

In 1963, the State of California enacted Government Code sections 25373 and 37361. Section 25373 provides in pertinent part:

(b) The board may, by ordinance, provide special conditions or regulations for the protection, enhancement, perpetuation, or use of places, sites, buildings, structures, works of art and other objects having a special character or special historical or aesthetic interest or value.

§ 37361 is identical and applies to cities.

In enacting subsection (b), the State Legislature expressly granted to cities and counties broad powers to regulate and protect all kinds of structures. (Cal. Govt. Code §§ 25737 and 37361.)

The broad power granted by subsection (b) encompasses not only landmarking but all manner of preservation. In fact, the word “landmark” is not used. (Cal. Govt. Code §§ 25737(b) and 37361(b).)

In 1994, by Assembly Bill No. 133, the broad powers granted to cities and counties by subsection (b) were expressly taken away from cities and counties with respect to noncommercial property held by religious organizations. The Legislature amended both statutes to allow religiously affiliated organizations to exempt their noncommercial property (“exempt property”) from the placement of any condition, or any regulation, for the protection, enhancement, perpetuation, or use of said property. Subsection (d) provides:

Subdivision (b) shall not apply to noncommercial property owned by any association or corporation that is religiously affiliated and not organized for private profit ...

(Cal. Govt. Code § 25737(d).)

Thus, in 1963, the State of California expressly granted to local governments broad powers to regulate and protect all kinds of structures and, in 1994, expressly took that power away from local governments with respect to exempt property. The result is that local governments are without power to place any “special conditions or regulations for the protection, enhancement, perpetuation, or use of places, sites, buildings, structures, works of art and other objects having a special character or special historical or aesthetic interest or value.” (Cal. Govt. Code §§ 25737 and 37361.)

The California Supreme Court has discussed the purpose of the Government Code exemptions, which is to protect religious freedom:

An explanation of the purpose of the exemption subdivisions was included in Senate Bill No. 1185 (1993–1994 Reg. Sess.), the 1993 legislation, and in Assembly Bill No. 133 (1993–1994 Reg. Sess.), the 1994 bill (hereafter Assembly Bill No. 133), each of which, after noting that historic landmark restrictions were not related to or compelled by public health or safety concerns, stated: “Sections 1 and 2 of this act ensure the protection of religious freedom

guaranteed by Section 4 of Article I of the California Constitution and by the First Amendment to the United States Constitution.” (Stats.1993, ch. 419, § 7, p. 2388; see Stats.1994, ch. 1199, § 3 [substantially identical].)

East Bay Asian Local Dev. Corp. v. State of Cal., 24 Cal.4th 693, 702 (2000) (East Bay).

The legislative history is even more specific. With respect to the Senate bill, Section 7 of Stats.1993, c. 419 (S.B.1185), provides:

“(a) The Legislature hereby finds and declares that Section 2 of this act addresses a matter of statewide interest and concern... (b) Sections 1 and 2 of this act ensure the protection of religious freedom guaranteed by Section 4 of Article I of the California Constitution and by the First Amendment to the United States Constitution.”

(West’s Ann. Cal. Govt. Code § 25373.)

With respect to the Assembly bill, Section 3 of Stats.1994, c. 1199 (A.B.133), provides:

“Sections 1 and 2 of this act address a matter of statewide interest and concern...”

Therefore, Sections 1 and 2 of this act ensure the protection of religious freedom guaranteed by Section 4 of Article I of the California Constitution, and by the First Amendment to the United States Constitution.”

(West’s Ann. Cal. Govt. Code § 25373.)