

**SUBJECT:** Regulating construction of church property in historical preservation zone

**COMMITTEE:** State Cultural and Recreational Resources — committee substitute recommended

**VOTE:** 5 ayes — Hilderbran, Geren, B. Cook, Kuempel, Phillips  
0 nays  
1 present not voting — Dukes  
1 absent — Bailey

**WITNESSES:** For — Richard Suttle  
Against — None

**BACKGROUND:** Tax Code, sec. 11.20 exempts religious organizations from taxation of real property that is used primarily as a place of regular religious worship and is reasonably necessary for engaging in religious worship; is reasonably necessary for use as a residence for clergy; and is an improvement under active construction or other physical preparation and is designed and intended to be used as a place of regular religious worship when complete, or the land on which the incomplete improvement is located.

Local Government Code, sec. 211.003(b) allows a municipal governing body to regulate the construction, reconstruction, alteration, or razing of buildings designated as having historical, cultural, or architectural importance.

A 1997 U.S. Supreme Court case, *City of Boerne v. Flores*, 521 U.S. 507, involved the denial of a permit to expand a church in Boerne. The city denied the permit based on the church's location in a historic preservation district. The church had hoped to expand to accommodate a growing congregation. The court's decision upheld the City of Boerne's denial of the permit. A later settlement between the city and the church allowed the expansion of the church while preserving most of the historic building.

**DIGEST:** CSHB 2674 would prohibit a municipal governing body from regulating the construction, reconstruction, alteration, or razing of a property owned by a religious organization that was entitled to a tax exemption under Tax Code, sec. 11.20, in an area of historical, cultural, or architectural importance.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS SAY:** CSHB 2374 would require cities to use powers other than historic designation to regulate church growth. By their lasting nature, churches often are in old buildings, yet neighborhoods and cities have encroached on them, prohibiting the churches from expanding. This bill would keep local governments from improperly designating buildings as historic landmarks simply to restrict churches' growth.

Religious organizations need this special protection because their churches usually are among the oldest buildings in town and often encounter problems with historic preservation laws. However, the bill would not exclude a religious organization from complying with a city's zoning or building codes, only those associated with an historic designation.

**OPPONENTS SAY:** CSHB 2674 would give religious organizations an unlimited right to tear down historic buildings. Church structures are often among the most recognized and venerated buildings in a community. If a municipality wants to preserve its heritage by preserving neighborhoods, including church properties, this does not constitute a suppression of religion, nor a denial of worship. This bill effectively would eliminate local governments' efforts to preserve some of their most historically significant properties.

The bill could be interpreted to allow religious organizations to ignore all building code requirements, including those related to fire and safety. Since many churches operate schools and day-care centers, this provision could put many people at risk in church-owned facilities. It remains in the best interest of our communities for church structures to meet all existing building and safety codes.

**NOTES:**

A related bill, HB 2456 by Chisum, which would require a municipal governing body that allows the exercise of religion in both residential and commercial zoning districts to enforce the least restrictive site development regulations in regard to property owned by a religious organization, was reported favorably, without amendment, by the House Urban Affairs Committee on May 1.