *religion, be supported by the weight of the evidence,*
28 *including a substantial connection to an important*
29 *governmental interest.*

30 *(b) A person may assert a violation of this section as a*
31 *claim or defense in a judicial proceeding and obtain*
32 *appropriate relief against a legislative body.*

33 *65912.7. As used in this article:*

34 *(a) "Land use law, regulation, or decision" means the*
35 *adoption, amendment, or rejection of a general plan,*



1 *specific plan, or zoning ordinance, or the issuance or*
2 *denial of any permits or entitlements for use, including a*
3 *conditional use permit.*

4 (b) *“Legislative body” means a “legislative body” as*
5 *defined in Section 53000, or a branch, department,*
6 *agency, instrumentality, or official or other person acting*
7 *under color of law, of the state.*

8 (c) *“Person” includes an individual, partnership,*
9 *association, corporation, organization, or any*
10 *combination thereof.*

11 (d) *“Religious assembly or institution” means an*
12 *assembly or institution principally devoted to religious*
13 *exercise.*

14 65912.8. (a) *This article applies to all land use laws,*
15 *regulations, or decisions, whether adopted before or after*
16 *the effective date of this article.*

17 (b) *To the extent that this article creates new rights to*
18 *monetary damages, nothing in this article shall be*
19 *construed to allow the imposition of monetary damages*
20 *on any legislative body for land use laws, regulations, or*
21 *decisions adopted prior to January 1, 2000.*

22 (c) *This article applies to all cities, including charter*
23 *cities. The Legislature finds and declares that free*
24 *exercise of religion is a matter of statewide concern and*
25 *is not merely a municipal affair or a matter of local*
26 *interest.*

