

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 303 Religious Expression in Public Schools
SPONSOR(S): PreK-12 Quality Subcommittee; Daniels; Williams and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Quality Subcommittee	14 Y, 0 N, As CS	McAlarney	Duncan
2) Education Committee	15 Y, 0 N	McAlarney	Hassell

SUMMARY ANALYSIS

The bill authorizes a student to:

- Express religious beliefs in written and oral assignments free from discrimination.
- Wear jewelry that displays a religious message or symbol to the same extent as secular types of jewelry that displays messages or symbols are permitted.
- Engage in and organize religious groups before, during, and after the school day in the same manner and to the same extent that secular student organizations and groups are permitted.

The bill requires a school district to:

- Allow a religious group the same access to the same school facilities for assembling as given to a secular group and allow a religious or secular group to advertise or announce its meetings.
- Permit school personnel to participate in religious activities on school grounds that are student-initiated and at reasonable times before or after the school day as long as the activities are voluntary and do not conflict with the duties and responsibilities of such school personnel.

The bill provides that these provisions may be enforced pursuant to s. 761.04, F.S., relating to attorney's fees and costs, authorized by the Religious Freedom Restoration Act of 1998.

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

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal and State Law Regarding Religion

The relationship between religion and government in the United States is governed by the First Amendment to the U.S. Constitution,¹ which both prevents the government from establishing religion and protects privately initiated expression and activities from government interference and discrimination.

The First Amendment to the U.S. Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Similarly, Article I, Section 3 of the Florida Constitution states:

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety.

Both the U.S. Constitution and the Florida Constitution contain an Establishment Clause, Free Exercise Clause, and protect individual freedom of speech and expression.²

Establishment of Religion

The Establishment Clause of the First Amendment to the U.S. Constitution requires the government, including public school officials, to maintain neutrality in its treatment of religion.³ Accordingly, teachers and other school personnel, as government officials, may not lead students in prayer, devotional readings from religious texts, or other religious practices.⁴

Free Exercise of Religion

The protections of the Free Exercise Clause direct that no law may discriminate against some or all religious beliefs or regulate or prohibit conduct undertaken for religious reasons.⁵ Florida courts have generally interpreted Florida's Free Exercise Clause as coequal to the federal clause.⁶

Students may pray, read religious texts, or study religious materials in a non-disruptive manner when not engaged in school activities or instruction.⁷ School authorities are permitted to regulate such activities, but must do so in a manner that does not discriminate against religious expression.⁸

¹ U.S. Const., Amend. 1.

² U.S. Const., Amend. 1; Art. I, s. 3, Fla. Const.

³ U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html (last visited March 9, 2017); see also *Everson v. Board of Education*, 330 U.S. 1, 18 (1947).

⁴ *Engle v. Vitale*, 370 U.S. 421 (1962) (invalidating state laws directing the use of teacher-led prayer in public schools) and *School District of Abington Township Pennsylvania et al. v. Shempp et al.*, 374 U.S. 203 (1963) (invalidating state laws requiring public schools to begin the school day with Bible readings).

⁵ *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

⁶ *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1030 (citing *Toca v. State*, 834 So. 2d 204, 208 (Fla. 2d DCA 2002)).

Additionally, the Florida Religious Freedom Restoration Act (RFRA) specifically protects a person's right to the free exercise of religion.⁹ The RFRA provides that government cannot burden the exercise of religion unless there is a compelling government interest and it is the least restrictive means of accomplishing that interest.¹⁰

The Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination based on race, color, religion, sex, and national origin.¹¹ As such, a school district may not discriminate against an employee on the basis of his or her religion. For purposes of the Civil Rights Act, the term "religion" includes all aspects of religious observance, practice, or belief.¹²

The Equal Access Act

The Equal Access Act¹³ makes it unlawful for any public secondary school that receives federal financial assistance and maintains a limited open forum¹⁴ to deny equal access or fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of religious, political, philosophical, or other content of speech at such meetings.¹⁵

A public secondary school is deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that:¹⁶

1. The meeting is voluntary and student-initiated;
2. There is no sponsorship of the meeting by the school, the government, or its agents or employees;
3. Employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;
4. The meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
5. Nonschool persons do not direct, conduct, control, or regularly attend such activities of student groups.

The U.S. Supreme Court has held that the Equal Access Act does not violate the Establishment Clause of the First Amendment to the U.S. Constitution.¹⁷ The Equal Access Act applies to public secondary schools¹⁸ and does not address the applicability of the Act to elementary or middle schools.¹⁹

⁷ U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html (last visited March 9, 2017).

⁸ *Board of Education of Westside Community Schools, etc. et al. v. Mergens et al.*, 496 U.S. 226 (1990).

⁹ See ch. 761, F.S.

¹⁰ Section 761.03, F.S.

¹¹ 42 U.S.C. s. 2000e.; U.S. Equal Employment Opportunity Commission, *Title VII of the Civil Rights Act of 1964*, <https://www.eeoc.gov/laws/statutes/titlevii.cfm> (last visited March 9, 2017).

¹² 42 U.S.C. s. 2000e(j).

¹³ 20 U.S.C. s. 4071.

¹⁴ A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurricular related student groups to meet on school premises during instructional time. 20 U.S.C. s. 4071(b). This is a different standard from the "limited public forum" specified in SB 436. See *East High Gay Straight Alliance v. Board of Education of Salt Lake City School District*, 81 F. Supp. 2d 1199, 1200 n.1 (D. Utah 1999) (citing *Mergens*, 496 U.S. at 242).

¹⁵ 20 U.S.C. s. 4071(a).

