

# SENATE BILL REPORT

## SB 6085

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As of January 25, 2012

**Title:** An act relating to the permitted use of state facilities.

**Brief Description:** Addressing the use of state facilities.

**Sponsors:** Senators Swecker, Pridemore, Hargrove and Haugen.

**Brief History:**

**Committee Activity:** Government Operations, Tribal Relations & Elections: 1/17/12.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

**Staff:** Sam Thompson (786-7413)

**Background:** The Director of the Department of Enterprise Services (DES) is statutorily authorized to control use of the Washington capitol buildings and grounds. DES has adopted administrative rules regarding use of public areas of the capitol buildings and grounds for free speech and assembly activities, commercial activities, and private activities. These rules define:

- "Free speech and assembly activity" as activity for the purpose of communicating information or ideas to others that will draw the attention, attendance, or participation of others. These activities include, but are not limited to, assemblies, marches, rallies, performances, community events, press conferences, demonstrations, celebrations, ceremonies, speeches and other similar expressive activities.
- "Commercial activity" as activity that promotes, creates, or exchanges commercial products or services. These activities include, but are not limited to, advertising, fund-raising, buying or selling any product or service, encouraging paid membership in any group, association or organization, or the marketing of commercial activities. These activities do not include such activities by or for government entities.
- "Private activity" as activity sponsored by a private individual, business or organization that is not open to the general public. These activities include, but are not limited to, banquets, receptions, award ceremonies, weddings, concerts, dances, and seminars.

The rules provide that DES may set reasonable time, place, and manner restrictions according to design, health, safety, operational or other such considerations. The rules

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provide that DES may require applicants to obtain permits for free speech and assembly activities involving 25 or more people in capitol buildings, or more than 75 people on the capitol grounds, and for all private or commercial activities. DES has established a fee schedule for permits for private and commercial activities. In addition, for private and commercial activities, DES may require liability insurance, hold harmless and indemnification provisions, and information regarding applicants' ability to finance, plan, and manage the activity to protect normal conduct of state operations, safety of people and property, and the condition and appearance of the capitol buildings and grounds.

DES rules do not expressly govern religious activity.

Article I, Section 11 of the Washington Constitution (Section 11), provides, in part: "No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment."

**Summary of Bill:** The Legislature finds that:

- free exercise of religion is a fundamental right and the state should refrain from inhibiting religious activities when they are not in conflict or inconsistent with the state's interests;
- it is necessary to clarify ambiguous language in Section 11; and
- Section 11 was intended to ensure that public money and property were not directly used for the primary purpose of supporting a religious establishment; it was not meant to prohibit free exercise of religion on state property open to general use by the public.

The Legislature intends to provide DES with statutory guidance in interpreting and applying Section 11 to allow use of capitol grounds for religious activity and provide consistency in applying rules regarding use of capitol grounds.

DES must not prohibit the use of capitol grounds for religious purposes, provided that the portion used is open to the public for events of a similar size and nature, and that the impact to the state is no greater than the impact by other allowed uses. DES must apply policies consistently to various religious activities, including those with cultural and societal significance.

The act does not allow direct appropriation or application of state resources for a religious purpose other than use of capitol grounds consistent with the act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Last year, the Reality Church of Olympia sought to conduct a baptism in Heritage Park, on the capitol grounds. Citing Article 11, DES

denied the request. DES should have granted the request. Ambiguous standards in Article 11 should be clarified.

OTHER: Management of the capitol grounds is a challenging endeavor for DES. Requests to conduct religious activity on the grounds raise complex legal issues. Legal standards are constantly evolving. DES relies upon the advice of the Attorney General's Office.

**Persons Testifying:** PRO: Paul Jones, Reality Church.

OTHER: Tim Gugerty, DES.