HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/SB 98 (HB 317)	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Judiciary; Siplin and others (VanZant and others)	88 **Y's**	27 **N's**
COMPANION BILLS:	HB 317	**GOVERNOR'S ACTION:**	Pending

SUMMARY ANALYSIS

CS/SB 98 passed the Senate on February 1, 2012, and subsequently passed the House on March 1, 2012. 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.

The bill does not have a fiscal impact.

Subject to the Governor's veto power, the effective date of the bill is July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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] The district school board may also provide a brief period, not to exceed two 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]

Additionally, Florida law prohibits district school boards and administrative and instructional personnel from taking affirmative action, including entering into agreements, which infringe upon personnel or student First Amendment rights, unless waived, in writing, by any individual whose constitutional rights would be impacted.[3]

Florida law requires the Department of Education to distribute the guidelines on "Religious Expression in Public Schools"[4] to all district school board members, district school superintendents, school principals, and teachers.[5] The guidelines include information regarding student prayer, moments of silence, student speech at student assemblies and extracurricular events, and prayer at graduation.[6]

Florida law does not, however, specifically address affirmative state authorization of student speech at school. 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.[7]

Some school districts have adopted policies regarding student speech at school assemblies. For example, the Duval County School Board adopted such a policy in 2001, which allowed a brief opening and/or closing message at high school graduation exercises, at the discretion of the graduating senior class.[8] The policy also provided 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 School Board's policy required that if the graduating senior class chose to deliver 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.[9]

The Duval County School Board policy was challenged as a violation of the "Establishment Clause."[10] 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.[11] Similarly, the Florida Constitution provides,

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[1] Section 1003.45(1), F.S.
[2] Section 1003.45(2), F.S.
[3] Chapter 2010-214, L.O.F.; s. 1003.4505, F.S.
[4] Section 1002.205, F.S.
[5] 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.
[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.
[7] *Adler v. Duval County School Bd.*, 250 F.3d 1330, 1332 (11th Cir. 2001).
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] 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.

"[t]here shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof."[12]

The Eleventh Circuit Court held[13] that Duval County School Board'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;[14] prohibited oversight by district personnel;[15] and, stated a secular purpose for such messages.[16] Like the Duval County School Board policy, the bill contains no overtly religious language; prohibits oversight by school district personnel; and states a secular purpose for such messages; i.e., "to provide students with the opportunity for formal or ceremonious observance of an occasion or event."

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

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.

If adopted, the policy must also 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 bill does not restrict the application of these policies to a particular grade level and is silent regarding the types of assemblies (e.g., commencement exercises and sporting events) at which an inspirational message could be delivered. However, a school district retains its discretion to limit the grade levels and events to which its policy applies.

Concerns have been expressed that the bill will result in a lack of student supervision at student assemblies.[17] These concerns are unfounded. The bill merely prohibits school district personnel from monitoring or reviewing

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[12] Art. I, s. 3, Fla. Const.

[13] *Adler,* 250 F.3d at 1332-33.

[14] 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 (2000). (In *Santa Fe*, the Court considered a school district policy which permitted "a brief invocation or message.")

[15] 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.

[16] 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.

[17] House Education Committee Meeting (Feb. 13, 2012), *recording available at* http://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?SessionId=70&CommitteeId=2591.

the content of a student volunteer's inspirational message; it does not limit or restrict school district personnel from supervising or monitoring a student assembly.

It has also been suggested that the bill will allow elementary school students to carry on assemblies without adult supervision.[18] Again, the bill does not limit the supervision of students during a student assembly, but rather prohibits school district personnel from monitoring or reviewing the content of an inspirational message. The bill specifies that students who are responsible for organizing the student-led portion of a student assembly are also responsible for deciding whether to deliver an inspirational message and which student volunteer will deliver the message. It is unlikely that elementary school students will be responsible for organizing a student-led portion of any assembly.

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.

[18] *Id.*