

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 Source(s): Kentucky Revised Statutes

Preparer: Mary Stephens **Reviewer:** KHC **Date:** 1/14/21