

STORAGE NAME: h0009s2.jud

DATE: March 10, 1999

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

BILL #: CS/CS/HB 9

RELATING TO: Patriotic programs in school districts

SPONSOR(S): Committee on Judiciary, Committee on Education K-12, and Representative Harrington

COMPANION BILL(S): SB 330(i)

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

- (1) EDUCATION K-12 YEAS 9 NAYS 0
- (2) JUDICIARY YEAS 8 NAYS 0
- (3) EDUCATION APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill reinstates language that was repealed in 1997 by CS/HB 137 (Ch. 97-190, L.O.F.). The language was previously contained in s. 233.065, F.S., and prescribed specific rules regarding patriotic programs. The 1997 law created a new section of statutes, s. 233.0612, F.S., that generally authorized each school district to provide students with programs and instruction designed to encourage patriotism and greater respect for country.

This bill authorizes district school boards to adopt specific rules to require patriotic programs in order to encourage greater respect for the U.S. government, the national anthem, and the flag. It authorizes school boards to require that students and other civilians stand at attention, with men removing any headdress, when the national anthem is being played. It authorizes requiring that the pledge of allegiance to the flag be rendered by students in a prescribed manner, that is, recitation of "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all" with the right hand placed over the heart, at the beginning of the school day in every public school within the district.

Students may be exempted from the requirement to recite the pledge upon written request by a parent or guardian.

Amendments in the Judiciary Committee changed s. 256.11(2), F.S., to provide a penalty for willful failure to display the flag, and a CS for CS/HB 9 was created.

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

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Existing statutes authorize school districts to provide programs and instruction to encourage patriotism and greater respect for country, but do not specifically address procedures to be followed when the national anthem is played or with regard to saluting the flag.

B. EFFECT OF PROPOSED CHANGES:

Unless specifically exempted, school districts could require that students and staff stand at attention with males removing hats, caps, or other forms of headdress, while the national anthem is played in public schools. Districts could also require that the pledge of allegiance be recited each morning in public schools unless the student is otherwise exempted. Since these provisions are already authorized more generally in s. 233.0612, F.S., the effect is expected to be minimal.

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 bill refines statutory authority regarding patriotic programs and makes specific reference to the protocol for standing at attention during the playing of the national anthem and saluting the flag.

Judiciary Committee Staff Comments:

The bill permits the separate school districts of Florida to adopt additional rules, which may differ in detail from school district to school district. The bill provides that the school district may regulate the conduct of individuals not ordinarily subject to the school district's jurisdiction.

(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/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?

Judiciary Committee Staff Comments:

Yes. The present law does not require any person to stand or remove their hat during the national anthem or stand and repeat the pledge of allegiance to the flag.

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?

N/A

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 program 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:

Section 233.0655, F.S., is created under the bill.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: This bill reinstates language that was repealed in 1997 by CS/HB 137 (Ch. 97-190, L.O.F.). The language was previously contained in s. 233.065, F.S., and prescribed specific rules regarding patriotic programs. The 1997 law created a new section of statutes, s. 233.0612, F.S., that generally authorized each school district to provide students with programs and instruction designed to encourage patriotism and greater respect for country.

This bill authorizes district school boards to adopt specific rules to require patriotic programs in order to encourage greater respect for the U.S. government, the national anthem, and the flag. It authorizes school boards to require that students and other civilians stand at attention, with men removing any headdress, when the national anthem is being played. It authorizes requiring that the pledge of allegiance to the flag be rendered by students in a prescribed manner, that is, recitation of "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one

nation under God, indivisible, with liberty and justice for all” with the right hand placed over the heart, at the beginning of the school day in every public school within the district.

Students may be exempted from the requirement to recite the pledge upon written request by a parent or guardian.

Section 2: 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:

N/A

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:

N/A

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:

While the bill makes provision for children to be excused from reciting the pledge, it is unclear as to whether this excuse extends to students standing and/or placing their right hand over the heart. There is no similar excuse provision for standing during the national anthem. The acts of "standing," and "placing the hand," as well as the presumption of having a hand to place all may convey the impression of failure to accommodate various segments of the school population. In addition, First Amendment concerns may be raised by the requirement that men remove their headdress during the playing of the national anthem. School districts are also given authority to require certain conducts from individuals not otherwise subject to the authority of the school district.

One alternative approach may be to adopt language similar to 36 USC § 171 and §172 which describe the patriotic customs associated with the playing of the national anthem and the manner of delivery of the pledge, but do not require any individual to observe the custom. A second alternative may be to authorize the teaching of the proper etiquette concerning the national anthem and pledge of allegiance with a discussion on inclusion of all children who may wish to participate.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute removes the comma in the phrase "one nation, under God" so that the pledge of allegiance to the flag is in its original form.

Judiciary Committee:

Both an amendment #1 and an amendment to amendment #1 were introduced, with the amendment to the amendment passing; and a Committee Substitute was created for the Committee Substitute brought to the Judiciary Committee. The amendment makes willful failure to display the flag (except for cleaning, repair or replacement) a punishable noncriminal violation.

VII. SIGNATURES:

COMMITTEE ON EDUCATION K-12

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