

House Bill 3609

Sponsored by Representative LINDSAY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits public body from burdening person's free exercise of religion even if burden results from application of rule of general applicability.

Allows public body to burden person's free exercise of religion if public body demonstrates that application of burden is essential to further compelling governmental interest and is least restrictive means of furthering that compelling governmental interest.

Prohibits public body from imposing or implementing land use regulation in manner that imposes unreasonable burden on person's exercise of religion, regardless of compelling governmental interest. Specifies exemptions.

A BILL FOR AN ACT

1
2 Relating to the free exercise of religion.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 4 of this 2011 Act:**

5 (1) **"Demonstrates" means meets the burden of going forward with the evidence and of**
6 **persuasion.**

7 (2) **"Exercise of religion" means the ability to act or refusal to act in a manner sub-**
8 **stantially motivated by a religious belief, whether or not the exercise is compulsory or cen-**
9 **tral to a larger system of religious belief.**

10 (3) **"Nonreligious assembly or institution" includes all membership organizations, thea-**
11 **ters, cultural centers, dance halls, fraternal orders, amphitheaters and places of public as-**
12 **sembly, regardless of size, where a public body allows meetings by ordinance, resolution or**
13 **practice.**

14 (4) **"Person" includes a religious assembly or institution.**

15 (5) **"Public body" has the meaning given that term in ORS 174.109.**

16 **SECTION 2. (1) Free exercise of religion is a fundamental right that applies in this state**
17 **and is protected against laws, rules or other government actions even if those laws, rules**
18 **or actions are facially neutral.**

19 (2) **Except as provided in subsection (3) of this section, a public body may not substan-**
20 **tially burden a person's exercise of religion even if the burden results from a rule of general**
21 **applicability.**

22 (3) **A public body may substantially burden a person's exercise of religion if the public**
23 **body demonstrates that application of the burden to the person:**

24 (a) **Is in furtherance of a compelling governmental interest; and**

25 (b) **Is the least restrictive means of furthering that compelling governmental interest.**

26 (4) **A person whose religious exercise is burdened in violation of this section may assert**
27 **that violation:**

28 (a) **As a claim or defense in a judicial or administrative proceeding brought by or against**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 a public body or an officer or employee of a public body; or

2 (b) As a defense in a judicial proceeding brought by any person that is not a public body
3 or an officer or employee of a public body.

4 (5) A person who prevails in any action to enforce this section against a public body or
5 an officer or employee of a public body shall recover attorney fees and costs.

6 **SECTION 3.** (1) A public body may not impose or implement a land use regulation in a
7 manner that imposes an unreasonable burden on a person's exercise of religion, regardless
8 of a compelling governmental interest, unless the government demonstrates:

9 (a) That the person's exercise of religion at a particular location violates religion-neutral
10 zoning standards in effect at the time of the person's application for a permit;

11 (b) That the person's exercise of religion at a particular location would be hazardous due
12 to toxic uses in adjacent properties; or

13 (c) The existence of a suitable alternate property the person could use for the exercise
14 of religion.

15 (2) A public body may not impose or implement a land use regulation in a manner that
16 treats a religious assembly or institution on less than equal terms with a nonreligious as-
17 sembly or institution, regardless of a compelling governmental interest.

18 (3) A public body may not impose or implement a land use regulation in a manner that
19 discriminates against an assembly or institution on the basis of religion, regardless of any
20 compelling governmental interest.

21 (4) A public body may not impose or implement a land use regulation in a manner that
22 completely excludes a religious assembly or institution from a zoning classification, or that
23 unreasonably limits religious assemblies, institutions or structures within a zoning classi-
24 fication, regardless of any compelling governmental interest.

25 (5) For the purposes of subsection (1) of this section, a land use regulation imposes an
26 unreasonable burden on a person's exercise of religion if the regulation prevents the person
27 from using the person's property in a manner that the person finds satisfactory to fulfill the
28 person's religious mission.

29 (6) For the purposes of subsection (1)(a) of this section, a zoning standard is religion-
30 neutral if the standard is based on quantitative factors, including but not limited to maxi-
31 mum occupancy limits, height restrictions, setback requirements, fire code requirements,
32 parking space requirements, sewer capacity limitations and traffic congestion limitations.
33 Subsection (1)(a) of this section does not apply to zoning standards that are based on:

34 (a) The desire that new construction be consistent with existing uses;

35 (b) The desire that new construction work together with existing or proposed uses to
36 improve the area; or

37 (c) The public body's interest in maximizing tax revenues in the area.

38 (7) For the purpose of determining whether there is a suitable alternate property that a
39 person can use for the exercise of religion under subsection (1)(c) of this section, a public
40 body must demonstrate that:

41 (a) The property can be afforded by the person, taking into account the revenue sources
42 of the person and other financial obligations of the person;

43 (b) The property is within a reasonable distance from the location proposed by the per-
44 son; and

45 (c) The property is large enough to fully accommodate the current and projected needs

1 of the person in fulfilling the person's religious mission.

2 **SECTION 4.** Sections 1 to 4 of this 2011 Act may not be construed to authorize any public
3 body to burden any religious belief.

4 **SECTION 5.** Sections 1 to 4 of this 2011 Act apply to all state laws, rules, ordinances and
5 resolutions, whether adopted before, on or after the effective date of this 2011 Act.
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