

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2022 Regular Session**

Part I: Measure Information

Bill Request #: 211

Bill #: HB 43 HCS 1

Document ID #: 6113

Bill Subject/Title: AN ACT relating to religion.

Sponsor: Representative Shane Baker

Unit of Government: X X X X Urban-County
Unified Local
X Charter County X Consolidated Local X Government

Office(s) Impacted: All executive offices

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/executive, mayor, and the chief executive of other local governments to act in a state of emergency. HB 43 HCS 1 would amend KRS 39A.100 to limit the powers of a governmental entity to act during a state of emergency where religious organizations and religious services are concerned. The term “governmental entity” would include the Commonwealth, its agencies and political subdivisions (cities and counties), and any person acting under color of state law.

HB 43 HCS 1 would amend KRS 39A.100 to prohibit the government seizing, taking, or condemning houses of worship during an emergency, unless such houses have become unsafe to the point they could be condemned in the absence of a state of emergency. The bill would require that religious services be treated as “essential services” during a state of emergency, 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 the requirements in the emergency situation are essential to furthering a compelling governmental interest and are the least restrictive means of furthering that interest. A governmental entity would not be allowed to prohibit or restrict a religious organization from operating or engaging in religious services during a declared emergency to the same or greater extent than other organizations or businesses that provide essential services.

Section 1 (6)(a) of 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. Adversely alter the tax treatment of the religious organization;
2. disallow a state tax deduction for charitable contributions to the organization;
3. impose a monetary fine, fee, penalty, etc. on the organization, or to
4. materially alter the terms or conditions of a state contract, entitlement, license or certification issued to the organization.

HB 43 HCS 1 would authorize a religious organization to sue a governmental entity for its violation and would abolish sovereign, governmental, and qualified immunity as a defense to a claim of violation. A successful litigant could recover both monetary and non-monetary compensatory damages, attorneys’ fees and costs of litigation.

The bill requires that it be broadly construed to protect the free exercise of religion. Its provisions would supersede any conflicting state or local law that infringes on the free exercise of religion.

The fiscal impact of HB 43 HCS 1 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. Potentially, this legislation could result in more local governments having to expend resources to defend against such claims as well as to pay out money as compensation to a successful litigant. Successful litigation of any sort 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 House Committee Substitute 1 to HB 43. HCS 1 does not change the fiscal impact of HB 43 as introduced.

The HCS 1 makes the following changes to HB 43 as introduced:

1. Adds language at pg. 1, Section 1(1)(c) that would allow condemnation of a house of worship during a declared emergency if the house is unsafe to the extent condemnation would be justified outside a state of emergency;
2. Adds language at pg. 5, Section 1(6)(a) to the effect that, in addition to not being allowed to prohibit a religious organization from operating or engaging in religious services during an emergency, neither may a governmental entity **restrict** such activities during an emergency;
3. Adds “adversely” at pg. 6, Section 1(7)(a) to the prohibition on altering the tax treatment of religious organizations or churches;
4. Adds language at p. 7, Section 1(8) specifying that a violation of subsections (4)(c), 5(b), or (6) of the bill would constitute a claim or defense in an action against a governmental entity.

Data Source(s): Kentucky League of Cities; LRC staff

Preparer: Mary Stephens (wfb) **Reviewer:** KHC **Date:** 2/28/22