

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/SB 98 (First Engrossed) Education

SPONSOR(S): Judiciary, Siplin and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education Committee	9 Y, 6 N	Muller	Klebacha
2) Judiciary Committee			

SUMMARY ANALYSIS

The bill authorizes, but does not require, a district school board to adopt a policy allowing an inspirational message to be delivered by students at a student assembly.

The bill requires that if adopted, the policy provide that students who are responsible for organizing any student-led portion of a student assembly must have sole discretion in determining whether an inspirational message is to be delivered. Additionally, those students must choose the student volunteer or volunteers who will deliver the inspirational message. The student volunteer must be solely responsible for the preparation and content of the inspirational message.

If adopted, the policy must provide that school district personnel may not participate in, or otherwise influence, the determination of whether an inspirational message is to be delivered or select the student volunteer who will deliver the message. School district personnel may not monitor or otherwise review the content of a student volunteer's inspirational message.

Some school districts have already authorized policies permitting student speech at assemblies. The bill resembles a policy which has withstood scrutiny when considered by a federal court.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation:

Florida law currently allows district school boards to provide secular instruction including, but not limited to, an objective study of the Bible and religion.¹ Additionally, the district school board may provide a brief period, not to exceed 2 minutes, to be set aside at the start of each school day or each school week for the purpose of silent prayer or meditation.²

Florida law also requires the Department of Education to distribute the guidelines on “Religious Expression in Public Schools,” published by the United States Department of Education.³ The guidelines must be provided to all district school board members, district school superintendents, school principals, and teachers.⁴ These guidelines provide information regarding, for example, student prayer, moments of silence, student speech at student assemblies and extracurricular events,⁵ and prayer at graduation.⁶

Florida law does not, however, specifically address student speech at student assemblies. Even though the law is silent on this issue, a school district currently has the authority to adopt a policy regarding student speech at student assemblies, provided the policy aligns with constitutional standards and national guidelines referenced above. Duval County School Board, for example, adopted such a policy, which is discussed below.

Effect of Proposed Changes:

The bill authorizes, but does not require, a district school board to adopt a policy allowing an inspirational message to be delivered by students at a student assembly. The bill does not restrict the application of these policies to a particular grade level. Accordingly, a school district could adopt a policy which pertains only to student assemblies at secondary schools. However, a policy that applies to K-12 would generally have limited impact on elementary schools in that student assemblies do not occur as often in the elementary grades and to the extent they do, elementary school students are less frequently held responsible for organizing any student-led portion of such an assembly, as is required by the bill.

If a district school board chooses to adopt a policy allowing a student inspirational message at a student assembly, then the policy must provide that the students who are responsible for organizing any student-led portion of that assembly have sole discretion to determine whether an inspirational message is to be delivered. Additionally, those students must choose the student volunteer or volunteers who will deliver the inspirational message. The student volunteer is solely responsible for the preparation and content of the inspirational message.

¹ Section 1003.45(1), F.S.

² Section 1003.45(2), F.S.

³ Section 1002.205, F.S.; United States Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, available at http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

⁴ Section 1002.205, F.S.

⁵ Section 1003.4505, F.S., provides for protection of school speech. More particularly, “[d]istrict school boards, administrative personnel, and instructional personnel are prohibited from taking affirmative action ... that infringes or waives the rights or freedoms afforded to instructional personnel, school staff, or students by the First Amendment to the United States Constitution, in the absence of the express written consent of any individual whose constitutional rights would be impacted by such infringement or waiver.”

⁶ United States Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, available at http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

The bill also stands silent regarding the types of assemblies (e.g., commencement exercises, sporting events) at which an inspirational message could be delivered, leaving that determination to each school district. Accordingly, a school district could narrow its policy to address specific types of assemblies.

If adopted, the policy must prohibit school district personnel from participating in, or otherwise influencing, the determination of whether an inspirational message is to be delivered or select the student volunteer who will deliver the message. School district personnel may not monitor or otherwise review the content of a student volunteer's inspirational message.

