STORAGE NAME: h1773.edk
DATE: March 22, 1999

HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION K-12
ANALYSIS

BILL #: HB 1773

RELATING TO: Use of Opening or Closing Message at Secondary School Assemblies

SPONSOR(S): Representatives Bronson, Roberts, Dennis and others

COMPANION BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) EDUCATION K-12
(2) JUDICIARY
(3)
(4)
(5)

I. SUMMARY:

This bill authorizes district school boards to allow the use of a brief opening and/or closing message at secondary school sporting events or noncompulsory school assemblies such as graduation. The message may not exceed two minutes in duration. It may include an invocation, prayer, poetry, or inspirational thought. If the participating student body chooses to use such a message, the message must be given by a student volunteer, chosen by the student body, who must also prepare the message. The message may not be monitored or otherwise reviewed by the school board. The stated purpose of the bill is to allow students to participate and direct their own message without monitoring or review by school officials.

There is no direct fiscal impact associated with this bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The First Amendment of the Constitution of the United States provides two distinct clauses designed to protect religious freedom. The Establishment Clause, states in pertinent part, "Congress shall make no law respecting the establishment of religion...." The second clause, the Free Exercise Clause, bans laws "prohibiting the free exercise" of religion. Although the First Amendment only restricts legislative action by Congress, these two clauses have been incorporated into the Fourteenth Amendment's guarantee of due process by the United States Supreme Court and are therefore applicable to state action. See, e.g., Everson v. Board of Education, 330 U.S. 1 (1947).

A review of constitutionality issues should begin with the historical framework of four U.S. Supreme Courts cases dealing with the general subject:

a) The 1948 case of McCollom v. Board of Education that determined that religious instruction conducted by clergy in classrooms during public school hours violated the Establishment Clause, even though the students were offered the option to attend alternative secular activities;

b) The 1952 case of Zorach v. Clauson in which the Court said that releasing students to attend religious activities out of public school was a constitutionally valid practice;

c) The 1953 case of Engel v. Vitale, where the Court held daily class recitation of prayer violated the Establishment Clause, even though the students could be excused upon request; and

d) The 1954 case of Abington Township v. Schempp stating daily readings from the Bible violated the Establishment Clause, even though students could be excused from the room.

The first real guidance came in 1971 in Lemon v. Kurtzman, 403 U.S. 602, 29 L.Ed 2d 745, 91 S.Ct. 2105, where the U.S. Supreme Court, although in an area dealing not with prayer, but with state laws providing aid to church-related schools with regard to instruction in secular matters, enunciated a test for state action. The Court announced what became known as the "Lemon Test" and held that a state procedure does not violate the Establishment Clause if:

a) the enactment has a secular purpose;

b) its primary effect neither inhibits nor advances religion; and

c) it does not foster excessive entanglements with religion.

There are three divergent lines of federal cases:

a) The primary leg is the fairly recent U.S. Supreme Court case of Lee v. Weisman, 505 US 577, 120 L.Ed 2d 467, 112 S.Ct. 2649 (1992). A middle school principal had chosen and invited a clergyman to deliver an invocation at the middle school graduation ceremony held on school property. The prayer was "non-sectarian" but was squarely in line with Judeo-Christian tradition. Student attendance was voluntary. The Court held that the prayer procedure violated the Establishment Clause because it was school led; because the graduation ceremony was directed by school officials; and because attendance was in a real sense obligatory. The Court did not use the "Lemon Test" analysis in reaching its decision.

b) The second leg is comprised of two federal appellate cases from the 9th U.S. Circuit.

1. In Collins v. Chandler District, 649 F.2d 759 (1981), the United States Court of Appeals for Arizona held that it was unconstitutional, based on the "Lemon Test", for prayer and Bible verses to be offered at public school assemblies, during school hours, even where the student council selected the prayer, selected the prayer leader, and planned and scheduled the recitations, and any student objecting could go to a study hall.

2. In Harris v. District 241, 41 F.3d 447 (1994), the same Court held that prayer during a public high school graduation ceremony held in the school gym violated the Establishment Clause, even though the graduating class, by majority vote, decided to have prayers and attendance

was strictly voluntary. The Court reasoned that the school board provides the facility and pays the bills for utilities and janitorial services, etc. The Court stated that public officials could not absolve themselves of their responsibility by delegating their duties to students; that the use of prayer to allegedly solemnize public ceremonies was not a secular purpose and was thus violative of the Establishment Clause.

c) The third and final leg is a trio of federal cases:

1. Jones v. Clear Creek, 977 F.2d 963 (5th Cir. 1992), again involved a high school graduation ceremony. Texas high school seniors chose a student volunteer to deliver a non-sectarian, non-proselytizing invocation. The 5th circuit held that no Establishment Clause violation had occurred because the prayer's purpose was to solemnize and impress the profound significance of the event on the graduates rather than endorse a religion. In short, the Court applied the "Lemon Test" and held that there was not excessive entanglement involved.

2. Ingebretsen v. Jackson Public School District, 1996 WL 205 (5th Cir. Miss), is the most recent federal court decision on the general subject of school prayer. The case involved a Mississippi statute that said:

   [on] public school property, other public property or other property, invocations, benedictions or nonsectarian, nonproselytizing student-initiated voluntary prayer shall be permitted during compulsory or noncompulsory school-related student assemblies, student sporting events, graduation or commencement ceremonies and other school-related student events.

