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DATE: April 2, 2001

HOUSE OF REPRESENTATIVES

COUNCIL FOR LIFELONG LEARNING
ANALYSIS

BILL #: HB 1199

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

SPONSOR(S): Representative(s) Holloway

TIED BILL(S): None

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

(1) COUNCIL FOR LIFELONG LEARNING
(2)
(3)
(4)
(5)

I. SUMMARY:

This bill authorizes district school boards to adopt a resolution allowing the use of an invocation or benediction at a secondary school commencement exercise, a secondary school-related sporting event, or a secondary school-related noncompulsory student assembly. The resolution must provide:

- That the use of an invocation or a benediction shall be at the discretion of the students;
- That an invocation or a benediction, if used, shall be given by a student volunteer;
- That an invocation or a benediction shall be nonsectarian and nonproselytizing in nature; and
- That school personnel shall not participate in, or otherwise influence the exercise of the discretion of the students in, the determination of whether to use an invocation or a benediction.

The bill states that its purpose is to provide for the solemnization and memorialization of secondary school events and ceremonies and is not intended to advance or endorse any religion or religious belief.

There is no direct fiscal impact associated with this bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes [X]	No []	N/A []
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

District school boards are authorized by s. 233.062(2), 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.

Some district school boards, on their own authority, have already chosen to allow invocations or benedictions at secondary school-related events. (See the CONSTITUTIONAL ISSUES section discussion of Adler v. Duval County School Board).

C. EFFECT OF PROPOSED CHANGES:

This bill would authorize district school boards to adopt a resolution allowing the use of an invocation or benediction at a secondary school commencement exercise, a secondary school-related sporting event, or a secondary school-related noncompulsory student assembly. The resolution must provide:

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The bill states that its purpose is to provide for the solemnization and memorialization of secondary school events and ceremonies and is not intended to advance or endorse any religion or religious belief.

D. SECTION-BY-SECTION ANALYSIS:

SECTION 1: This section authorizes district school boards to adopt a resolution allowing the use of an invocation or benediction at a secondary school commencement exercise, a secondary school-related sporting event, or a secondary school-related noncompulsory student assembly. The resolution must provide:

- That the use of an invocation or a benediction shall be at the discretion of the students;

- That an invocation or a benediction, if used, shall be given by a student volunteer;
- That an invocation or a benediction shall be nonsectarian and nonproselytizing in nature; and
- That school personnel shall not participate in, or otherwise influence the exercise of the discretion of the students in, the determination of whether to use an invocation or a benediction.

SECTION 2: This section states that the purpose of the bill is to provide for the solemnization and memorialization of secondary school events and ceremonies and is not intended to advance or endorse any religion or religious belief.

SECTION 3: This section provides an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

There is no direct fiscal impact associated with this bill.

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 to take action which requires 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.

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:

A. CONSTITUTIONAL ISSUES:

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).

Brief history of student prayer cases

A review of constitutionality issues should begin with the historical framework of four U.S. Supreme Court 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 and one from the 11th 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.

3. In a decision that 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 the 1981 Ninth Circuit Court opinion in Collins, cited above, 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).

b) In another line of federal cases:

1. Jones v. Clear Creek, 977 F.2d 963 (5th Cir. 1992), involved a public high school graduation ceremony. The case did not specify whether the graduation ceremony was held at the school or elsewhere. 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, on its face, 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.

Most recent cases on student prayer

In June 2000, the U.S. Supreme Court decided the case of Santa Fe Independent School District v. Doe, 120 S.Ct. 2266 (2000). In this case the Court limited its holding to the following question:

> Whether petitioner's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause.

Id. at 2275 (emphasis added). By a 6-3 vote, the Court concluded that it did.

The Court first rejected the argument that the pregame invocations were private student speech because the school district implemented an election process where by a majority vote, the students chose who was to deliver the message. The student body elected one student who then delivered the message at each home football game. The court criticized this arrangement and found that "the

majoritarian process implemented by the District guarantees, by definition, that minority candidates will never prevail and that their views will be effectively silenced." Id. at 2276.

The Court went on to say that the school district's stated purpose of solemnizing an event, and its inclusion of the word "invocation" in its policy encouraged religious messages. This fact, coupled with the invocation being "delivered to a large audience assembled as part of a regularly-scheduled, school-sponsored function conducted on school property" and that the "message is broadcast over the school's public address system, which remains subject to the control of school officials" would lead one to believe that it was delivered with the approval of the school administration. Id. at 2278.

The Court next rejected the school district's argument that no one is coerced in to an act of religious worship because attendance at extracurricular events is voluntary. The Court noted that attendance is mandatory for students such as cheerleaders, band members and the team members who receive class credit. Furthermore, the Court reasoned that "[e]ven if we regard every high school student's decision to attend a home football game as purely voluntary, we are nevertheless persuaded that the delivery of a pregame prayer has the improper effect of coercing those present to participate in an act of religious worship." Id. at 2280.

The Court did note, however, that it reached its conclusion that the school district's policy was facially unconstitutional, in part, because of the school district's history of "institutional practices that unquestionably violated the Establishment Clause." Id. at 2282. Specifically, the Court cited "the District's long-established tradition of sanctioning student-led prayer at varsity football games" and that every student understood that the expressed purposes of the policy encourage the selection of a religious message. Id.

While many of the Court's findings in this case could be extended to student prayer in other types of school-related activities, the Court specifically chose to confine its holding to student-led, student-initiated prayer at football games. It would be speculative at this point to conclude that the Court will eventually expand this holding.

One case that will help decide how far, if at all, the U.S. Supreme Court may expand its holding in Santa Fe is the case of Adler v. Duval County School Board, 206 F.3d 1070 (11th Cir. 2000) cert. granted 121 S.Ct. 31 (2000). This case considers whether the school district's "policy of permitting graduating students to vote on whether to select a student or deliver a message wholly of her own choosing at the beginning or closing of a high school graduation ceremony violates the Establishment Clause." Id. at 1071.

The U.S. Court of Appeals for the Eleventh Circuit, sitting en banc, held 10-2 that it did not, and the Appellants appealed to the U. S. Supreme Court. The Court granted certiorari, vacated the judgment of the Eleventh Circuit, and remanded the case for further consideration in light of the Santa Fe decision. The parties in Adler have submitted new briefs to the court but, as of this date, no decision has been rendered. Because the Santa Fe decision was limited to football games, it is possible that the Eleventh Circuit could still find the student prayer issue in Adler constitutional, as the Appellees are still encouraging the court to do.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The case of Santa Fe Independent School District v. Doe, 120 S.Ct. 2266 (2000), held that student-led, student-initiated prayer at football games violated the Establishment Clause. This bill contains

a provision allowing an invocation or a benediction at a school related sporting event. Since this provision would include football games, it would raise constitutional concerns under the Santa Fe case.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COUNCIL FOR LIFELONG LEARNING:

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