

AMENDED IN SENATE APRIL 27, 1999

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 38

Introduced by Senator Baca

December 7, 1998

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.

Under the Planning and Zoning Law, any action by a city, county, city and county, or other local governmental agency that denies to any individual or group of individuals the enjoyment of any land use because of race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, or age is null and void.

This bill would enact the Religious Freedom Protection Act to require that ~~a land use law, regulation, or decision~~ *any act performed pursuant to the Planning and Zoning Law* that has the effect of ~~prohibiting or restricting~~ *regulating* 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 any action.~~

The bill also would prohibit the imposition of monetary damages on any legislative body for land use laws, regulations, or decisions adopted for any act performed prior to January 1, 2000, but would provide that its provisions apply to all acts performed before or after 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. Article 4.1 (commencing with Section
2 65912.5) is added to Chapter 4 of Division 1 of Title 7 of
3 the Government Code, to read:

4

5 Article 4.1. Religious Freedom Protection Act

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7 65912.5. This article shall be known and may be cited
8 as the Religious Freedom Protection Act.

9 ~~65912.6. (a) A land use law, regulation, or decision
10 that has the effect of prohibiting or restricting the time,
11 place, or manner of operation of a religious assembly or
12 institution shall be subject to both of the following
13 requirements. Its adoption and application shall:~~

14 ~~(1) Impose no greater limitation or restriction on
15 religious assemblies or institutions than nonreligious
16 assemblies or institutions that create similar impacts on
17 land use.~~

18 ~~(2) If substantially burdening the free exercise of
19 religion, be supported by the weight of the evidence,
20 including a substantial connection to an important
21 governmental interest.~~

22 ~~(b) A person may assert a violation of this section as a
23 claim or defense in a judicial proceeding and obtain
24 appropriate relief against a legislative body.~~

25 ~~65912.7. As used in this article:~~



1 ~~(a) “Land use law, regulation, or decision” means the~~
2 ~~adoption, amendment, or rejection of a general plan,~~
3 ~~specific plan, or zoning ordinance, or the issuance or~~
4 ~~denial of any permits or entitlements for use, including a~~
5 ~~conditional use permit.~~

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

10 ~~(c) “Person” includes an individual, partnership,~~
11 ~~association, corporation, organization, or any~~
12 ~~combination thereof.~~

13 ~~(d) “Religious assembly or institution” means an~~
14 ~~assembly or institution principally devoted to religious~~
15 ~~exercise.~~

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

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

24 *65912.6. (a) Any act performed pursuant to this title*
25 *that has the effect of regulating the time, place, or*
26 *manner of operation of a religious assembly or institution*
27 *shall not impose any greater restriction on that operation*
28 *than on the operation of nonreligious assemblies or*
29 *institutions that create similar effects on land use.*

30 *(b) Any act performed pursuant to this title that has*
31 *the effect of regulating the time, place, or manner of*
32 *operation of a religious assembly or institution and that*
33 *substantially burdens the free exercise of religion shall*
34 *have a substantial connection to an important*
35 *governmental interest.*

36 *(c) Any administrative or quasi-judicial act performed*
37 *pursuant to this title that has the effect of regulating the*
38 *time, place, or manner of operation of a religious*
39 *assembly or institution and that substantially burdens the*



1 *free exercise of religion shall be supported by the weight*
2 *of the evidence.*

3 *(d) In an action against a city, county, or city and*
4 *county, any person may assert a violation of this article as*
5 *either a claim or a defense, and may obtain appropriate*
6 *relief, including damages. Qualified immunity shall be a*
7 *defense in any claim for damages under this article.*

8 *(e) As used in this article, “person” includes an*
9 *individual, partnership, association, corporation,*
10 *organization, or any combination thereof.*

11 *(f) As used in this article, “religious assembly or*
12 *institution” means an assembly or institution principally*
13 *devoted to religious exercise.*

14 *65912.7. (a) This article applies to all acts performed*
15 *pursuant to this title, whether performed before or after*
16 *January 1, 2000.*

17 *(b) No court shall award damages under this article for*
18 *any act performed pursuant to this title before January 1,*
19 *2000.*

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

