

# SENATE BILL REPORT

## ESHB 1754

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As Passed Senate - Amended, March 3, 2020

**Title:** An act relating to the hosting of the homeless by religious organizations.

**Brief Description:** Concerning the hosting of the homeless by religious organizations.

**Sponsors:** House Committee on Housing, Community Development & Veterans (originally sponsored by Representatives Santos, Jinkins and Pollet).

**Brief History:** Passed House: 2/17/20, 95-3.

**Committee Activity:** Housing Stability & Affordability: 2/26/20, 2/28/20 [DPA].

**Floor Activity:**

Passed Senate - Amended: 3/03/20, 42-7.

### Brief Summary of Engrossed First Substitute Bill

- Places additional limitations on the ability of counties, cities, towns, and code cities to regulate outdoor encampments, safe parking efforts, indoor overnight shelters, and temporary small houses on property owned or controlled by a religious organization.
- Allows a county, city, town, or code city to require a religious organization hosting the homeless and the agency managing the hosting to enter into a memorandum of understanding to protect the public health and safety of residents.
- Requires religious organizations hosting the homeless to comply with certain regulations relating to sex offender checks, vehicle and driver laws, and the homeless client management information system.
- Requires religious organizations hosting the homeless to host a public meeting to discuss related neighborhood concerns and provide notice at least one week if possible but no later than 96 hours before the meeting.

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### SENATE COMMITTEE ON HOUSING STABILITY & AFFORDABILITY

**Majority Report:** Do pass as amended.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Zeiger, Ranking Member; Fortunato, Assistant Ranking Member; Darneille, Saldaña and Warnick.

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*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.*

**Staff:** Brandon Popovac (786-7465)

**Background:** Temporary Encampments for the Homeless. Religious organizations may host temporary encampments for the homeless on any real property they own or control. With respect to the efforts of a religious organization to provide housing or shelter to homeless persons, counties, cities, and towns are prohibited from:

- imposing conditions on the decisions or actions of a religious organization regarding the location of housing or shelter for homeless persons on property the organization owns;
- requiring a religious organization to obtain insurance pertaining to the liability of a municipality with respect to homeless persons housed on the organization's property or otherwise requiring the organization to indemnify the municipality against such liability; or
- imposing permit fees in excess of the actual costs associated with the review and approval of required permit applications.

Homeless Client Management Information System and Continuum of Care. The Washington Homeless Client Management Information System (HMIS), managed by the Department of Commerce (Commerce), is an online information and referral system that enables local governments and providers to connect homeless persons in the database with available housing and other support services. Information about homeless individuals for the HMIS comes from the Washington Homeless Census, state agencies, and community organizations providing services to homeless individuals and families. The HMIS also provides Commerce with information to consolidate and analyze data about the extent and nature of homelessness in Washington. Commerce also works with counties to submit applications for the annual federal Department of Housing and Urban Development (HUD) Continuum of Care competition. The competition provides grant funding to nonprofit agencies and state and local governments for homelessness efforts.

Religious Land Use and Institutionalized Persons Act. The federal Religious Land Use and Institutionalized Persons Act (RLUIPA) prohibits zoning and landmarking laws that substantially burden the religious exercise of churches or other religious assemblies or institutions absent the least restrictive means of furthering a compelling governmental interest. This prohibition applies when:

- the state or local government entity imposing the substantial burden receives federal funding;
- the substantial burden affects, or removal of the substantial burden would affect, interstate commerce; or
- the substantial burden arises from the state or local government's formal or informal procedures for making individualized assessments of a property's uses.

The RLUIPA also prohibits zoning and landmarking laws that:

- treat churches or other religious assemblies or institutions on less than equal terms with nonreligious assemblies or institutions;
- discriminate against any assemblies or institutions on the basis of religion or religious denomination;
- totally exclude religious assemblies from a jurisdiction; or

- unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.

**Summary of Engrossed First Substitute Bill:** Regulating Outdoor Encampments, Safe Parking, and Temporary Small Houses. Additional limitations are placed on the ability of counties, cities, towns, and code cities to regulate outdoor encampments, safe parking efforts, indoor overnight shelters, and temporary small houses on property owned or controlled by a religious organization. These new limitations do not affect county, city, town, or code city policies, ordinances, memoranda of understanding, or consent decrees that:

- existed before the effective date of the bill;
- do not categorically prohibit the hosting of the homeless by religious organizations; and
- have not been previously ruled by a court to violate the RLUIPA.

