

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE

House Bill 1041 (Delegate Rosenberg. *et al.*)

Commerce and Government Matters

Religious Freedom

This bill provides that governmental action may not substantially burden a person's religious exercise, even if the burden results from governmental action of general applicability, unless the governmental authority demonstrates that the application of the burden to the person is the least restrictive means of achieving a compelling governmental interest. Religious exercise is defined as an act or refusal to act that is substantially motivated by religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief. The least restrictive means of achieving a compelling governmental interest means that the application of the burden to the person is essential to achieve the State's compelling governmental interest and there is no alternative means of achieving the State's compelling governmental interest that will impose a lesser burden on a person's religious exercise. In a civil action, a person aggrieved by a violation of this bill may recover injunctive relief, monetary damages, and reasonable attorney fees and litigation costs.

Fiscal Summary

State Effect: Indeterminate significant increase in expenditures.

Local Effect: Potential indeterminate increase in expenditures due to the effect on the ability of local governments to enforce zoning and building codes, and other government legislation regarding land use and health and safety matters.

Small Business Effect: None.

Fiscal Analysis

Background: The First Amendment of the U.S. Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

Both the Establishment and Free Exercise Clause of the First Amendment apply to the states under the Fourteenth Amendment. The Free Exercise Clause prohibits the government from punishing someone on the basis of the person’s religious beliefs unless the government can demonstrate a compelling government interest and the least restrictive means. The Supreme Court has never found an interest that was so “compelling” that it would justify punishing a religious belief.

However, in Employment Division v. Smith (1990), the Supreme Court held that states may prohibit or regulate conduct of general applicability even if the prohibition incidentally interferes with a person’s religious practices unless it can be shown that the law was motivated by a desire to interfere with religion. In Smith, the Supreme Court held that two members of the Native American Church were not exempt from a law prohibiting the use of peyote on religious freedom grounds.

In response to the Smith decision, Congress passed the 1993 Religious Freedom Restoration Act (RFRA) which provided that governments may not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability unless it demonstrates that application of the burden to the person is in furtherance of a compelling state interest and is the least restrictive means of furthering that compelling state interest.

In Flores v. City of Boerne (1997), a decision by a local zoning authority to deny a church a building expansion permit was challenged under RFRA. In Flores, the Supreme Court held that RFRA exceeded the power of Congress and was therefore unconstitutional. Maryland and many other states have responded to the Flores decision by introducing RFRA-like legislation at the state level of government.

State Expenditures: Because this bill applies to all State government action it is difficult to reliably estimate the effect the bill could have on State finances, although it is assumed to be substantial. The bill would affect the prison system, the public schools, the court system, the State as an employer, and could involve substantial litigation costs. However, according to a study prepared by a professor from the George Washington University Law School, the most pervasive effect of the federal RFRA was on State prisons. According to the study, over half of the reported cases under RFRA involved prison inmates. What follows is an analysis of the costs that may be incurred by the Department of Public Safety and Correctional Services.

There are currently 26,000 inmates representing more than 37 different religions. The Department of Public Safety and Correctional Services (DPSCS) advises that it would incur approximately \$10,515,900 in additional expenditures each year in order to accommodate the

religious dietary practices of all its inmates.

Various religious sects embrace different dietary practices. Some sects restrict pork, beef, chicken, fish, processed foods, or certain vegetables. In addition to restricting the types of foods that can be eaten, dietary laws also govern the method of preparation, the type of equipment and utensils to be used in preparing and serving the foods, and the time of day meals may be consumed.

This bill could require the Division of Support Services to provide religiously approved meals to inmates. Currently, the food service program provides two alternative regular diets and a number of modified medical diets. Inmates may choose between a menu containing meat or a vegetarian alternative. DPSCS operates a traditional preparation kitchen in most of its facilities. During the past 15 years, DPSCS has invested in technology in order to achieve cost effective food preparation. The ability to serve the same prepared foods to a majority of the inmate population has been an important source of cost containment.

Of the 26,000 inmates currently incarcerated in Division of Correction facilities, approximately 7,000 belong to religious sects with significantly restrictive dietary laws. There are currently six different religious groups within the prison system with special diets. Five of these groups have already requested that the prison prepare a special diet. These dietary practices would affect many of the current types of foods used, affect the current method of preparation, and require DPSCS to develop additional menus. Food service facilities would need to be enlarged in order to accommodate additional food preparation equipment, storage facilities, and refrigerated areas to separate the storage of these religiously required foods. DPSCS would need additional staff to receive, store, prepare, and serve the additional menu options. DPSCS would lose the efficiencies associated with its current limited menu options, and would incur the increased cost of special religiously required foods.

The Division of Correction advises that it will require 25 new chaplains, 22 correctional officers, 11 volunteers, and 11 office secretaries as a result of this bill. Accordingly, the division expects expenditures to increase by approximately \$1,905,500 each year.

This bill could require the Division of Correction to expand the accommodation of religious services by increasing the number of worship and study activities. Currently, the number of correctional officers used for escorting inmates to a place of worship and supervising religious activities limits the schedule for worship and religious study sessions. Currently, inmates are permitted to attend one religious workshop or a study session per week. However, the division notes that some religious groups have requested to meet more often. For example, some religious groups believe that it is more effective to study in groups than alone. In order to expand worship and religious study sessions, the division advises that it would need two additional correctional officers at each major institution. Additionally, the division advises that it would need to hire 25 more chaplains for worship. During 1995-96, at the peak of RFRA, religious freedom-based inmate formal complaints increased from 6 to 23. In 1997, the number dropped to 13. The division expects the number of complaints handled through the Administrative Remedy Procedure or the Inmate Grievance Office to increase as a result of this bill. In addition, the number of informal complaints is expected to increase.

Local Expenditures: This bill could hamper the ability of local governments to enforce zoning laws, land use laws, and laws relating to health and safety. For example, a city which zones a particular new neighborhood as strictly residential may be challenged in court by a person who would like to build a church or synagogue in that area and who claims that the zoning ordinance violates the person's exercise of religion under this bill. Any uncertainty regarding local zoning laws and property rights would cause litigation and planning costs to increase.

Information Source(s): Judiciary, Human Relations Commission, Department of Public Safety and Correctional Services

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