# Local Government Mandate Statement Kentucky Legislative Research Commission 2021 Regular Session

# Corrected 1/14/21

### **Part I: Measure Information**

Bill Request #: 928						
Bill #: HB 218						
<b>Document ID #:</b> 2337						
Bill Subject/Title: AN ACT relating to religion.						
Sponsor: Representative Shane Baker						
Unit of Government:       X       City       X       County         Multiple Algorithm       Multiple Algorithm       Multiple Algorithm       Multiple Algorithm						
X Charter County X Consolidated Local X Government						
Office(s) Impacted: All						
Requirement: X Mandatory Optional						
Effect on Powers & Duties: X Modifies Existing Adds New Eliminates Existing						

# Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

KRS Chapter 39A gives broad powers to the Governor, county judge/executives, mayors, and the chief executive of other local governments to act in a state of emergency. HB 218 would limit the powers of a governmental entity to act during a state of emergency where religious organizations and religious services are concerned. The proposed bill defines the terms "religious organization" and "religious services." The term "governmental entity" is defined by the bill to include the Commonwealth, its agencies and political subdivisions, and any person acting under color of state law.

HB 218 would require that religious services be treated during a state of emergency as essential services necessary to the health and welfare of the public. Neutral health, safety, or occupancy requirements imposed on other organizations and businesses that provide essential services may be imposed on religious organizations so long as the requirements do not impose a substantial burden on a religious organization or its services, unless

essential to furthering a compelling governmental interest and the least restrictive means of furthering that interest.

The bill would prohibit a governmental entity taking any discriminatory action against a religious organization on the basis that the organization is religious, operates or seeks to operate during a state of emergency, or engages in religious exercise protected by the First Amendment to the United States Constitution. "Discriminatory action" against a religious organization is defined by the bill, in summary, as governmental action to:

- 1. alter its tax treatment;
- 2. disallow a state tax deduction for charitable contributions to the organization;
- 3. impose a monetary fine, fee, penalty, etc.; or
- 4. materially alter the terms or conditions of a state contract, entitlement, license or certification, etc

HB 218 would authorize a religious organization to bring a civil or administrative action against a governmental entity for violation of the bill, and would waive sovereign, governmental, and qualified immunity as a defense to a claim of violation. Remedies for violation include, but are not limited to:

- 1. Declaratory and injunctive relief;
- 2. Compensatory damages for monetary and non-monetary losses; and
- 3. Attorneys' fees, and costs.

The bill would require that its provisions be broadly construed to protect the free exercise of religion, and they are in addition to and do not preempt other federal, state, or local laws equally protective of the free exercise of religion. Its provisions supersede any conflicting state or local law that infringes on the free exercise of religion.

The fiscal impact of HB 218 on local governments is indeterminable due to the uncertainty of the number of claims that might arise under it and the outcome of any litigation. The waiver of any immunity defense could result in more local governments having to expend resources to defend against such claims. Successful litigation would likely have a moderate to significant fiscal impact on a local government.

### Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II applies to HB 218 as introduced. There is no prior version for comparison.

Data Sourc	e(s): <u>Kentucky F</u>	Revised Statutes			
Preparer:	Mary Stephens	<b>Reviewer:</b>	KHC	Date:	1/14/21