

STORAGE NAME: h0019.jud

DATE: September 8, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 19

RELATING TO: Religious Liberty/Ten Commandments

SPONSOR(S): Rep. Garcia

COMPANION BILL(S):

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

- (1) JUDICIARY
 - (2) GOVERNMENTAL RULES & REGULATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Section 1. Contains legislative findings which re-iterate existing law that the First Amendment of the United States Constitution secures rights against laws made by Congress respecting an establishment of religion or prohibiting the free exercise thereof. In also re-states that the Tenth Amendment to the United States Constitution reserves to the states the powers not delegated to the United States nor prohibited to the states.

Section 2. Declares the power to display the Ten Commandments on or within property owned or administered by the state or any political subdivision of the state to be a power reserved to the state. It also permits the state or any political subdivision of the state to display the Ten Commandments on or within any property owned or administered by the state or any political subdivision of the state. The expression of religious faith by any person on or within property owned or administered by the state or its political subdivisions is found to be among the rights secured against laws respecting an establishment of religion or prohibiting the free exercise of religion.

Section 3. Act is to take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

No current state law declares the power to display of the Ten Commandments in or on property owned or administered by the State of Florida or its political subdivisions as a power reserved to the state.

B. EFFECT OF PROPOSED CHANGES:

Would expressly permit the state or its political subdivisions to adopt measures concerning the display of the Ten Commandments on or within any property owned or administered by the state or any political subdivision of the state.

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?

Yes. Permits the judiciary to adjudicate disputes concerning the posting of the Ten Commandments in a manner consistent with the proposed legislation.

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

No action is required by any government.

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

N/A

b. If an agency or program is 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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

Bill may be viewed as: (1) increasing individual freedom to see and be reminded of the contents of the Ten Commandments; or (2) decreasing the allowable options of those who do not wish to see or consider the effect of the Ten Commandments; or (3) neither increasing nor decreasing allowable options but reciting one of the ideological bases upon which our current governments are premised.

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:

To the extent that public school buildings are determined to be buildings in which the Ten Commandments may be placed:

(1) Who evaluates the family's needs?

School Board policy makers.

(2) Who makes the decisions?

School Board policy makers.

(3) Are private alternatives permitted?

Privately owned school buildings would not be subject to the policy, but private expression is not limited by the bill.

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

All families attending public schools which decide to display the Ten Commandments would be impacted by the local policy decision.

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

Parents refusing to permit their children to see the Ten Commandments displayed at school might lose access to a free public education, depending on the accommodations made for such cases.

- 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:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

School boards are vested with the policy decision.

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION ANALYSIS:

Please see Summary above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

The legislation as proposed does not require any action by any government, direct constitutional litigation on the subject of the bill itself may be avoided. But when a government takes action in reliance upon the authority of this bill, the subsequent proposal to post the Ten Commandments in a public building will likely be subject to constitutional challenge on the basis of the Establishment Clause of the First Amendment, which states

“Congress shall make no law respecting the establishment of religion....” United States Constitution. Amendment I.

In *Stone v. Graham*, 449 U.S. 1104, 101 S.Ct. 192 (1980), the United States Supreme Court held that: (1) the Kentucky statute requiring posting of a copy of the Ten Commandments on the walls of each public school classroom in the state had a preeminent purpose which was plainly religious in nature and thus violative of the Establishment Clause; (2) an “avowed” secular purpose was not sufficient to avoid conflict with the First Amendment, and the conflict could not be precluded by a provision in the statute that the display include the notation: “The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States”; and (3) such conflict could not be avoided by a provision that copies be financed by voluntary private contributions or by the fact that the Bible verses were merely posted on the wall rather than read aloud.

Posting of the Ten Commandments on a sculpture on the back wall of the Haywood County, North Carolina court room was sustained by a federal court in North Carolina in *Suhre v. Haywood County, North Carolina*, 1999 WL 428406 (W.D.N.C.) ___ F. Supp. 2d ___. That sculpture took great effort to recount the historical development of law, including the ancient mythical gods and goddesses, and the laws of Rome and the Tribes of Israel. The federal court also noted that the south wall frieze in the United States Supreme Court contains, among other ancient law givers, a sculpture of Moses holding the Ten Commandments. *Id.* Applying the long established three prong test for analyzing Establishment Clause challenges enunciated in *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105 (1971), the court found the practice to have: (1) a secular purpose (honor and respect of the development of the judicial system); (2) neither advancing nor inhibiting religion; and (3) not fostering an excessive governmental entanglement with religion. Applying the result in *Suhre* to the legislation proposed, it would appear that the posting of only the Ten Commandments would likely be found violative of the Establishment Clause, while the Ten Commandments in the context of a larger display on many sources of law might pass constitutional muster.

In *Adler v. Duval County*, Case Nos. 98-2709, 98-2720 (11 Cir. 1999), the U.S. Eleventh Circuit Court of Appeals found the Duval County school system policy of permitting graduating students to vote on whether to have unrestricted student-led messages at graduation ceremonies to be violative of the Establishment Clause both “facially” and “as-applied.” The Court discussed extensively both *Lee v. Weisman*, 505 U.S. 577, 112 S.Ct. 2646 (1992) and the test for analyzing Establishment Clause challenges enunciated in *Lemon v. Kurtzman*. On June 3, 1999, the Eleventh Circuit ordered this case reheard and vacated the panel’s decision discussed in this paragraph. This rehearing may provide further guidance to Florida in the present application of Establishment Clause.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

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