STATE OF NEW YORK

183

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. EICHENSTEIN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, in relation to enacting the New York religious land use and religious exercise act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "New York religious land use and religious exercise act".

§ 2. Article 10 and sections 100 and 101 of the civil rights law, as renumbered by chapter 263 of the laws of 2019, are renumbered article 15 and sections 150 and 151, respectively.

§ 3. The civil rights law is amended by adding a new article 10 to read as follows:

ARTICLE 10

RELIGIOUS LAND USE AND RELIGIOUS EXERCISE

Section 100. Definitions.
101. Restriction on regulations affecting religious land use.
102. Restriction on regulations affecting religious exercise of institutionalized persons.
103. Government discretion in alleviating burdens on religious exercise.
104. Judicial relief.
105. Rules of construction.
106. Broad construction.
107. Severability.

§ 100. Definitions. As used in this article:

1. "Claimant" means a person raising a claim or defense under this article.

2. "Demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD00209-01-3

3. "Free exercise clause" means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

4. "Government" means:

(a) the state;

(b) the governing board of a municipal corporation as such terms are defined in section two of the general municipal law;

(c) any other governmental entity created under the authority of the state or a municipal corporation, including but not limited to any branch, department, agency or instrumentality; or

(d) any other person acting under color of state law.

5. "Institution" means an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. § 1997).

6. "Land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

7. "Native American tribe" means those tribes, bands or other organized groups of Indians recognized in the state or considered by the federal secretary of the interior to be a Native American or Indian tribe or a Native American or Indian organization for any purpose.

8. "Person" means any natural person, partnership, corporation, company, trust, association or other entity, however organized.

9. "Program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. § 2000d-4a).

10. "Religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief. The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

§ 101. Restriction on regulations affecting religious land use. 1. Substantial burdens.

(a) A government shall not impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution:

(1) is in furtherance of a compelling interest of the government; and

(2) is the least restrictive means of furthering such compelling interest.

(b) The provisions of this subdivision shall apply in any case in which:

(1) the substantial burden is imposed in a program or activity that receives government or federal financial assistance, even if the burden results from a rule of general applicability; or

(2) the substantial burden affects, or the removal of that substantial burden would affect, commerce with foreign nations, with another state or municipal corporation, or with Native American tribes, even if the burden results from a rule of general applicability; or

(3) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place, formal or informal procedures or practices

that permit the government to make, individualized assessments of the proposed uses for the property involved.

2. Discrimination and exclusion. A government shall not impose or implement a land use regulation:

(a) in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution;

(b) that discriminates against any assembly or institution on the basis of religion or religious denomination; or

(c) that totally excludes religious assemblies from a jurisdiction or unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

3. Definition. As used in this section, "substantial burden" may include:

(a) being prohibited from using a property for religious exercise where the use is otherwise permitted by right or special exception;

(b) an actual and substantial financial burden in proceeding with a land use project which is not attributable to a factor or factors other than the land use regulation at issue; or

(c) an actual and substantial delay in proceeding with a land use project which is not attributable to a factor or factors other than the land use regulation at issue.

§ 102. Restriction on regulations affecting religious exercise of institutionalized persons. 1. A government shall not impose a substantial burden on the religious exercise of a person residing in or confined to an institution as defined in section one hundred of this article, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person:

(a) is in furtherance of a compelling interest of the government; and

(b) is the least restrictive means of furthering such compelling interest.

2. The provisions of this section shall apply in any case in which:

(a) the substantial burden is imposed in a program or activity that receives government assistance;

(b) the substantial burden affects, or the removal of that substantial burden would affect, commerce with foreign nations, with another state or municipal corporation, or with Native American tribes.

§ 103. Government discretion in alleviating burdens on religious exercise. A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

§ 104. Judicial relief. 1. (a) A person may assert a violation of this article as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Jurisdiction and standing to assert a claim or defense under this article shall be governed by the general rules of jurisdiction and standing under New York law.

(b) The attorney general may bring an action for injunctive or declaratory relief to enforce compliance with this article. Nothing in this article shall be construed to deny, impair, or otherwise affect any right or authority of the attorney general or of any agency, officer, or employee of the state, acting under any law other than this article, to institute or intervene in any proceeding.

(c) An action may be brought as provided in paragraph (a) or (b) of this subdivision as soon as any final government action occurs.

2. If a plaintiff produces prima facie evidence to support a claim alleging a violation of this article, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

3. The court, in its discretion and in an appropriate case, may award actual damages and reasonable attorney's fees to a prevailing claimant.

4. If the only jurisdictional basis for applying a provision of this article is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, another state or municipal corporation, or with Native American tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the state would not lead in the aggregate to a substantial effect on commerce with foreign nations, another state, or with Native American tribes.

§ 105. Rules of construction. Nothing in this article shall:

1. Be construed to authorize any government to burden any religious belief.

2. Create any basis for restricting or burdening religious exercise or for claims against a religious organization, including any religiously affiliated school or university, not acting under color of law.

3. Create or preclude a right of any religious organization to receive funding or other assistance from a government or the federal government, or of any person to receive government funding for a religious activity; provided, however, that a government may be required to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

4. Authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance, or restrict any authority that may exist under other law to so regulate or affect such activities or policies, except as provided in this article.

5. With respect to a claim brought under this chapter, be construed as proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, another state, or with Native American tribes, shall not establish any inference or presumption that the legislature intends that any religious exercise is, or is not, subject to any law other than this article.

6. Be construed to restrict, negate or otherwise weaken any protections afforded under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc, et seq.

7. Preempt any other state law that is equally as protective of religious exercise as, or more protective of religious exercise than, this article.

§ 106. Broad construction. This article shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this article, the Constitution of the state of New York and the Constitution of the United States.

§ 107. Severability. If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent juris-

diction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this article directly involved in the controversy in which the judgment shall have been rendered.

§ 4. This act shall take effect immediately.