

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 737 Moments of Silence in Public Schools

**SPONSOR(S):** Daniels

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 946

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) PreK-12 Innovation Subcommittee	17 Y, 0 N	Satterly	Brink
2) PreK-12 Appropriations Subcommittee	8 Y, 0 N	Bailey	Potvin
3) Education Committee	17 Y, 0 N	Satterly	Hassell

**SUMMARY ANALYSIS**

The bill requires a moment of silence to be set aside for public school students during each school day. The bill directs the principal of each school to require first-period classroom teachers in all grades to set aside one to two minutes for a moment of silence. The bill prohibits a teacher from making suggestions about the nature of a student’s reflection during the moment of silence. Instead, teachers must encourage parents to discuss the moment of silence with their children and to make suggestions to their children about how they should use this time.

The bill prohibits students from interfering with each other’s participation in the moment of silence.

The bill has no fiscal impact.

The bill has an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### **Federal Law Regarding Moments of Silence**

The U.S. Constitution prevents the government from establishing religion and protects privately initiated expression and activities from government interference and discrimination.<sup>1</sup> In order to determine whether a challenged state statute is permissible under the Establishment Clause, courts apply the *Lemon Test*, which requires the challenged statute to have a secular legislative purpose, to have a principal or primary effect that neither advances nor inhibits religion, and to avoid excessive government entanglement with religion.<sup>2</sup>

Two federal cases define the boundaries of what is permissible under the Establishment Clause regarding moments of silence in public schools.<sup>3</sup> In *Wallace v. Jaffree*, the Supreme Court of the United States considered an Alabama statute that authorized a daily period of silence in public schools for “meditation or voluntary prayer.”<sup>4</sup> The Court held the Alabama statute was unconstitutional because it was enacted for the purpose of endorsing religion, violating the Establishment Clause of the First Amendment and failing the first prong of the *Lemon Test*.<sup>5</sup> In *Brown v. Gwinnett County School District*, the United States Court of Appeals for the Eleventh Circuit upheld a Georgia statute that required a “moment of quiet reflection” in public schools. There, the court held the statute was constitutional because it had the secular legislative purpose of providing students with an opportunity for a brief period of quiet reflection before beginning the day's activities, did not advance nor inhibit religion because it required a moment of quiet reflection rather than prayer, and did not entangle the government with religion.<sup>6</sup>

##### U.S. Department of Education Guidance

Federal law requires the Secretary of the U.S. Department of Education (USDOE) to issue guidance on constitutionally protected prayer in public elementary and secondary schools.<sup>7</sup> In January 2020, the USDOE published *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools* to provide information on the current state of the law concerning religious expression in public schools.<sup>8</sup> The document provides that “if a school has a “moment of silence” or other quiet periods during the school day, students are free to pray silently, or not to pray, during these periods of time; teachers and other school employees may neither require, encourage, nor discourage students from praying during such time periods.”<sup>9</sup>

##### **State Law Regarding Moments of Silence**

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<sup>1</sup> See U.S. Const., Amend. 1

<sup>2</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

<sup>3</sup> See *Wallace v. Jaffree*, 472 U.S. 38, 61 (1985). See *Brown v. Gwinnett Cty. Sch. Dist.*, 112 F.3d 1464 (11<sup>th</sup> Cir. 1997).

<sup>4</sup> *Wallace*, 472 U.S. at 40.

<sup>5</sup> *Id.* at 61.

<sup>6</sup> *Brown*, 112 F.3d at 1474.

<sup>7</sup> 20 U.S.C. § 7904(a).

<sup>8</sup> U.S. Department of Education, *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools* (January 16, 2020), available at [https://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html).

<sup>9</sup> *Id.*

Fifteen states require a moment of silence for the purpose of meditation, reflection, or prayer during each school day.<sup>10</sup> An additional sixteen states authorize the school district, school, or teachers to allow students to observe a period of silence for meditation, reflection, or prayer during each school day.<sup>11</sup>

Similar to the U.S. Constitution, the Florida Constitution also prevents the government from establishing religion and protects privately initiated expression and activities from government interference and discrimination.<sup>12</sup>

Florida law permits district school boards to set aside up to two minutes for silent prayer or meditation at the start of each school day or each school week in the public schools in the district.<sup>13</sup>

### **Effect of Proposed Changes**

The bill provides a legislative finding that “in the hectic society of today, too few persons are able to experience even a moment of quiet reflection before plunging headlong into the activities of daily life. Young persons are particularly affected by the absence of an opportunity for quiet reflection. The Legislature finds that our youth, and society as a whole, would be well served if students in public schools were afforded a moment of silence at the beginning of each school day.”<sup>14</sup>

The bill requires a moment of silence to be set aside for public school students during each school day. The bill directs the principal of each school to require first-period classroom teachers in all grades to set aside one to two minutes for a moment of silence. The bill prohibits a teacher from making suggestions about the nature of a student’s reflection during the moment of silence and prohibits students from interfering with each other’s participation in the moment of silence.

Teachers must encourage parents to discuss the moment of silence with their children and to make suggestions to their children about how they should use this time.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1003.45, F.S., requiring a moment of silence to be set aside for public school students at the beginning of each school day.

**Section 2.** Provides an effective date of July 1, 2020.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

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<sup>10</sup> ALA. CODE § 16-1-20.4; ARK. CODE ANN. § 6-10-115; CONN. GEN. STAT. § 10-16a; GA. CODE ANN. § 20-2-1050; ILL. COMP. STAT. 20/1; IND. CODE § 20-30-5-4.5; LA. REV. STAT. ANN. § 17:2115; MASS. GEN. LAWS ANN. Ch. 71 § 1A; NEV. REV. STAT. ANN. § 388.075; OKLA. STAT. tit. 70, § 11-101.2; R.I. GEN. LAWS § 16-12-3.1; S.C. CODE ANN. § 59-1-443; TENN. CODE ANN. § 49-6-1004; TEX. EDUC. CODE ANN. § 25.082; VA. CODE ANN. § 22.1-203.

<sup>11</sup> ARIZ. REV. STAT. ANN. § 15-342; DEL. CODE ANN. tit. 14 § 4101A; Section 1003.45, F.S.; KAN. STAT. ANN. § 72-9929; KY. REV. STAT. ANN. § 158.175; MD. CODE ANN., EDUC. § 7-104; ME. REV. STAT. ANN. tit. 20-A § 4805; MICH. COMP. LAWS ANN. § 380.1565; MINN. STAT. ANN. § 121A.10; N.H., REV. STAT. ANN. § 189:1-b; N.M. STAT. ANN. § 22-27-3; N.Y. EDUC. LAW § 3029-a; N.C. GEN. STAT. § 115C-47; N.D. CENT. CODE § 15.1-19-03.1; OHIO REV. CODE ANN. § 3313.601; 24 PA. CONS. STAT. § 15-1516.1; UTAH CODE ANN. § 53G-7-207.

<sup>12</sup> Art. I, s. 3, Fla. Const.

<sup>13</sup> Section 1003.45, F.S.

<sup>14</sup> See ALA. CODE § 16-1-20.4, which includes nearly identical legislative finding language.

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**

None.