

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Governmental Operations Committee

BILL: CS/SB 464

INTRODUCER: Governmental Operations Committee and Senator Siplin

SUBJECT: Three Kings Day

DATE: March 22, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill designates January 6 of each year as “Three Kings Day.” It also authorizes local governments to issue a proclamation commemorating the day and recognizing that many residents of the state celebrate the occasion as a time to be with their family and friends, attend services, exchange gifts, and celebrate their cultural heritage.

This bill creates section 683.33 of the Florida Statutes.

II. Present Situation:

Chapter 683, F.S., establishes legal holidays and special observance days. Legal holidays and special observances may apply throughout the state or they may be limited to particular counties. Designation of a day as a legal holiday does not necessarily make that day a paid holiday for public employees.¹ Another provision of statute, s. 110.117, F.S., establishes which legal holidays are paid holidays for public employees.

A declaration that a specific day is a legal holiday may impact state contracts.

Section 683.02, F.S., provides that whenever reference is made to “legal holidays” in contracts to be performed by the state, the term includes the holidays designated in s. 683.01, F.S., and such others as may be designated by law. Designating a day as a legal holiday also may affect legal

¹ “Legal holidays” are not necessarily the same as “paid holidays” for governmental employees. Section 110.117(1), F.S., provides that the following holidays are paid holidays for all state branches and agencies: (a) New Year’s Day; (b) Martin Luther King Birthday; (c) Memorial Day; (d) Independence Day; (e) Labor Day; (f) Veteran’s Day; (g) Thanksgiving Day and Friday after Thanksgiving; (h) Christmas Day.

notice requirements and result in the need to count additional days to calculate legal filing dates or periods. For example, Florida Rule of Civil Procedure 1.090(a) provides:

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included *unless it is a Saturday, Sunday, or legal holiday*, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 7 days, *intermediate Saturdays, Sundays, and legal holidays shall be excluded* in the computation [emphasis added].

The legal holidays established in s. 683.01(1), are:

- (a) Sunday, the first day of each week.²
- (b) New Year's Day, January 1.
- (c) Birthday of Martin Luther King, Jr., January 15.
- (d) Birthday of Robert E. Lee, January 19.
- (e) Lincoln's Birthday, February 12.
- (f) Susan B. Anthony's Birthday, February 15.
- (g) Washington's Birthday, the third Monday in February.
- (h) Good Friday.
- (i) Pascua Florida Day, April 2.³
- (j) Confederate Memorial Day, April 26.
- (k) Memorial Day, the last Monday in May.
- (l) Birthday of Jefferson Davis, June 3.
- (m) Flag Day, June 14.
- (n) Independence Day, July 4.
- (o) Labor Day, the first Monday in September.
- (p) Columbus Day and Farmer's Day, the second Monday in October.
- (q) Veterans' Day, November 11.
- (r) General Election Day.
- (s) Thanksgiving Day, the fourth Thursday in November.
- (t) Christmas Day, December 25.⁴
- (u) Shrove Tuesday, sometimes also known as "Mardi Gras" or "Fat Tuesday."⁵

² Sunday as a holiday has its origins in the Christian Sabbath or day of rest.

³ "Pascua Florida" is a Spanish term that means *flowery festival* or *feast of flowers*. It usually refers to the Easter season, though, "Pascua" can, depending on the context, refer to the Jewish Passover, Easter, Christmas, Epiphany or Pentecost. See, <http://www.answers.com/topic/pascua-florida>. April 2 each year is designated as "Florida State Day" and is known as "Pascua Florida Day." Juan Ponce de León called the land he encountered in 1513 "Pascua florida." The holiday is to be observed in the same manner as a "patriotic occasion."

⁴ Public designation of Christmas Day as a holiday has been determined to be constitutionally acceptable as ". . . the Christmas holiday in our national culture contains both secular and sectarian elements." See, *Silver Rose Entertainment, Inc., v. Clay County*, 646 So.2d 246 at 253 (1st DCA 1994), citing *Lynch v. Donnelly*, 465 U.S. 668, 104 S. Ct. 1355, 79 L.Ed.2d (1984).

⁵ The day before the beginning of Lent is known as *Shrove Tuesday*. To shrove someone, in old-fashioned English (he shrives, he shrove, he has shriven or he shrives, he shrived, he has shrived), is to hear his acknowledgement of his sins, to assure him of God's forgiveness, and to give him appropriate spiritual advice. Shrove Tuesday is also called *Fat Tuesday* (in French,

Additionally, Gasparilla Day is a legal holiday in Hillsborough County; DeSoto Day is a legal holiday in Manatee County; Parade Day is a legal holiday in Hillsborough County; Rosh Hashanah, You Kippur, and Good Friday are legal holidays in any judicial circuit if the chief judge so designates it.

Additionally, the chapter designates other days of special observance that are not legal holidays, such as Law Enforcement Memorial Day, Grandmother's Day, and Bill of Rights Day.

