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DATE: January 16, 2002

HOUSE OF REPRESENTATIVES

COUNCIL FOR LIFELONG LEARNING
ANALYSIS

BILL #: HB 667

RELATING TO: School related events/Invocation

SPONSOR(S): Representative 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:

The bill authorizes, but does not require, district school boards to adopt a resolution allowing the use of invocation or benediction at a secondary school commencement exercise, a secondary school-related sporting event, or a secondary school-related noncompulsory student assembly.

The bill requires that if the district school board adopts such a resolution, the resolution must provide:

- That the use of an invocation or a benediction will be at the sole discretion of the students;
- That if an invocation or a benediction is used it will be given by a student volunteer;
- That an invocation or a benediction will be nonsectarian and nonproselytizing in nature; and
- That school personnel will 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 that the bill is not intended to advance or endorse any religion or religious belief.

Some district school boards have, on their own authority, already chosen to allow student-led opening and/or closing messages at noncompulsory secondary school-related events. (See CONSTITUTIONAL ISSUES) This policy has been held to be constitutional by the United States Court of Appeals for the Eleventh District, the precedent-setting court for Florida. The United States Supreme Court has declined to hear the appeal of that decision.

The bill does not appear to have any fiscal impact.

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]

B. PRESENT SITUATION:

Section 233.06(2), F.S, authorizes district school boards to allow public schools in their district to set aside a brief period, not exceeding two minutes, for the purpose of silent prayer or meditation at the start of each school day or school week.

Some district school boards have, on their own authority, already chosen to allow student-led opening and/or closing messages at noncompulsory secondary school-related events. (See CONSTITUTIONAL ISSUES) This policy has been held to be constitutional by the United States Court of Appeals for the Eleventh District, the precedent-setting court for Florida. The United States Supreme Court has declined to hear the appeal of that decision.

C. EFFECT OF PROPOSED CHANGES:

The bill authorizes, but does not require, district school boards to adopt a resolution allowing the use of invocation or benediction at a secondary school commencement exercise, a secondary school-related sporting event, or a secondary school-related noncompulsory student assembly.

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- That the use of an invocation or a benediction will be at the sole discretion of the students;
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- That an invocation or a benediction will be nonsectarian and nonproselytizing in nature; and
- That school personnel will 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 that the bill is not intended to advance or endorse any religion or religious belief.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Authorizes school boards to adopt a resolution allowing the use of an invocation or benediction at certain noncompulsory secondary school-related events; provides for the requirements of such a resolution.

Section 2: States the purpose of the bill as providing for the solemnization and memorialization of secondary school events and ceremonies; states that the bill is not intended to advance or endorse any religion or religious belief.

Section 3: Provides for an effective date of July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have a fiscal impact of state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

The bill does not reduce the authority that counties or municipalities have to raise revenues.

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

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The First Amendment to 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 the constitutional issues surrounding the separation of church and state should begin with a historical framework of three U.S. Supreme Court cases dealing with the general subject:

1. In the 1962 case of Engel v. Vitale, 370 U.S. 241, the Court reviewed a New York statute allowing public school students to begin each day with a prayer. Although students could be excused from the prayer, the Court held that the law violated the Establishment Clause and breached the wall of separation between church and state.

2. In the 1963 case of Abington Township v. Schempp, 374, U.S. 203, the Court reviewed a Pennsylvania statute allowing stating daily readings from the Bible. Again, although students could be excused from the room during the recitation of Bible verses, the Court held that the law violated the Establishment Clause.

3. The first real guidance came in the 1971 case of Lemon v. Kurtzman, 403 U.S. 602. The Court reviewed a Pennsylvania statute that provided state aid to church-related schools with regard to instruction in secular matters. The Court announced what became known as the "Lemon Test" and held that a state procedure does not violate the Establishment Clause if:

- the enactment has a secular purpose;
- its primary effect neither inhibits nor advances religion; and
- it does not foster excessive entanglements with religion.

Most recent cases on student prayer

In the past two years, three cases directly related to the issues raised by HB 667 have been decided.

1. In June 2000, the U.S. Supreme Court decided the case of Santa Fe Independent School District v. Doe, 120 S.Ct. 2266 (2000). 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 the policy was unconstitutional.

The Court noted 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 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.

2. In June 2001, the U.S. Supreme Court let stand the lower court ruling in Chandler v. Siegelman, 230 F.3d 1313. The Supreme Court had directed the lower court to review its previous decision in light of the recent decision in Santa Fe. The lower court upheld its ruling allowing students to participate in group prayers at school functions such as graduations. The case arose after Alabama legislators enacted a law requiring public schools to allow student-initiated prayers as long as they do not promote one religion over another and as long as students do not try to convert their classmates.

The Supreme Court let stand the decision of the 11th U.S. Circuit Court of Appeals (which is also the precedent setting federal court for Florida) stating that courts could not prohibit genuinely student initiated religious speech at school events, including graduations, nor could they impose restrictions greater than those placed on students' nonreligious speech.

3. The most recent decision on the issue of student led prayer is the case of Adler v. Duval County School Board, 122 S.Ct. 664. Again, the U.S. Supreme Court requested the Eleventh Circuit to review its previous decision in light of the higher Court's decision in Santa Fe. In December 2001, the U.S. Supreme Court ultimately let stand the Eleventh Circuit's decision stating that the Duval County school district's "policy of permitting a graduating student, elected by her class, to deliver an unrestricted message of her choice at graduation ceremonies was not facially violative of the Establishment Clause. (See Adler v. Duval County School Board, 250 F. 3d 1330).

In an 8-4 decision, the Eleventh Circuit ruled that Duval County's facially-neutral policy permitting high school seniors to vote upon the delivery by a student of a message entirely of that student's choosing as part of graduation ceremonies did not violate the Establishment Clause.

The Court emphasized that "under the Duval County's policy school officials have no power to direct that a message (let alone a religious message) be delivered at graduation ceremonies, or control in any way the content of any message actually to be delivered." Id. at 1332-33. This fact removes any hint that the student speech is state-sponsored.

The Court rejected the argument that the state's role in providing a vehicle for a graduation message by itself transformed the student's private speech into state-sponsored speech. The Court stressed that "the board did not have control over the elements which are most crucial in the Establishment Clause calculus: the selection of the messenger, the content of the message, or most basically, the decision whether or not there would be a message in the first place." Id. at 1333.

The Court also rejected the argument that the policy would have the impermissible effect of coercing unwilling listeners to participate in a state-sponsored religious exercise. The Court explained that "neither the Duval County schools nor the graduating senior class even decide if a religious prayer or message will be delivered, let alone 'require' or 'coerce' the student audience to participate in any privately crafted message." Id. The Court noted that schools do not endorse all speech that they do not censor.

With regard to the purpose of the policy being to "solemnize" an event, the Court held that this alone did not make the policy religious. The Court noted that the Supreme Court's decision in Santa Fe did *not* purport to declare that the desire to solemnize so important an event as a graduation ceremony is never a secular purpose.

As the above discussion indicates, the provisions of HB 667 do not appear to violate the Establishment Clause. The only point of debate may be in the bill's use of the word "invocation." The Supreme Court specifically noted in Santa Fe that the term "invocation" connotes a religious speech.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Because of the U.S. Supreme Court's decision in Santa Fe Independent School District v. Doe, 120 S.Ct. 2266 (2000), the sponsor will offer an amendment to remove "a secondary school related sporting event" from the list of school activities where an invocation or benediction may be allowed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COUNCIL FOR LIFELONG LEARNING:

Prepared by:	Staff Director:
Anitere Flores	Patricia Levesque