SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1776

SPONSOR: Education Committee and Senator Clary

SUBJECT: Recitation of Declaration of Independence

DATE: March 4, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gordon	O'Farrell	ED	Favorable/CS
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill designates the last week in September as "Celebrate Freedom Week" which must include three hours of instruction in social studies class on the Declaration of Independence. During that week, school all school principals and teachers are to conduct an oral recitation by students of a portion of the Declaration of Independence at the beginning of each school day. Upon a parent's request, a student must be excused from this recitation.

This bill creates the following section of the Florida Statutes: s. 233.0659.

II. Present Situation:

Section 233.0651, F.S., permits teachers or administrators to read or post in a public school building or classroom an excerpt of certain historical documents including, but not limited to the Florida Constitution, the pledge of allegiance and the Declaration of Independence. That statute requires that the material be presented in a nonproselytizing manner and that "no material shall be selected to advance a particular religious, political or sectarian purpose." While several other states permit the posting and reading of such documents, only two require students to recite the Declaration of Independence in some capacity.

Arizona is currently the only state that requires students to recite a portion of the Declaration of Independence. However, the student may refuse to participate in such recitation if that student's parent or guardian objects in writing. See Ariz. Rev. Stat.. Ann. §15-203 (2001). Although lacking a similar statutory provision, an Attorney General decision in Kentucky prohibits students in history classes from refusing to learn or recite the Constitution or the Declaration of Independence. See Kentucky OAG Decision, 74-818.

Other states have recently made attempts to pass similar legislation. One measure failed in the New Jersey Legislature in 2001after being approved in that state's Senate. Another bill is currently pending in South Carolina and requires the same recitation as does this bill.

III. Effect of Proposed Changes:

This bill would require all school principals and teachers to conduct an oral recitation by students of the following portion of the Declaration of Independence during the last week in September:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

Those who favor this bill believe it will encourage patriotism while its opponents opine that, without an opt-out provision for students who cannot participate for religious reasons or simply object on the basis of freedom of speech, the requirements of this bill may be viewed as unconstitutional.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Requiring students to recite the Declaration of Independence may raise First Amendment free exercise of religion, establishment of religion, and freedom of speech concerns. The First Amendment prohibits Congress and, through the Fourteenth Amendment, the states from making any law that would abridge these freedoms. Several Supreme Court decisions have examined these issues.

The recitation may raise religious concerns because of its use of the common religious term, "Creator." Although no case regarding the recitation of historical documents containing religious terms has been heard by the Supreme Court, that Court's rulings on recitation cases involving religious texts contain comparisons with the recitation of historical documents. In *Engel v. Vitale*, 370 U.S. 421 (1962), the Court specifically mentioned the recitation of the Declaration of Independence with its incidental use of the

religious term, "Creator," as an example of a patriotic or ceremonial activity *dissimilar* to the New York public school prayer mandate in the case before them. In a concurring opinion in *School District of Abbington Tp., Pa. v. Schempp*, 374 U.S. 203 (1963), Justice Harlan wrote that it had not been shown that the daily recitation of the pledge of allegiance served any other purpose than a secular one. Several federal courts have followed this dicta in rejecting claims that the pledge of allegiance and the singing of the national anthem are religious activities simply because they use the term "God". See *Sheldon v. Fannin*, 221 F.Supp., 766 (D. Ariz. 1963); *Smith v. Denny*, 280 F.Supp. 651 (D. Cal. 1968); and *Sherman v. Community Consolidated School District 21 of Wheeling Township* (Fed. Cir. 7th 1992). Given this case law, it is unlikely that religiously-based challenges to this legislation will be successful.

Two cases are relevant to the freedom of speech concerns that may be raised. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), the Supreme Court held unconstitutional a Virginia State Board of Education ordinance that required students to salute the flag and recite the pledge of allegiance or face expulsion. The Court found that although states may require the teaching of history and civics generally, it may not "prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein." *See id*. at 642. In reaching this decision, the Court also stated:

> Love of country must spring from willing hearts and free minds, inspired by a fair administration of wise laws enacted by the people's elected representatives within the bounds of express constitutional prohibitions. These laws must, to be consistent with the First Amendment, permit the widest toleration of conflicting viewpoints consistent with a society of free men.

See id. at 644. In his concurrence, Justice Murphy states: "The right of freedom of thought and of religion as guaranteed by the Constitution against State action includes both the right to speak freely and the right to refrain from speaking at all, except in so far as essential operations of government may require it for the preservation of an orderly society. . . ." *See id.* at 1189.

In *Wooley v. Maynard*, 430 U.S. 705 (1977), the Court found a New Hampshire statute making it a crime to obscure the words "Live Free or Let Die" on state license plates unconstitutional because it required individuals to subvert their own beliefs to the display of a state ideological message on their personal property.

Both cases indicate that state attempts to impose speech requirements on its citizens are often viewed as an infringement on First Amendment rights. This view would likely be modified if citizens had the right to choose whether to participate. The opt-out provision in this legislation may shield it from constitutional challenge.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.