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House Bill 5958 (as passed by the House)
Sponsor: Representative Jase Bolger
House Committee: Judiciary

CONTENT

The bill would create the "Michigan Religious Freedom Restoration Act" to prohibit government from substantially burdening a person's exercise of religion, even if the burden resulted from a rule of general applicability. ("Exercise of religion" would mean "the practice or observance of religion, including an act or refusal to act, that is substantially motivated by a sincerely held religious belief, whether or not compelled by or central to a system or religious belief".)

The bill provides that government could substantially burden a person's exercise of religion only if it demonstrated that application of the burden to that person's exercise of religion was in furtherance of a compelling governmental interest, and was the least restrictive means of furthering that interest.

These provisions would apply to all laws of this State and its political subdivisions, and the implementation of those laws, whether statutory or otherwise, unless a State law explicitly excluded application by reference to the proposed Act.

A person whose religious exercise had been burdened in violation of the Act could assert that violation as a claim or defense in any judicial or administrative proceeding and obtain appropriate relief, including equitable relief, against the government. A court or tribunal could award all or a portion of the costs of litigation, including attorney fees to a person who prevailed against the government.

The proposed Act would have to be construed in favor of broad protection of religious exercise to the maximum extent permitted by the terms of the Act, the State Constitution, and the United States Constitution. The Act could not be construed to authorize a burden on any religious belief, or to preempt or repeal any law that was equally or more protective of religious exercise than the proposed Act. Also, the Act could not be construed to affect, interpret, or address the portions of the State Constitution or United States Constitution that prohibit laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permitted under those constitutional provisions would not be a violation of the proposed Act.

If any provision, or application of any provision, of the proposed Act were held to be unconstitutional, the remainder of the Act and the application of the provision to any other person or circumstance would not be affected.

The bill also would state certain legislative findings and declarations pertaining to religious exercise and Supreme Court precedent.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The fiscal impact of the bill on State and local government is unknown. Currently, religious freedom is protected by the U.S. and Michigan Constitutions. The impact of the bill would depend on whether lawsuits regarding religious freedom and governmental burdens on religious expression were filed based on a cause of action provided by the bill that is not available under the U.S. or Michigan Constitutions. To the extent that the bill resulted in additional litigation, State and local government would incur costs for defense and the potential for payment of the costs of litigation, including reasonable attorney fees, to a person who prevailed in litigation under the bill. "Government" would be broadly defined by the bill to include State government ("any branch, department, agency, division, bureau, board, commission, council, authority, instrumentality, employee, official, or other entity of this state"), political subdivisions of the State (which would include cities, villages, townships, counties, school districts, intermediate school districts, community colleges, and authorities), and a person acting under color of law.

Date Completed: 12-11-14

Fiscal Analyst: Elizabeth Pratt

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