

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 529 Moments of Silence in Public Schools

**SPONSOR(S):** Fine

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 282

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Early Learning & Elementary Education Subcommittee	12 Y, 6 N	Bauman	Brink
2) Secondary Education & Career Development Subcommittee			
3) Education & Employment Committee			

### 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 1 to 2 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, 2021.

# 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 that the challenged statute have a secular legislative purpose, have a principal or primary effect that neither advances nor inhibits religion, and 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 current 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 (11th 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* (Jan. 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.*

Fourteen states require a moment of silence for the purpose of meditation, reflection, or prayer during each school day.<sup>10,11</sup> An additional 17 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>12,13</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>14</sup>

Florida law permits district school boards to set aside up to 2 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>15</sup>

### **Effect of Proposed Changes**

The bill provides a legislative finding that “in today’s hectic society, 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>16</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 1 to 2 minutes for a moment of silence.<sup>17</sup> 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 or guardians to discuss the moment of silence with their children and to make suggestions to their children about how they should use this time.<sup>18</sup>

## **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, 2021.

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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; 105 ILL. COMP. STAT. 20/1; IND. CODE § 20-30-5-4.5; 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(a); TEX. EDUC. CODE ANN. § 25.082(d); VA. CODE ANN. § 22.1-203.

<sup>11</sup> New Hampshire is not included in this figure because its requirement involves schools providing students up to 5 minutes each day to participate voluntarily in the free exercise of religion before classes officially begin. *See* N.H. REV. STAT. ANN. § 189:1-b.

<sup>12</sup> ARIZ. REV. STAT. ANN. § 15-342(21); DEL. CODE ANN. tit. 14 § 4101A; Section 1003.45, F.S.; KAN. STAT. ANN. § 72-9929; KY. REV. STAT. ANN. § 158.175(5); LA. REV. STAT. ANN. § 17:2115; 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.M. STAT. ANN. § 22-27-3; N.Y. EDUC. LAW § 3029-a; N.C. GEN. STAT. § 115C-47(29); 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>13</sup> Montana is not included in this figure because it permits any teacher, principal, or superintendent to open the school day with a prayer but does not address moments of silence. *See* MONT. CODE ANN. 20-7-112.

<sup>14</sup> Art. I, s. 3, Fla. Const.

<sup>15</sup> Section 1003.45, F.S.

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

<sup>17</sup> One to 2 minutes daily totals to 3 to 6 hours of instructional time over the course of the school year. Florida Department of Education, *Agency Legislative Bill Analysis for SB 282* (Dec. 18, 2020), at 2.

<sup>18</sup> Section 1000.21(5), F.S. defines “parent” as either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent.

## 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

None.