Amendments to such policies, ordinances, memoranda of understanding, or consent decrees that occur after the effective date of the bill are also not affected by the new limitations if they do not categorically prohibit hosting of the homeless or violate the RLUIPA.

Religious organizations hosting the homeless that receive public funds may not refuse to host a homeless person due to protected class status.

*Outdoor Encampments.* Counties, cities, towns, and code cities may not enact an ordinance or regulation or take other action that:

- limits a religious organization's availability to host an outdoor encampment to fewer than six months during any calendar year, except that a separation of three months may be required between outdoor encampment hostings at a particular site;
- limits a religious organization's hosting term for an outdoor encampment to less than four consecutive months; or
- limits the number of simultaneous religious organization outdoor encampments within the same municipality during any given time period, except when simultaneous or adjacent outdoor encampments are within 1000 feet of each other.

*Safe Parking.* Counties, cities, towns, and code cities may not enact an ordinance or regulation or take other action that limits a religious organizations availability to host safe parking efforts at its on-site parking lot, including other congregationally sponsored uses and the parking available to support such uses during the hosting, except for limitations consistent with the following:

- no less than one space may be devoted to safe parking per 10 on-site parking spaces;
- restroom access must be provided, with provisions for proper disposal of waste if recreational vehicles are hosted; and
- religious organizations must comply with existing on-site parking requirements unless the religious organization and local government enter into a memorandum of understanding that reduced the minimum number of parking spaces required.

*Indoor Overnight Shelters.* Counties, cities, towns, and code cities may not enact an ordinance or regulation or take other action that limits a religious organizations availability to host an indoor overnight shelter in spaces with at least two accessible exits due to lack of sprinklers or other fire-related concerns. A religious organization and a county, city, town, or

code city may require a religious organization to enter into a memorandum of understanding for fire safety that includes:

- local fire district inspections;
- an outline for appropriate emergency procedures;
- a determination of the most viable means to evacuate occupants from inside the host site with appropriate illuminated exit signage;
- panic bar exit doors; and
- a completed fire watch agreement that indicates the following:
  1. posted safe means of egress;
  2. operable smoke detectors, carbon monoxide detectors as necessary, and fire extinguishers; and
  3. a plan for monitors who spend the night awake and are familiar with emergency protocols, who have suitable communication devices, and who know how to contact the local fire department.

In addition, a county, city, town, or code city may place limits on an indoor overnight shelter if a fire official finds that fire-related concerns pose an imminent danger.

*Temporary Small Houses.* Counties, cities, towns, and code cities may not enact an ordinance or regulation or take other action that limits a religious organization's ability to host temporary small houses on land owned or controlled by a religious organization, except for recommendations in accord with the following:

- a renewable one-year duration agreed to by the host religious organization and local jurisdiction via a memorandum of understanding;
- maintaining a maximum unit square footage of 120 square feet, with units set at least 6 feet apart;
- electricity and heat, if provided, must be inspected by the local jurisdiction;
- space heaters, if provided, must be approved by the local fire authority;
- doors and windows must be included and be lockable, with a recommendation that the managing agency and host religious organization also possess keys;
- each unit must have a fire extinguisher;
- adequate restrooms must be provided, including restrooms solely for families if present, along with handwashing and potable running water to be available if not provided within the individual units, including accommodating black water; and
- a partnership between the host religious organization and regional homeless service providers to develop pathways to permanent housing.

Permit Fees. A county, city, town, or code city may reduce or waive permit fees for religious organizations that are hosting the homeless.

Memorandum of Understanding. A county, city, town, or code city may enact an ordinance or regulation or take any other action that requires a host religious organization and a distinct managing agency, which manages an outdoor encampment, temporary small houses, indoor overnight shelter, or vehicle safe parking on property owned or controlled by the religious organization, to enter into a memorandum of understanding to protect the public health and safety of both residents of the homeless hosting and residents of the county, city, town, or code city. The memorandum of understanding must include information regarding:

- the right of a resident in a homeless hosting to seek public health and safety assistance;
- the residents ability to access social services on site;
- the residents ability to directly interact with the host religious organization, including the ability to express any concerns regarding the managing agency to the religious organization;
- a written code of conduct agreed to by the managing agency, if any, host religious organization, and all volunteers working with residents of the homeless hosting; and
- when a publicly funded managing agency exists, the ability for the host religious organization to interact with residents of the homeless hosting using a release of information.

