

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 355 CS

Education

**SPONSOR(S):** Holloway

**TIED BILLS:**

**IDEN./SIM. BILLS:**

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| REFERENCE                                   | ACTION                | ANALYST        | STAFF DIRECTOR |
|---------------------------------------------|-----------------------|----------------|----------------|
| 1) <u>Choice &amp; Innovation Committee</u> | <u>6 Y, 2 N, w/CS</u> | <u>Hassell</u> | <u>Aldis</u>   |
| 2) <u>Education Council</u>                 | <u></u>               | <u>Hassell</u> | <u>Cobb</u>    |
| 3) <u></u>                                  | <u></u>               | <u></u>        | <u></u>        |
| 4) <u></u>                                  | <u></u>               | <u></u>        | <u></u>        |
| 5) <u></u>                                  | <u></u>               | <u></u>        | <u></u>        |

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### SUMMARY ANALYSIS

This bill authorizes, but does not require, district school boards to adopt a resolution allowing the use of an inspirational message, including an invocation or benediction, at a secondary school commencement exercise 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 inspirational message will be at the sole discretion of the students;
- if an inspirational message is used it will be given by a student volunteer; and
- school personnel will not participate in, or otherwise influence the exercise of the discretion of the student in, the determination of whether to use an inspirational message.

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, as stated by the bill. 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 the CONSTITUTIONAL ISSUES section of this analysis for additional comments.

The bill does not appear to have any fiscal impact.

The bill takes effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Safeguard individual liberty* – This bill provides for students to exercise their own discretion, without the participation and influence of school personnel, in determining whether to have a student volunteer give an inspirational message at a secondary school commencement exercise or a secondary school-related noncompulsory student assembly.

#### B. EFFECT OF PROPOSED CHANGES:

Section 1003.45(2), F.S., currently 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 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. This policy has been held to be constitutional by the United States Court of Appeals for the Eleventh Circuit, a federal precedent-setting court for Florida. The United States Supreme Court has declined to hear an appeal of that decision. (See Constitutional Issues)

The federal Elementary and Secondary Education Act of 1965 as amended by the No Child Left Behind Act of 2001 requires local educational agencies to certify to the state educational agency that no policy of the local educational agency prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools.<sup>1</sup> Florida requires the Department of Education to annually distribute the guidelines on “Religious Expression in Public Schools” published by the United States Department of Education to all district school board members, district school superintendents, school principals, and teachers.<sup>2</sup>

HB 355 authorizes, but does not require, district school boards to adopt a resolution allowing the use of an inspirational message, including an invocation or benediction, at a secondary school commencement exercise 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 inspirational message will be at the sole discretion of the students;
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- 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 inspirational message.

#### C. SECTION DIRECTORY:

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

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<sup>1</sup> See 20 U.S.C. § 7904.

<sup>2</sup> See s. 1002.205, F.S.

**Section 3:** Provides a severability clause so that if a court finds any provision of the bill invalid, the rest of the bill's provisions may still be given full effect.

**Section 4:** Provides an effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

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

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

This bill does not appear to have a fiscal impact on local government 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:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require municipalities or counties to expend funds, does not reduce their authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

#### **2. Other:**

**Freedom of Religion:** Two First Amendment clauses, the Free Exercise Clause and the Establishment Clause, protect religious freedom.<sup>3</sup> The Free Exercise Clause prohibits restraints on

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<sup>3</sup> The pertinent clauses of the First Amendment of the United States Constitution read: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." 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 and are therefore applicable to state action. See *Everson v. Board of Education*, 330 U.S. 1(1947).

religious activity, if such restraints are interposed solely to prevent the religious activity.<sup>4</sup> The Establishment Clause guarantees that a government may not coerce anyone to support or participate in religion or its exercise.<sup>5</sup>

Courts generally hold invalid any law which exhibits a preference for a particular religious belief, unless the law is narrowly tailored to promote a compelling interest.<sup>6</sup> Where the law does not grant a preference, a three-part test is substituted for the compelling interest test:

- a. The law must have a non-religious purpose.
- b. The law must have a primary effect that neither advances nor inhibits religion.
- c. The law must not produce excessive government entanglement with religion.<sup>7</sup>

