

HOUSE BILL REPORT

ESHB 1956

As Amended by the Senate

Title: An act relating to the housing of homeless persons on property owned or controlled by a church.

Brief Description: Authorizing the housing of homeless persons on property owned or controlled by a church.

Sponsors: House Committee on Local Government & Housing (originally sponsored by Representatives Williams, Chase, Ormsby, Darneille, Van De Wege, Dickerson and Simpson).

Brief History:

Committee Activity:

Local Government & Housing: 2/18/09, 2/19/09 [DPS].

Floor Activity:

Passed House: 3/3/09, 56-41.

Floor Activity:

Passed House: 2/10/10, 57-39.

Senate Amended.

Passed Senate: 3/2/10, 40-5.

Brief Summary of Engrossed Substitute Bill

- Grants broad authority to a church to provide shelter or housing to homeless persons on property owned or controlled by a church.
- Prohibits counties and cities from enacting ordinances or taking other action that unreasonably interferes with efforts by a church to provide shelter or housing for the homeless.
- Prohibits a county or city from requiring a church to obtain liability insurance related to providing services to homeless persons or otherwise indemnify a municipality against such liability.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Simpson, Chair; Nelson, Vice Chair; Miloscia, Springer, Upthegrove, White and Williams.

Minority Report: Do not pass. Signed by 4 members: Representatives Angel, Ranking Minority Member; Cox, Ericksen and Short.

Staff: Thamas Osborn (786-7129).

Background:

Constitutional Protection of the Right to the Free Exercise of Religion.

Both the Washington Constitution and the U.S. Constitution recognize that the free exercise of religion is a fundamental right and both extend broad protection to this right. Notably, the Washington courts have recognized that with respect to freedom of religion, the Washington Constitution "extends broader protection than the first amendment to the federal constitution." *First Covenant Church v. City of Seattle*, 120 Wn. 2d 203, 229-30 (1992).

Homeless Housing and Assistance Act.

In the prelude to the Homeless Housing and Assistance Act, the Legislature makes the following findings (RCW 43.185C.005):

"Despite laudable efforts by all levels of government, private individuals, nonprofit organizations, and charitable foundations to end homelessness, the number of homeless persons in Washington is unacceptably high. The state's homeless population, furthermore, includes a large number of families with children, youth, and employed persons. The Legislature finds that the fiscal and societal costs of homelessness are high for both the public and private sectors, and that ending homelessness should be a goal for state and local government.

The support and commitment of all sectors of the statewide community is critical to the chances of success in ending homelessness in Washington. While the provision of housing and housing-related services to the homeless should be administered at the local level to best address specific community needs, the Legislature also recognizes the need for the state to play a primary coordinating, supporting, and monitoring role."

Summary of Engrossed Substitute Bill:

Churches are authorized to host temporary encampments for the homeless on any real property owned or controlled by a church.

With respect to the efforts of a church to provide housing or shelter to homeless persons, counties, cities, and towns, are prohibited from:

- unreasonably interfering with the decisions or actions of a church regarding the location of housing or shelter for homeless persons on property the church owns or controls;

- unreasonably prohibiting or attempting to regulate the housing of homeless persons on church property based upon the property's proximity to a school or day care center; or
- requiring a church to obtain insurance pertaining to the liability of a municipality with respect to homeless persons housed on church property or otherwise requiring the church to indemnify the municipality against such liability.

In applying the act to cities, towns, and code cities, "church" is defined to mean a building or buildings and adjacent real property that is used as a place of worship by a religious denomination and that is owned or controlled by the denomination.

In applying the act to counties, "church" is defined to mean a building or buildings and adjacent real property that is used as a place of worship by any religious group, congregation or denomination and that is owned or controlled by such group, congregation, or denomination.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment has the following effects on the substitute House bill:

- Adds intent language urging local governments and religious organizations to utilize dispute resolution processes in order to avoid litigation.
- Prohibits local governments from enacting an ordinance or regulation that imposes conditions other than those necessary to protect the public health and safety and that do not substantially burden the decisions or actions of a religious organization with respect to the provision of homeless housing.
- Prohibits the imposition of permit fees in excess of the actual costs associated with the review and approval of the required permit applications.
- Deletes a provision prohibiting the regulation of a homeless encampment based on its proximity to a school or daycare center.
- Replaces all references to "church" with the phrase "religious organization" and provides a definition.
- Provides immunity to local governments, public agencies, and specified public officials for damages arising from permitting decisions and activities occurring within homeless encampments.
- Clarifies that the act does not supersede current consent decrees or negotiated settlements entered into between a public agency and a religious organization prior to July 1, 2010.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill is intended to resolve issues involving conflicts between municipalities and churches regarding providing shelter and assistance to the homeless. Homelessness is a very widespread and difficult problem, and state and local governments need all the help they can get in finding a solution. Churches have played a very valuable role in providing much needed help to the homeless. Providing shelter is one of the key things that churches have done and very often the only option a church has is to provide temporary shelter outdoors in the form of tent cities. Churches do not begin to have the amount of suitable indoor space necessary to accommodate the shelter needs of homeless families. Accordingly, they have had no choice but to provide shelter elsewhere on church property. Church sponsored tent cities are common and have not presented significant problems for the surrounding communities. Nevertheless, many municipalities, such as Lacey, have been hostile to such efforts by local churches and have enacted ordinances prohibiting outdoor shelters. These ordinances serve no useful purpose and present a barrier to church efforts to assist the poor. The bill would provide churches with the legal authority they need in order to continue to sponsor homeless shelter programs.

(Opposed) This bill is heavy-handed and unnecessary since almost all of the problems between churches and municipalities regarding homeless shelter programs have been worked out informally. For example, after some negotiating the City of Lacey recently repealed its ordinance banning tent cities. The bill would preempt the good-faith efforts of local governments to find local solutions to homeless housing issues. Furthermore, court rulings have largely supported the efforts of churches to provide shelter, while at the same time recognizing that cities and towns have the authority to take the steps necessary to protect public health and safety. Laws such as this would be an impediment to community efforts to work out compromises. Also, the bill does not address the real issues and problems that arise as the result of tent cities.

Persons Testifying: (In support) Bill Kirlin-Hackett, Interfaith Taskforce for Homelessness; Lee Johnson, Panza; Randy Williams, Camp Quixote; Howard Ullery, Lacey Community Church; and Mark Dowdy, The United Churches.

(Opposed) Tammy Fellin, and Matt Segal, Association of Washington Cities; and Rashi Gupta, Washington Association of Counties.

Persons Signed In To Testify But Not Testifying: Bruce Thomas and Jamy Noesges, Share/Wheel's Tent City 4; Tim Ransom, Olympia Unitarian Universalist Congregation; Dennis W. Lone; and Richard Frank, Power Acorn.