Sex Offender Checks. Any religious organization hosting the homeless, or the religious organizations managing agency, must ensure that the county or local law enforcement agency has completed sex offender checks of all adult residents and guests if required to do so by the county, city, town, or code city. The host religious organization retains the authority to allow sex offenders to remain on the property.

Legal Status of Vehicles and Drivers. A host religious organization or host religious organizations managing agency performing any hosting of vehicle resident safe parking must inform vehicle residents how to comply with laws regarding the legal status of vehicles and drivers and provide a written code of conduct consistent with area standards.

Homeless Client Management Information System. Any religious organization hosting the homeless with a publicly funded managing agency must work with the county, city, town, or code city to utilize the HMIS. Religious organizations not partnering with a managing agency are encouraged to partner with a local homeless services provider using the HMIS. Except for temporary, overnight, extreme weather shelters provided in religious organization buildings, any managing agency receiving any funding from local continuum of care programs must utilize the HMIS.

Public Meeting. A religious organization hosting the homeless on property owned or controlled by the religious organization is required to host a public meeting for the purpose of providing a forum for discussion of related neighborhood concerns, unless the use is in response to a declared emergency. The religious organization must provide written notice of the meeting to the legislative authority of the county, city, town, or code city at least one week if possible but no later than 96 hours before the meeting. The notice must specify the time, place, and purpose of the meeting. A county, city, town, or code city must provide community notice of the meeting by taking at least two of the following actions at any time before the meeting:

- delivering to each local newspaper and local radio/television station that has on file a written request to receive such notices;
- posting on the county, city, town, or code city's website;
- prominently displaying on signage of specific dimensions one or more meeting notices that can be placed on main arterials close to the meeting location; or
- prominently displaying the notice at the meeting site.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The critical nature of the housing and homelessness problem is affecting every corner of the state, and it is important to ensure that all willing hands who can be part of the solution are a part of the solution, including churches and other religious faith organizations throughout the state. Faith congregations are all built on the notion of helping one's neighbor, and providing a venue for homeless encampments, tiny homes, or safe resident parking is something that these congregations can and want to do. But often faith congregations face barriers and obstacles erected by city permitting processes, which should be considered illegal under the RLUIPA. Regarding the fire marshal concerns with the bill, if a fire official finds that a hosting poses an imminent danger to persons within the venue that government entity may take actions to limit that religious organizations ability to host such facilities or amenities.

This bill passed with resounding support in the House. This bill is not about land use, but about keeping consistent with the federal rights of faith organizations to practice their faith while caring for the vulnerable as legislated under RLUIPA and its predecessor legislation. Too many religious organizations have been forced into federal court to continue their ministries of compassion and obligations in assisting unsheltered people. Previous polices in legislation since 2010 have proved to be far too vague and jurisdictions were not complying with RLUIPA. This bill offers governance compromises since some faith committees do not report hostings to cities. The bill adds a variety of tools that jurisdictions need to protect and assist unsheltered populations by providing safety and pathways to exit homelessness. The option of using a memorandum of understanding might often replace an unsettling permit or ordinance process.

CON: The bill has come far in the many years it has been worked on. The strong grandfather clause language is critical to allow communities that have already come to agreements with their faith communities to provide vital services to help address the homelessness crisis all across the state. The grandfather clause language also protects policies in place that can then be amended later and still be enforceable. The length of time that a religious organization can host for a maximum of time is preferred to be three months instead of six months with a three-month break. The elimination of the ability to require sprinklers given the fire marshals concerns regarding safety is a problem.

OTHER: The inclusion of the grandfather clause is appreciated since some cities have worked with their faith-based communities to reach certain agreements. A technical change to the grandfather clause regarding ordinances or policies that do not violate RLUIPA is recommended in order to avoid a potential cause of action under state law and federal law. The 48 hour notice provision is problematic since some cities require ten days' notice for pending public meetings. Any shorter notice periods would require unobtainable communication standards or create legal predicaments.

**Persons Testifying:** PRO: Representative Sharon Tomiko Santos, Prime Sponsor; Bill Kirlin-Hackett, Director, Interfaith Task Force on Homelessness; Jeffrey Boyce, Missioner for Homeless Ministries, Diocese of Olympia.

CON: Carl Schroeder, Association of Washington Cities.

OTHER: Hannah Bahn Miller, City of Renton Housing Programs Manager; Briahna Murray, City of Bellevue.

**Persons Signed In To Testify But Not Testifying:** No one.