The stated purpose of the bill is to provide students with the opportunity for formal or ceremonious observance of an occasion or event.

Some school districts have adopted policies regarding student speech as assemblies. For example, Duval County School Board adopted such a policy in 2001.⁷ The Duval County policy allowed a brief opening and/or closing message at high school graduation exercises, at the discretion of the graduating senior class. The policy also explained that the message was to be given by a student volunteer, in the graduating senior class, chosen by the graduating senior class as a whole. Additionally, Duval County's policy required that if the graduating senior class chose to use a message, the content of the message was to be prepared by the student volunteer, and was not to be monitored or otherwise reviewed by Duval County School Board, its officers or employees. The stated purpose of the policy was to allow students to direct their own graduation message without monitoring or review by school officials.⁸

The Duval County policy was challenged as a violation of the "Establishment Clause."⁹ The Establishment Clause, part of the First Amendment to the United States Constitution, provides that government shall make no law respecting the establishment of religion.¹⁰ Similarly, the Florida Constitution provides "[t]here shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof."¹¹

The Eleventh Circuit Court held¹² that Duval County's policy was facially constitutional and did not violate the Establishment Clause because the policy was neutral on its face, in that it contained no religious terms or references;¹³ prohibited oversight by district personnel;¹⁴ and, stated a secular purpose for such messages.¹⁵ Like the Duval County policy, the bill contains no overtly religious

⁷ *Adler v. Duval County School Bd.*, 250 F.3d 1330, 1332 (11th Cir. 2001).

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. Const., Amend. 1. The Fourteenth Amendment imposes the substantive limitations of the First Amendment on the legislative power of the States and their political subdivisions. *See Everson v. Board of Education*, 330 U.S. 1 (1947). The First Amendment governs the relationship between religion and government in the United States. The First Amendment not only prevents the government from establishing religion but also protects privately initiated religious expression and activities from government interference and discrimination.

¹¹ Art. I, s. 3, Fla. Const.

¹² *Adler*, 250 F.3d at 1332-33.

¹³ The United States Supreme Court has stated that certain language, such as the term "invocation," describes "an appeal for divine assistance," and has held a policy permitting this type of student speech unconstitutional. The Court reasoned that a policy containing such language encouraged the selection of a religious message. *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 306-07. (In *Santa Fe*, the Court considered a school district policy which permitted "a brief invocation or message.")

¹⁴ The United States Supreme Court in *Santa Fe* stated that involvement by school district personnel indicates affirmative state-sponsorship of religion. *Santa Fe*, 530 U.S. at 306-10. Also, the court in *Adler* stated: "[U]nder Duval County's policy school officials have no power to direct that a message (let alone a religious message) be delivered at graduation ceremonies, or control in any way the content of any message actually to be delivered. The School Board also does not suggest in any way, let alone require, that the graduating class consider religious or any other criteria in deciding whether to have a student message or in selecting a particular student speaker. ... [T]he content of the message shall be prepared by the student speaker alone and no one else. ... There, on the face of the policy itself, the students unambiguously understand that any student message is utterly divorced from any state sponsorship." *Adler*, 250 F.3d at 1332-33.

¹⁵ The policy in *Santa Fe* stated that the purpose of the message was "to solemnize the event." The United States Supreme Court reasoned that a religious message is the most obvious method of solemnizing an event. *Santa Fe*, 530 U.S. at 306.

language; contains an explicit prohibition on oversight by school district personnel; and states a secular purpose for such messages; i.e., "to provide student with the opportunity for formal or ceremonious observance of an occasion or event."

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law that allows a district school board to adopt a policy allowing a student-led inspirational message at a student assembly, provides policy requirements, and provides the purpose of the bill.

Section 3. Provides an effective date of July 1, 2012.

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:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.