

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1403 Pledge of Allegiance

SPONSOR(S): Broxson and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	10 Y, 0 N	Dehmer	Fudge
2) Education Appropriations Subcommittee	11 Y, 0 N	Seifert	Heflin
3) Education Committee	16 Y, 0 N	Dehmer	Mizereck

SUMMARY ANALYSIS

Currently, each school district board may adopt rules that require, in all district schools, programs of a patriotic nature. The programs are designed to encourage greater respect for the United States government, the national anthem and the flag. The programs are subject to other existing laws of the United States or the state.

In each public elementary, middle and high school in the state, the pledge of allegiance (the pledge) shall be recited at the beginning of the day. The pledge shall be rendered by students standing with the student’s right hand over their heart. When the pledge is given, civilians must show full respect to the flag by standing at attention. Men must remove their headdress, unless worn for a religious purpose.

Each student must be informed of the right not to participate in the pledge by a notice posted in a conspicuous place. The student is excused from the pledge when the student obtains a written request from their parent.

The bill repeals the requirement to conspicuously post notice of the right not to participate and instead provides that students shall be informed of the right not to participate in the pledge by a written notice published in the student handbook, the code of student conduct or a similar school publication. School districts are currently required to provide written codes of conduct and the inclusion of the right not to participate in the pledge is not expected to have any fiscal impact on school districts.

The bill removes the requirement that all civilians, including excused students, stand and place their hand over their heart during the pledge. Instead, only unexcused students must stand and recite the pledge.

The bill does not have a fiscal impact on state or local governments.

The bill takes effect July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Pledge of Allegiance

Present Situation

Currently, each school district board may adopt rules that require, in all district schools, programs of a patriotic nature. The programs are designed to encourage greater respect for the United States government, the national anthem and the flag. The programs are subject to other existing laws of the United States or the state.¹

When the national anthem is played, students and civilians shall stand at attention and men shall remove their headdress, unless worn for a religious purpose.²

In each public elementary, middle and high school in the state, the pledge shall be recited at the beginning of the day. The pledge shall be rendered by students standing with their right hand over his or her heart. When the pledge is given, civilians must show full respect to the flag by standing at attention. Men must remove their headdress, unless worn for a religious purpose.³

Each student must be informed of the right not to participate in the reciting of the pledge by a notice posted in a conspicuous place. The student is excused from reciting the pledge when the student obtains a written statement from their parent.⁴

In Frazier ex rel. Frazier v. Winn, a high school student, without a signed, written excuse from his parent, refused to stand and recite the pledge.⁵ The court upheld the requirement that students must obtain a signed, written statement from their parent before being excused from the pledge.⁶ The court “conclude[d] that the State's interest in recognizing and protecting the rights of parents on some educational issues is sufficient to justify the restriction of some students' freedom of speech.”⁷

However, the court found that the requirement that all civilians, including excused students, stand and place their hand on his or her heart during the pledge, violated the constitution.⁸ An excused student has the right to remain quietly seated during the pledge.⁹

Effect of Proposed Changes

The bill repeals the requirement to conspicuously post notice of the right not to participate and instead provides that students shall be informed of the right not to participate in the pledge by a written notice published in the student handbook, the code of student conduct or a similar school publication.

The bill addresses the constitutional issues cited in Frazier by removing the requirement that all civilians, including excused students, stand and place their hand over their heart during the pledge. Instead, only unexcused students must stand and recite the pledge.

B. SECTION DIRECTORY:

¹ Section 1003.44(1), F.S.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Frazier ex rel. Frazier v. Winn, 535 F.3d 1279, 1285-86 (11th Cir. 2008).

⁶ *Id.* at 1285.

⁷ *Id.*

⁸ *Id.* at 1282 (holding that the “standing at attention” provision should not be enforced).

⁹ *Id.*

Section 1. Amends s. 1003.44, F.S., relating to patriotic programs and rules.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

School districts are currently required to provide written codes of conduct and the inclusion of the right not to participate in the pledge is not expected to have any fiscal impact on school districts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.