Three Kings Day (Dia de los Reyes) is celebrated 12 days after Christmas on January 6. Also known as *Epiphany*, Three Kings Day is a celebration that commemorates the Biblical story of the three kings from the east (or wise men)⁶ that followed the star of Bethlehem to bring gifts to the Christ child. This holiday is widely celebrated in the Hispanic community. Traditionally in Mexico, Three Kings Day was the gift-giving time, rather than Christmas Day. In some regions of Mexico, it was customary for children to leave their shoes out on the night of January 5, sometimes filling them with hay for the camels, in hopes that the Three Kings would leave toys and gifts for them when they awoke on January 6th.⁷

III. Effect of Proposed Changes:

The bill designates January 6 of each year as "Three Kings Day." It also authorizes local governments to issue a proclamation commemorating the day and recognizing that many residents of the state celebrate the occasion as a time to be with their family and friends, attend services, exchange gifts, and celebrate their cultural heritage.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

Mardi=Tuesday; gras=fat), because on that day fats normally used in cooking are used up because they will not be used during Lent. The day (or sometimes a longer period immediately preceding Lent) is also called *Carnival*, which means "farewell to meat." "Carni" as in carnivorous, and "vale" as in valediction, valedictorian, etc. One last hamburger before the Lenten fast begins. See, <http://elvis.rowan.edu/~kilroy/JEK/LITCAL/ShroveTuesday.html>

⁶ Tradition, though not the Gospels, holds that the Three Kings were named Melchior, Caspar and Balthazar and that they presented gifts of gold, frankincense and myrrh to the infant Jesus.

⁷ <http://www.calendar-updates.com/info/holidays/us/threekings.aspx>

D. Other Constitutional Issues:

Federal Constitutional Law: The 1st Amendment to the U.S. Constitution provides, in part, that “Congress shall make no law respecting an establishment of religion...” This provision, made applicable to the states by the Fourteenth Amendment, has generally been interpreted to restrict a unit of federal, state, and local governments from promoting or affiliating itself with any particular religious doctrine or organization, discriminating among persons on the basis of their religious beliefs and practices, delegating a governmental power to a religious institution, or involving itself too deeply in such an institution’s affairs.⁸

To evaluate whether laws or policies violate these restrictions, courts have applied an analysis from *Lemon v. Kurtzman*,⁹ which requires that the challenged practice:

- have a valid secular purpose,
- not have the effect of advancing or inhibiting religion, and
- not foster excessive government entanglement with religion.

The difficulty in consistently applying the test from *Lemon v. Kurtzman* to specific circumstances is illustrated by two decisions the U.S. Supreme Court handed down in the 2004-2005 term. In *McCreary County v. ACLU*,¹⁰ the Court, applying the *Lemon* test, ruled that the Ten Commandments display in a Kentucky courthouse violated the Establishment Clause, finding that the displays *lacked a primary secular purpose*. In *Van Orden v. Perry*,¹¹ the Court found that the *Lemon* test was not determinative in evaluating whether an edifice on the grounds of the Texas state capitol depicting the Ten Commandments contravened the Establishment Clause, and *looked to the nature of the monument and history* in holding that the edifice did not violate the Establishment Clause.

A lower federal court applied the *Lemon* test to an Indiana law that designated Good Friday as a legal holiday for state employees, and upheld the law in finding that it did not violate the Establishment Clause because the holiday was based on several secular justifications.¹²

To the extent that this bill promotes a non-secular purpose, it is subject to challenge under the *Lemon* test, and may be declared unconstitutional.

Florida Constitutional Law: Article I, section 3 of the Florida Constitution provides that “[t]here shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof,” and that “[n]o revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or

⁸ *County of Allegheny v. ACLU*, 492 U.S. 573, 589, 109 S.Ct. 3086, 3099 (1989).

⁹ *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105 (1971).

¹⁰ 125 S.Ct. 2722 (2005).

¹¹ 128 S.Ct. 2854 (2005).

¹² *Bridenbaugh v. O’Bannon*, 185 F.3d 796 (1999).

indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”

Local government actions related to religious holidays have been addressed by Florida courts. In 1994, the 2nd District Court of Appeal of Florida upheld a Clay County ordinance outlawing the sale of alcohol on Christmas Day and Christmas night.¹³ The court held that Christmas, notwithstanding its deep religious significance for many, also has secular traditions which local government is free to acknowledge, without offending the constitutions either of Florida or of the United States. The court found that “[a]ny statute that passes muster under article 1, section 3 of the Florida Constitution necessarily meets the federal Establishment clause test,” because of the additional “no aid” provision in the Florida Constitution.¹⁴ Applying the *Lemon* test in upholding the constitutionality of the ordinance, the court was “unable to discern any religious principle that the ordinance under challenge endorses,” and found that it did not have the primary effect of advancing religion.¹⁵ More recent decisions on the constitutionality of Florida’s Opportunity Scholarship Program have addressed Article 1, section 3, of the State Constitution, but those decisions have largely analyzed the “no aid” clause.

To the extent that this bill promotes a non-secular purpose, or has the effect of advancing religion, it could be challenged under the U.S. and Florida constitutions.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not require that local governments issue a proclamation. Issuance of a proclamation would have some cost, though it is likely *de minimis*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹³ *Silver Rose Entertainment, Inc., v. Clay County*, 646 So.2d 246 (Fla. 1st DCA 1994).

¹⁴ *Id.* at 251.

¹⁵ *Id.* at 252.

VIII. Summary of Amendments:

None.

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