Recent caselaw provides some direction in analyzing freedom of religion issues. The United States Supreme Court held that the Santa Fe Independent School District's policy permitting student-led, student-initiated prayer if authorized by student election violates the Establishment Clause.<sup>8</sup> In this case the Court based its decision on the difference between public and private religious speech: "there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect."<sup>9</sup> In determining that the messages delivered by students pursuant to the policy would constitute state-sponsored (public) speech rather than private speech, the court offered four reasons:

1. the student's speech would be authorized by a government policy that explicitly and implicitly encouraged one particular kind of message;
2. it would take place on school property at a school event;
3. the government had broad power to regulate the content of the speech;
4. the election system would yield only a single speaker and would completely prevent dissenting viewpoints from being heard.<sup>10</sup>

The United States Court of Appeals for the Eleventh Circuit (a federal precedent-setting court for Florida) has recently decided two Freedom of Religion cases in light of the United States Supreme Court's decision in *Santa Fe*. In an Alabama case, the court reviewed an injunction which assumed that any religious speech in schools is attributed to the State.<sup>11</sup> In directing the lower court to revisit the injunction, the court opined that private speech endorsing religion is constitutionally protected—even in school.<sup>12</sup> "As long as the prayer is genuinely student-initiated, and not the product of any school policy which actively or surreptitiously encourages it, the speech is private and it is protected."<sup>13</sup>

In a Florida case, the United States Court of Appeals for the Eleventh Circuit held that the Duval County School Board's policy of permitting a graduating student, elected by her class, to deliver an unrestricted message of her choice at the beginning and/or closing of graduation ceremonies was not facially violative of the Establishment Clause.<sup>14</sup> In this case the court opined that "what turns

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<sup>4</sup> See *Everson v. Board of Education*, 330 U.S. 1(1947).

<sup>5</sup> See *Lee v. Weisman*, 505 U.S. 577(1992).

<sup>6</sup> See *Everson v. Board of Education*, 330 U.S. 1(1947).

<sup>7</sup> See *Lemon v. Kurtzman*, 403 U.S. 602 (1970).

<sup>8</sup> See *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000).

<sup>9</sup> See *Santa Fe* at 302.

<sup>10</sup> See *Adler* at 1335, quoting *Santa Fe*.

<sup>11</sup> See *Chandler v. Siegelman*, 230 F.3d 1313 (11<sup>th</sup> Cir., Ala., 2001); rehearing denied 248 F.3d 1032 (11<sup>th</sup> Cir., Ala., 2001); cert. denied 533 U.S. 916 (2001).

<sup>12</sup> See *Chandler* at 1317.

<sup>13</sup> See *Chandler* at 1317.

<sup>14</sup> See *Alder v. Duval County School Board*, 250 F.3d 1330 (11<sup>th</sup> Cir., Fla., 2001); cert. denied 534 U.S. 1065 (2001). The Duval County policy provides in relevant part: 1) The use of a brief opening and/or closing message, not to exceed 2 minutes, at high school graduation exercises shall rest within the discretion of the high school class; 2) The message shall be given by a student volunteer... chosen by the graduating senior class as a whole; 3) If the graduating class chooses to use a message, the content of that message shall

private speech into state speech, in the context of messages delivered by high school students at graduation, is... the element of state control over the content of the message.”<sup>15</sup>

**B. RULE-MAKING AUTHORITY:**

This bill does not grant additional rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On April 12, 2005, the Choice and Innovation Committee adopted a technical amendment that removed the words “invocation or a benediction” and inserted the words “inspirational message” in multiple places throughout the bill, and adopted an amendment that removed the requirement that the resolution provide that an invocation or benediction be nonsectarian and nonproselytizing in nature. The bill, as amended, was reported favorably as a committee substitute.

This analysis is drafted to the committee substitute.

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be prepared by the student volunteer and shall not be monitored or otherwise reviewed by the School Board, its officers, or employees; The purpose of these guidelines is to allow students to direct their own graduation message without monitoring or review by school officials.

<sup>15</sup> See *Alder at 1341*.