¹⁶ *Id.* at (c).

¹⁷ *Mergens*, 496 U.S. at 253.

¹⁸ A "secondary school" means a public school which provides secondary education as determined by state law. 20 U.S.C. 4072(1). A secondary school in Florida is described as a high school. Section 1003.01(2), F.S.

¹⁹ The U.S. Supreme Court has noted that no meaning can be derived from the decision by Congress not to address elementary schools in the Equal Access Act. *Good News Club v. Milford Central School*, 533 U.S. 98, 118 n.8 (2001).

Guidance on Religious Expression in Public Schools

The DOE is required to annually distribute the federal guidelines on “Religious Expression in Public Schools” published by the U.S. Department of Education to all district school board members, district superintendents, school principals, and teachers for informational purposes.²⁰

Inspirational Message

Florida law authorizes a district school board to adopt a policy allowing an inspirational message by students at a student assembly.²¹ The policy must provide that students who are responsible for organizing any student-led portion of a student assembly must:²²

- Have sole discretion in determining whether an inspirational message is to be delivered.
- Choose the student volunteers to deliver the message. The student volunteers must be solely responsible for the preparation and content of the inspirational message.

School district personnel are prohibited from participating in, or otherwise influencing, the determination of whether an inspirational message is to be delivered or selecting the student volunteers to deliver the inspirational message.²³ Additionally, school district personnel may not monitor or otherwise review the content of a student volunteer’s inspirational message.²⁴

The purpose of this provision is to give students an opportunity for formal or ceremonious observance of an occasion or event.²⁵

Permitting Study of the Bible and Religion and a Brief Meditation Period

District school boards may allow a secular program of education that includes an objective study of the Bible and of religion.²⁶ Also, school districts may set aside 2 minutes of each school day for silent prayer or meditation.²⁷

Protection of School Speech

District school boards, administrative personnel, and instructional personnel cannot take any affirmative action that infringes on the rights afforded to personnel or students by the First Amendment to the United States Constitution. An individual whose constitutional rights would be infringed may waive those rights. Such a waiver of rights must be expressly done in writing.²⁸

Attorney’s Fees and Costs

Florida law provides that the prevailing plaintiff in any action or proceeding to enforce a provision of the Religious Freedom and Restoration Act, chapter 761, F.S., is entitled to reasonable attorney’s fees and costs to be paid by the government.²⁹

²⁰ Section 1002.205, F.S.; see also U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html (last visited March 9, 2017).

²¹ Section 1001.432(1), F.S.

²² *Id.* at (1) (a).

²³ *Id.* at (1) (b) 1.

²⁴ *Id.* at (1) (b) 2.

²⁵ Section 1001.432(2), F.S.

²⁶ Section 1003.45 (1), F.S.

²⁷ Section 1003.45 (2), F.S.

²⁸ Section 1003.4505, F.S.

²⁹ Section 761.04, F.S.

Effect of Proposed Changes

The bill authorizes voluntary expression of religious beliefs by students in public schools. A student may express religious beliefs in homework, artwork, and other written and oral assignments free from discrimination based on the religious content.³⁰ Such assignments must be evaluated based on relevant academic standards, and neither penalized nor rewarded on account of religious content.³¹

In addition to permitting written and oral religious expression, the bill authorizes students to wear jewelry that displays a religious message or symbol³² to the same extent that students are permitted to wear secular jewelry.

The bill also authorizes students to organize religious activities before, during, and after the school day to the same extent that students may engage in secular activities, expression, or groups. A religious group may be given access to the same school facilities for assembling as given to secular groups without discrimination based on the religious content of the group's expression. Further, the bill authorizes a religious group to advertise or announce its meetings to the same extent that a secular group may advertise or announce its meetings.³³ Students at such schools may organize during noninstructional time.³⁴ The bill appears to extend this right to students in public elementary and middle schools.

The bill provides that a school district may not prevent school personnel from participating in religious activities on school grounds that are initiated by students at reasonable times before or after the school day if such activities are voluntary and do not conflict with the responsibilities or assignments of such personnel. Pursuant to the Establishment Clause of the First Amendment to the U.S. Constitution, teachers, school administrators, or other school employees generally may not actively participate in prayer or similar religious activities with students on school grounds, unless the overall context makes clear such employees are not participating in their official capacity.³⁵

The rights provided under the bill may be enforced pursuant to chapter 761, F.S., the Religious Freedom Restoration Act of 1998.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Creates subsection (25) of s. 1002.20, F.S., to include student rights including religious expression, religious jewelry, and religious organizations.

Section 2. Amends s. 1002.205, F.S. prohibiting school districts from preventing school personnel from participating in student initiated religious activities on school grounds.

³⁰ See U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html (last visited March 9, 2017). As an example, if a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer should be judged on the basis of academic standards, such as literary quality. *Id.*

³¹ *Id.*

³² An example of jewelry that displays a religious message or symbol may include a rosary necklace (see *Chalifoux v. New Caney Independent School District*, 976 F. Supp. 659 (S.D. Tex. 1997)).

³³ See Equal Access Act; 20 U.S.C. s. 4071.

³⁴ "A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time." *Id.* at (b).

³⁵ U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html (last visited March 9, 2017). For example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversations or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies. *Id.*

Section 3. Provides an effective date of July 1, 2017.

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:

None.

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

On March 14, 2017, the House PreK-12 Quality Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably. The PCS differs from the bill by deleting provisions relating to clothing and accessories, a limited public forum, and the development and publishing of a model policy.

The bill analysis is drafted to the PCS as adopted by the PreK-12 Quality Subcommittee.