

**STORAGE NAME:** h0019a.jud  
**DATE:** October 1, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
JUDICIARY  
ANALYSIS**

**BILL #:** HB 19  
**RELATING TO:** Religious Liberty/Ten Commandments  
**SPONSOR(S):** Rep. Garcia  
**TIED BILL(S):**

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

- (1) JUDICIARY
  - (2) GOVERNMENTAL RULES & REGULATION
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

HB 19 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. It 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.

The bill also 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.

The bill is to take effect upon becoming law.

The bill appears not to have a significant fiscal impact.

The bill may raise serious constitutional issues and be subject to litigation on those issues.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. 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.

C. 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.

D. SECTION-BY-SECTION ANALYSIS:

Please see Summary above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties 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 state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The government's posting of the Ten Commandments pursuant to the authority granted to it by this bill may lead to a constitutional challenge of that action on the basis of the Establishment Clause of the First Amendment to the U.S. Constitution, which states in part that "Congress shall make no law respecting the establishment of religion...." U.S. Const. amend. I.

The United States Supreme Court has developed a three prong test to determine whether a state statute violates the Establishment Clause. In *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the Court used the following three pronged test: (1) the statute at issue must have a secular legislative purpose; (2) its principal or primary effect must be one that neither advances nor inhibits religion; and (3) the statute must not foster an "excessive government entanglement with religion." *Id.* at 612-613. (citations omitted). If the statute at issue violates one of these provisions, it must be struck down as unconstitutional. *Stone v. Graham*, 449 U.S. 39, 40 (1980).

In cases where a school board has posted the Ten Commandments for non-secular purposes, the courts have determined that those displays were unconstitutionally violative of the Establishment Clause. In *Stone v. Graham*, 449 U.S. 39 (1980), the United States Supreme

Court held that a Kentucky statute requiring the 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. *Id.* at 41. In its analysis, the court simply reviewed the text of the Commandments to reach the conclusion that the document was “undeniably a sacred text in the Jewish and Christian faiths...” *Id.*

The Court also held that an “avowed” secular purpose was not sufficient to avoid conflict with the First Amendment, and moreover that the conflict could not be precluded by a provision in the statute that the display include a notation regarding the “secular application” of the Ten Commandments in Western Civilization, or by the fact that copies of the Ten Commandments were financed by private contributions. *Id.* Importantly, the court also held that the fact that the Bible verses were posted as opposed to read aloud did not alleviate the constitutional conflict. *Id.* at 42.

Federal courts have held that the display of the Ten Commandments as part of a larger display of the history of the judicial system is constitutional precisely because the Ten Commandments were a component of a secular display. See *Suhre v. Haywood County*, 1999 WL 428406 (W.D.N.C. 1999)(sculpture containing Ten Commandments in county court room not unconstitutional). In the *Suhre* case, the court also noted that the Supreme Court building contains a frieze including a sculpture of Moses holding the Ten Commandments. *Id.* at 1.

The Eleventh Circuit Court of Appeals is currently addressing the related issue of the rights of students to hold student-led messages during graduation ceremonies. The case of *Adler v. Duval County*, 174 F.3d 1236 (1999) is scheduled for oral argument on October 19, 1999. The court recently vacated the decision by one appellate panel that found the Duval county policy of allowing student-led messages to be unconstitutionally violative of the Establishment Clause and ordered a re-hearing of the matter. It remains to be seen whether that court will reverse the ruling altogether or merely modify it, but the decision will be controlling precedent in the Eleventh Circuit, which includes Florida.

Given the judicial precedent created by *Lemon*, *Stone*, and *Suhre*, and pending the *Adler* re-hearing, there is a strong possibility that the posting of the Ten Commandments in state-owned or administered property will be found to violate the Establishment Clause of the First Amendment to the United States Constitution.

**B. RULE-MAKING AUTHORITY:**

N/A

**C. OTHER COMMENTS:**

N/A

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

N/A

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**PAGE 5**

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

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Maggie Moody