

# 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.)

Prepared By: Community Affairs Committee

BILL: SB 740

SPONSOR: Senator Siplin

SUBJECT: Three Kings Day

DATE: February 8, 2005

REVISED: 02/22/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>GO</u>	<u></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>
6.	<u></u>	<u></u>	<u></u>	<u></u>

## Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

### I. Summary:

This bill designates January 5 as “Three Kings Day” and authorizes local governments to annually issue a proclamation commemorating the occasion, and calls upon the residents of the State of Florida to observe the occasion.

This bill creates s. 683.33 of the Florida Statutes.

### II. Present Situation:

Chapter 683, F.S., relates to legal holidays and special observances. Section 683.01, F.S., designates 21 legal holidays, to include Good Friday and Christmas. Other provisions in ss. 683.04-683.25, F.S., designate special observances or explain the significance of certain legal holidays.

Section 683.19, F.S., authorizes chief circuit judges to designate Rosh Hashanah, Yom Kippur, and Good Friday as legal holidays for the courts within their respective judicial circuits.

Three Kings Day (Dia de los Reyes) is celebrated 12 days after Christmas on January 6. Also known as the Epiphany, Three Kings Day is a celebration that commemorates the Biblical story of the three kings (or wise men) who followed the star of Bethlehem to bring gifts to the Christ

child. This holiday is widely celebrated in the Hispanic community, especially by Mexican-Americans.

### III. Effect of Proposed Changes:

**Section 1** creates s. 683.33, F.S, which designates January 5 of each year as “Three Kings Day” and provides that local governments may annually issue a proclamation commemorating January 5 as “Three Kings Day” and calling upon the residents of the state to observe the occasion.

**Section 2** provides an effective date of July 1, 2005.

### 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:

This bill amends s. 683.33, F.S., to designate January 5 of each year as "Three Kings Day." Furthermore, local governments are authorized to annually “issue a proclamation commemorating January 5 as Three Kings Day and calling upon the residents of this state to observe the occasion.”

In its current form, this bill could be challenged as a violation of the Establishment Clause of the U.S. Constitution.

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

To evaluate whether laws or policies violate these restrictions, the courts have applied the *Lemon test*,<sup>2</sup> which requires that the challenged practice:

<sup>1</sup> *County of Allegheny v. ACLU*, 492 U.S. 573, 589, 109 S.Ct. 3086, 3099, 106 L.Ed.2d 472 (1989).

<sup>2</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971).

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

While the courts have deviated in limited circumstances from the *Lemon* test, the test “is often maligned...but it is even more often applied.”<sup>3</sup> However, the courts recognize that “Establishment Clause challenges are not decided by bright-line rules, but on a case-by-case basis with the result turning on the specific facts.”<sup>4</sup>

This test was most recently applied in *Glassroth v. Moore*,<sup>5</sup> where the 11<sup>th</sup> Federal Circuit Court of Appeal ruled the Chief Justice of the Alabama Supreme Court violated the Establishment Clause by placing a monument to the Ten Commandments in the rotunda of the Alabama State Judicial Building. The court held that this action had a non-secular purpose, and that the monument had the primary effect of endorsing religion.

The court has also applied the *Lemon* test to state actions that designated Good Friday as a legal holiday for state employees. The 7<sup>th</sup> Federal District Court ruled that this action did not violate the Establishment Clause because the holiday was based on several secular justifications.<sup>6</sup>

Local government actions related to religious holidays have also been addressed by Florida courts. In 1994, the 2<sup>nd</sup> District Court of Appeal of Florida upheld a Clay County ordinance outlawing the sale of alcohol on Christmas Day and Christmas night.<sup>7</sup> 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 was “unable to discern any religious principle that the ordinance under challenge endorses.” Furthermore, the ordinance was not found to advance religion or any particular religion.

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.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

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<sup>3</sup> *Glassroth v. Moore*, 335 F.3d 1282 (2003), cert. denied, 1245 S.Ct. 497 (2003)

<sup>4</sup> *Id.* At 1288.

<sup>5</sup> *Id.* At 1295.

<sup>6</sup> *Bridenbaugh v. O'Bannon*, 185 F.3d 796 (1999).

<sup>7</sup> *Silver Rose Entertainment, Inc., v. Clay County*, 646 So.2d 246 (Fla. 1<sup>st</sup> DCA 1994). It is also important to note that the court held this ordinance did not violate Art. 1, s. 2 of the State Constitution, which is generally regarded as more restrictive than the Establishment Clause in the U.S. Constitution.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The bill currently designates January 5 as “Three Kings Day”. This holiday is commonly celebrated 12 days after Christmas on January 6 of each year.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

Barcode 631124 by Community Affairs:

This amendment corrects the date and deletes the provision that calls upon the residents of the state to observe the occasion.

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