

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2636

SPONSOR: Education Committee and Senator King

SUBJECT: Secondary Schools/Assemblies

DATE: April 20, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute authorizes, but does not require, district school boards to permit the use of a brief opening or closing message for solemnization and memorialization of any noncompulsory high school activity such as student assemblies, sporting events, and graduation. The message may include a prayer, poetry, or inspirational thought. If a majority of the participating students request a message, the message must be given by a student representative chosen by the student body.

The bill provides for severability of the provisions of the act.

This bill creates unnumbered sections of the Florida Statutes.

The bill takes effect July 1, 1999.

II. Present Situation:

Section 233.062, F.S., authorizes a school board to provide a brief period, not to exceed 2 minutes, for the purpose of silent prayer or meditation at the beginning of the school day or the school week in public schools in the district.

III. Effect of Proposed Changes:

The committee substitute authorizes, but does not require, district school boards to permit the use of a brief opening or closing message for solemnization and memorialization of any noncompulsory high school activity such as student assemblies, sporting events, and graduation. The message may include a prayer, poetry, or inspirational thought. If a majority of the participating students request a message, the message must be given by a student representative chosen by the student body.

The bill provides for severability of the provisions of the act.

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:

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.

A review of the constitutionality of this bill should begin with the pre-1971 framework of four U.S. Supreme Court cases dealing with the general subject.

- a) The 1948 case of McCullom v. Board of Education that determined that religious instruction conducted by clergy in classrooms during public school hours violated the Establishment Clause, even though the student were offered the option to attend alternative secular activities;
- b) The 1952 case of Zorach v. Clauson in which the Court said that releasing students to attend religious activities out of public school was a constitutionally valid practice;
- c) The 1953 case of Engel v. Vitale, where the Court held that daily class recitation of prayer violated the Establishment Clause, even though the students could be excused upon request; and
- d) 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 four general categories of federal cases:

- a) The first category is the U.S. Supreme Court case of Lee v. Weisman, 505 US 577, 120 L.Ed 2d 467, 112 S.Ct. 2649 (1992). A middle school principal had chosen and invited a clergyman to deliver an invocation at the middle school graduation ceremony held on school property. The prayer was “non-sectarian” but was squarely in line with Judeo-Christian tradition. Student attendance was voluntary. The Court held that the prayer procedure violated the Establishment Clause because it was school led; because the graduation ceremony was directed by school officials; and because attendance was in a real sense obligatory. The Court did not use the “Lemon Test” analysis in reaching its decision.
- b) The second category is comprised of three federal appellate cases from outside the U.S. Circuit covering Florida, that generally invalidated the prayer policies:
 - 1) In Collins v. Chandler District, 644 F.2d 759, cert. denied 454 U.S. 863 (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 couldn’t 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 Doe v. Santa Fe Independent School District, 1999 WL 104884, a very recent U.S. Circuit Court of Appeals decision on the general subject of student-led school prayer, the district’s policy that authorized student-led prayer at graduation ceremonies and at football games, for the purpose of solemnization, was challenged. The court held that:

- a. A public school prayer policy that permits sectarian, proselytizing benedictions and invocations cannot pass constitutional muster, and
 - b. Extending a prayer policy to cover messages delivered before a high school football game violates the Constitution even if such a policy includes the “nonsectarian, nonproselytizing” restrictions, because athletic events, unlike graduation ceremonies, are not once-in-a-lifetime events, and are not therefore appropriately solemnized by prayer.
- c) The third category consists of two federal cases arising beyond the circuit that covers Florida, in which the court allowed school prayer in the high school graduation setting:
- 1) Jones v. Clear Creek, 977 F.2d 963 (5th Cir. 1992), again involved a high school graduation ceremony. 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 no 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 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 to a non-sectarian, non-proselytizing, student-initiated, student-led, voluntary invocation prayer at a high school graduation ceremony.
- d) The final category consists of two cases arising in our federal circuit:
- 1) In a decision which the U.S. Supreme Court refused to review, the Eleventh Circuit Court of Appeals found the Douglas County Georgia Board of Education practice of pre-game 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).
 - 2) In Adler v. Duval County, 851 F.Supp. 446 (1994), reh. denied 130 F.3d 276 (11th Cir. (Fla.) July 11, 1997), a U.S. district judge in Jacksonville addressed the district policy permitting invocations and benedictions at area public high school graduation ceremonies. The policy stated that there could be a brief opening and/or closing

prayer at the discretion of the senior class, given by a student volunteer who was a member of the graduating class, chosen by the graduating class, with the contents prepared by the student and not monitored or otherwise reviewed by school authorities. The trial judge applied the “Lemon Test” and held that the practice passed constitutional muster. This decision was appealed. The Eleventh Circuit Court of Appeals held that students’ claims for declaratory injunctive relief seeking to prevent the school board from allowing student prayers at future graduation ceremonies were moot since the students had already graduated.

Summary:

Although there is still a split between the federal circuits with regard to prayer at high school graduation ceremonies, there is a fairly clear pattern with regard to assemblies and sports events. These non-graduation invocations, prayers, and benedictions generally have been held to violate the Establishment Clause. The distinction has to do with the solemnity and uniqueness of the occasion--high school graduation being in an apparent class by itself, especially where the insulating factors are present: non-sectarian, non-proselytizing, student-initiated, student-led, student-chosen, student-organized, for solemnization, not supervised by the school administration or staff, strictly voluntary, etc.

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.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