   The federal appeals court held that this Mississippi statute violated all five of the applicable tests set by the United States Supreme Court. The federal appeals court sustained the federal trial court's injunction, except (as the same court ruled in the 1992 Jones case) as to a non-sectarian, non-proselytizing, student-initiated, student-led, voluntary invocation prayer at a high school graduation ceremony.

3. In Adler v. Duval County, 851 F.Supp. 446 (1994), a U.S. district judge in Jacksonville addressed the district policy permitting invocations and benedictions at area public high school ceremonies. The policy stated that there could be a brief opening and/or closing message of not greater than 2 minutes, at the discretion of the senior class, given by a student volunteer who was a member of the graduating class, chosen by the graduating class, with the contents prepared by the student and not monitored or otherwise reviewed by school authorities. The trial judge applied the "Lemon Test" and *held that the practice passed constitutional muster*. This decision was appealed. The Eleventh Circuit Court of Appeals held that students' claims for declaratory injunctive relief seeking to prevent the school board from allowing student prayers at future graduation ceremonies were moot since the students had already graduated. The Court of Appeals *did not address the constitutionality of the school board's policy*.

Another case of note is Chamberlin v. Dade County Board of Public Instruction, 171 So.2nd 535 (Fla. 1965). This case was addressed several times by both the U.S. Supreme Court and the Florida Supreme Court. In Chamberlin v. Dade County Board of Public Instruction, 143 So.2d 21 (Fla. 1962), the Florida Supreme Court upheld s. 231.09, F.S. (1961). This statute, originally enacted in 1925, permitted daily Bible readings and the recitation of the Lord's prayer in the state's public schools. The Florida Supreme Court cited, with favor, the legislative intent of the statute which stated that the statute was intended to provide "good moral training, of a life of honorable thought and good citizenship, that the public school children should have lessons of morality brought to their attention during their school days..." Therefore, the Florida Supreme Court found that the statute was based on secular, rather than sectarian, purposes. The U.S. Supreme Court vacated (voided) this decision and remanded the case back to the Florida Supreme Court with instructions to reconsider the case. Upon reconsideration, the Florida Supreme Court upheld its original decision and continued to permit daily Bible reading and recitation of the Lord's prayer in public schools. On appeal, the U.S. Supreme Court reversed the decision and again remanded the case to the Florida Supreme Court. After the second remand from the U.S. Supreme Court, the Florida Supreme Court held that prayer and devotional Bible reading in state public schools pursuant to s. 231.09, F.S. (1961), or as sponsored by school authorities violated the Establishment Clause of the U.S. Constitution and was, therefore, unconstitutional.

In a decision in which the U.S. Supreme Court refused to review, the Eleventh Circuit Court of Appeals found the practice of praying at high school athletic events unconstitutional. Jager v. Douglas County School District, 862 F.2d 824 (11 Cir.), cert. denied, 109 S.Ct. 2431 (1989). The Jager opinion was consistent with a 1981 Ninth Circuit Court opinion in which the court invalidated the practice of students offering prayers at school assemblies. The U.S. Supreme Court also declined to review this decision. See Collins v. Chandler Unified School District, 644 F.2d 759 (9th Cir.), cert. denied 454 U.S. 863 (1981).

Although there is now a split between the federal circuits with regard to prayer at graduation ceremonies, there is a fairly clear pattern with regard to assemblies and sports events. Invocations under those circumstances have been held to violate the Establishment Clause. The distinction has to do with the solemnity of the occasion--graduation being in an apparent class by itself.

The term "secondary school" was defined by State Board of Education Rule 6A-2.001(46)(e), F.A.C. to include grades 7 through 12. This rule was repealed effective October 30, 1994. There is currently no statutory definition for the term "secondary school."

District school boards are authorized by s. 233.062, F.S., to allow public schools in the district to set aside a brief period, not to exceed two minutes, at the start of each school day, or each school week, for the purpose of silent prayer or meditation.

B. EFFECT OF PROPOSED CHANGES:

This bill authorizes district school boards to allow the use of a brief opening and/or closing message at secondary school-related sporting events or noncompulsory school assemblies such as graduation. The message may not exceed two minutes in duration. It may include an invocation, prayer, poetry, or inspirational thought. If the participating student body chooses to use such a message, the message must be given by a student volunteer, chosen by the student body, who must also prepare the message. The message may not be monitored or otherwise reviewed by the school board.

The bill does not limit "school-related sporting events or noncompulsory school assemblies" -- such activities could include events not occurring on school property and routine sports practices.

The message must be given by a student volunteer.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Not specified.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 authorizes district school boards to allow the use of a brief opening and/or closing message at secondary school sporting events or noncompulsory school assemblies such as graduation. The message may not exceed two minutes in duration. It may include an invocation, prayer, poetry, or inspirational thought. If the participating student body chooses to use such a message, the message must be given by a student volunteer, chosen by the student body, who must also prepare the message. The message may not be monitored or otherwise reviewed by the school board.

Section 2 specifies that the bill is effective upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

According to the bill, the message will be given by a student volunteer chosen by the participating student body. The bill, however, does not specify how the volunteer will be chosen, require that the student volunteer belong to the group for whom the event is intended, or propose procedures for choosing among more than one volunteer.

The message (invocation, prayer, poetry, inspirational thought, etc.) must be prepared by the student volunteer. There is no restriction on the content of the message. The bill prohibits the school board from monitoring or otherwise reviewing the content of the message. The stated purpose of the bill is to allow students to participate and direct their own message *without* monitoring or review by school officials. Adults employed by the school or school board will have no censure authority before or during the presentation of the message.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON EDUCATION K-12:

Prepared by: Staff Director:

Terri J. Chasteen Patricia W. Levesque