

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 303	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Religious Expression in Public Schools	103	Y's 12	N's
SPONSOR(S):	PreK-12 Quality Subcommittee; Daniels and others	GOVERNOR'S ACTION:	Approved	
COMPANION BILLS:	SB 436			

SUMMARY ANALYSIS

CS/HB 303 passed the House on May 5, 2017, as SB 436.

The bill creates the "Florida Student and School Personnel Religious Liberties Act" and prohibits a school district from discriminating against K-12 public school students, their parents, and school personnel based on their religious belief and expression. The bill authorizes a student to:

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

A school district must treat a student's voluntary expression of a religious viewpoint on an otherwise permissible subject in the same way that it would treat the expression of a secular viewpoint. Additionally, 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.
- Allow groups that meet for prayer or religious speech to advertise or announce their meetings to the same extent that a secular group may advertise or announce their meetings.

School districts must adopt a limited public forum policy to be followed when students are speaking publicly at a school event. The Florida Department of Education is directed to develop and publish on its website a model policy for limited public forums and the voluntary expression of religious viewpoints.

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

The bill was approved by the Governor on June 9, 2017, ch. 2017-74, L.O.F., and will become effective on July 1, 2017.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Federal and State Law Regarding Religion and Free Speech

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 May 16, 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 Lukimi 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)).

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 May 16, 2017).

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

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

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

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 May 16, 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).

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

Free Speech and Expression

The Florida Constitution and the U.S. Constitution provide that every person may speak, write, and publish on all subjects. However, the government may limit a person's freedom of speech or expression if the person's speech or expression occurs on government-owned property, including public K-12 and postsecondary schools.²⁹ The limitation on speech is dictated by the type of public forum created. There are generally three types of public forums:³⁰

1. Traditional/Open public forum: A place with a longstanding tradition of freedom of expression, such as a public park or street corner. The government may only impose content-neutral time, place, and manner restrictions on speech and expression.

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 May 16, 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 *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992).

³⁰ First Amendment Schools, *What is a public forum?* <http://www.firstamendmentschools.org/freedoms/faq.aspx?id=13012>, (last visited May 16, 2017); *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 45-46 (1983) .

2. Designated/Limited public forum: A place with a more limited history of expressive activity, usually only for certain groups or topics.
3. Closed Public Forum: A place not traditionally open to public expression.

While student speech and religious expression are generally constitutionally protected, these rights can be limited by the federal, state, or local government.³¹ These rights are protected to the extent they do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others.³²

Florida law authorizes a district school board to adopt a policy allowing an inspirational message by students at a student assembly.³³ This policy must provide that students who are responsible for organizing any student-led portion of an assembly must have sole discretion in determining whether an inspirational message is to be delivered and choose the student volunteers to deliver the message.³⁴ These volunteers must be solely responsible for the preparation and content of the message. School district personnel are prohibited from participating in or influencing whether an inspirational message is to be delivered.³⁵ Also, personnel may not monitor or otherwise review the content of a student volunteer's inspirational message.³⁶

Effect of Proposed Changes

The bill creates the "Florida Student and School Personnel Religious Liberties Act" and 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.³⁷ Such assignments must be evaluated based on relevant academic standards, and neither penalized nor rewarded on account of religious content.³⁸

In addition to permitting written and oral religious expression, the bill authorizes students to wear jewelry, accessories, and clothing that display a religious message or symbol³⁹ to the same extent that students are permitted to wear secular clothing, accessories, and 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

³¹ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506, 513-514 (1969) (stating "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gates."); see *Mergens*, 496 U.S. at 230, 250 (1990) and *Chandler v. Siegelman*, 230 F.3d 1313, 1316-1317 (11th Cir. 2001) cert. denied, 533 U.S. 916 (2001) (religious expression).

³² *Tinker*, 393 U.S. at 506, 512-13.

³³ Section 1001.432(1), F.S.

³⁴ *Id.* at (1)(a).

³⁵ *Id.* at (1)(b)1.

³⁶ *Id.* at (1)(b)2.

³⁷ 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 May 16, 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.*

³⁸ *Id.*

³⁹ 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)).

group may advertise or announce its meetings.⁴⁰ Students at such schools may organize during noninstructional time.⁴¹

The bill specifies certain requirements for school districts regarding religious expression in public schools. School districts are directed to comply with Title VII of the Civil Rights Act of 1964, which prohibits an employer from discriminating against an employee on the basis of religion. Additionally, school districts may not prevent personnel from participating in religious activities on school grounds that are initiated by students before or after the school day. The activities must be voluntary, held at reasonable times, and must not conflict with the responsibilities or assignments of such personnel.⁴²

Currently, district school boards have discretion whether or not to establish a limited public forum.⁴³ The bill requires a school district to adopt a policy that establishes a limited public forum for student speakers at any school event where a student is speaking publicly. The school district must:

- provide a forum that does not discriminate against a student's voluntary expression of a religious viewpoint on an otherwise permissible subject;
- provide, based on neutral criteria, a method for student speakers selection at school activities and events;
- ensure the student speaker does not engage in vulgar, obscene, indecent, or offensively lewd speech; and
- state in written or oral form that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the school district. The disclaimer must be delivered at any event where a student speaks publicly.

A forum may not exclude student expression of a religious viewpoint on an otherwise permissible subject.

The Florida Department of Education (DOE) must develop and publish on its website a model policy⁴⁴ for limited public forums and the voluntary expression of religious viewpoints.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁴⁰ See Equal Access Act; 20 U.S.C. s. 4071.

⁴¹ "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).

⁴² 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 May 16, 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.*

⁴³ See Perry, 460 U.S. at 45-46. A limited public forum is a place with a more limited history of expressive activity, usually only for certain groups or topics. Examples may include a university meeting hall. Such limitations must serve a compelling state interest. First Amendment Schools, What is a public forum? <http://www.firstamendmentschools.org/freedoms/faq.aspx?id=13012>, (last visited May 16, 2017).

⁴⁴ See e.g. TEX. EDUC. CODE § 25.156, Texas Model Policy Governing Voluntary Religious Expression in Public Schools, <http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.25.htm#25.156> (last visited May 17, 2017); Student Religious Expression, Texas Association of School Boards Legal Services; https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Community/Religion-in-the-Public-Schools/documents/stud_religious_exp.aspx (last visited May 17, 2017); MISS. CODE ANN. § 37-12-9(5), Mississippi Model Policy, Mississippi Student Religious Liberties Act, <http://law.justia.com/codes/mississippi/2014/title-37/chapter-12/section-37-12-9> (last visited May 17, 2017).

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.