

**STORAGE NAME:** h1773s1.jud

**DATE:** April 14, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
JUDICIARY  
ANALYSIS**

**BILL #:** CS/HB 1773

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

**SPONSOR(S):** Committee on Education K-12 and Representatives Bronson, Roberts, Dennis and others

**COMPANION BILL(S):** SB 2636

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) EDUCATION K-12 YEAS 6 NAYS 4
  - (2) JUDICIARY
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

The committee substitute authorizes, but does not require, district school boards to allow an inspirational message, including a prayer or invocation, at noncompulsory high school activities including student assemblies, sports events, and other school-related activities, if a majority of the students participating request an inspirational message and select a student representative to deliver the message. The purpose of the committee substitute is to provide for solemnization and memorialization of noncompulsory high school events and ceremonies. The committee substitute is not intended to prohibit the school or school officials from disciplining students in regard to unprotected speech or behavior which is inappropriate or disruptive.

The effective date of the bill is July 1, 1999.

There is no direct fiscal impact associated with this bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Current Statutory Authorization Regarding Prayer**

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.

**Relevant Constitutional Provisions**

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 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
- b) 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 divergent lines of federal cases:

- a) In 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.
- b) In another line 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, 88 F.3d 274, 1996 WL 205 (5th Cir. Miss), cert. denied, 117 S.Ct. 388 (1996), 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), reh. denied 130 F.3d 276 (11th Cir. (Fla.) July 11, 1997), 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.
4. Doe v. Santa Fe Independent School District, 1999 WL 104884 (5th Cir.(Tex.)) is the most recent U.S. Circuit Court of Appeals decision on the general subject of student-led school prayer. The district's policy authorized student-led prayer at graduation ceremonies and at football games, for the purpose of solemnization. The court held that:
  - 1) A public school prayer policy that permits sectarian, proselytizing benedictions and invocations cannot pass constitutional muster, and
  - 2) Extending a prayer policy to cover messages delivered before a high school football game violates the Constitution even if such a policy includes the "nonsectarian, nonproselytizing" restrictions, because athletic events, unlike graduation ceremonies, are not once-in-a-lifetime events, and are not therefore appropriately solemnized by prayer.

In a decision 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 (11th 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.

**B. EFFECT OF PROPOSED CHANGES:**

This committee substitute authorizes, but does not require, district school boards to allow an inspirational message, including a prayer or invocation, at noncompulsory high school activities including student assemblies, sports events, and other school-related activities, if a majority of the students participating request an inspirational message and select a student representative to deliver the message. The purpose of the committee substitute is to provide for solemnization and memorialization of noncompulsory high school events and ceremonies. The committee substitute is not intended to prohibit the school or school officials from disciplining students in regard to unprotected speech or behavior which is inappropriate or disruptive.

The effective date of the bill is July 1, 1999.

**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?

The committee substitute authorizes school boards to permit an inspirational message at noncompulsory high school activities.

(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?

The committee substitute allows an inspirational message at noncompulsory high school activities, if a majority of the students request and select a student representative to deliver the message.

- 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 permit an inspirational message at noncompulsory high school activities, if a majority of the students participating request an inspirational message and select a student representative to deliver the message.

Section 2 outlines the purpose of the act is to provide for the solemnization and memorialization of noncompulsory high school events and ceremonies.

Section 3 clarifies that the bill is not intended to prohibit the school or school officials from disciplining students in regard to unprotected speech or behavior which may be inappropriate or disruptive.

Section 4 specifies that the effective date of the bill is July 1, 1999.

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:

None.

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:

*Judiciary Committee Staff comments:*

*The inclusion of the words "including a prayer or invocation" in section 1 of the CS may give rise to an argument that a purpose of the bill is to specially protect prayer. This is arguably an advancement or aid to religion under the Lemon test. The bill could avoid that difficulty by the deletion of the phrase. The only legitimate public policy is to promote solemnizing and memorializing utterances such as prayer but not favoring prayer or any other particular class of content not inappropriate to the occasion.*

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute differs from the original bill in the following ways:

- The committee substitute does not limit the message to 2 minutes.
- The committee substitute provides a secular intent of the bill to provide for the solemnization and memorialization of noncompulsory high school events.
- The committee substitute clarifies that the school officials may discipline students in regard to unprotected speech or behavior which is inappropriate or disruptive. The original bill did not contain this provision and stated that the content of the message must not be monitored or reviewed by the school board, its officers, or employees.

VII. SIGNATURES:

COMMITTEE ON EDUCATION K-12:

Prepared by:

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