

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 195 Study of the Bible and Religion

**SPONSOR(S):** Daniels and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Quality Subcommittee	11 Y, 3 N	McAlarney	Guy
2) PreK-12 Appropriations Subcommittee			
3) Education Committee			

### SUMMARY ANALYSIS

The bill requires school districts to offer high school-level courses that teach an objective study of religion or the Bible. The courses must be elective, and no student would be required to take a course.

For courses on the Bible, the bill requires districts to offer courses on:

- The Hebrew Scriptures and the Old Testament of the Bible;
- The New Testament of the Bible; and
- The Hebrew Scriptures, the Old Testament of the Bible, and the New Testament of the Bible.

The bill does not allow districts or schools to require a student to use a specific translation of the Hebrew Scriptures or the Bible as the only text for a course. A course must follow all state and federal laws and guidelines regarding religious neutrality, and must accommodate the diverse religious views, traditions, and perspectives of all students in the school. The bill prohibits showing a hostility toward particular religions or religious perspectives.

The bill requires the Florida Department of Education (DOE) to include the new elective courses in the DOE's Course Code Directory.

The school districts may incur costs related to developing curriculum, hiring staff, purchasing books, and other related items. The cost is indeterminate.

The bill has an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Federal and State Constitutional Law Regarding Religion**

The relationship between religion and government in the United States is governed by the First Amendment to the U.S. Constitution,<sup>1</sup> 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 and an Free Exercise Clause, which protect an individual's freedom of speech and expression.<sup>2</sup>

##### 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.<sup>3</sup> Accordingly, teachers and other school personnel, as government officials, may not lead students in prayer, devotional readings from religious texts, or other religious practices.<sup>4</sup> The same would apply under Article I, Section 3 of the Florida Constitution as Florida courts have generally held that in any state issue the federal constitution represents the "floor" for basic freedoms, and the state constitution represents the "ceiling."<sup>5</sup>

##### 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.<sup>6</sup> Florida courts have generally interpreted Florida's Free Exercise Clause as coequal to the federal clause.<sup>7</sup>

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

<sup>2</sup> U.S. Const., Amend. 1; Fla. Const. art. I, s. 3.

<sup>3</sup> 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](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) (last visited Mar. 1, 2019); see also *Everson v. Board of Education*, 330 U.S. 1, 18 (1947).

<sup>4</sup> *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).

<sup>5</sup> *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1030 (citing *Traylor v. State*, 596 So. 2d 957, 962 (Fla.1992)).

<sup>6</sup> *Church of the Lukimi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

<sup>7</sup> *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1030 (citing *Toca v. State*, 834 So. 2d 204, 208 (Fla. 2d DCA 2002)).

Students may pray, read religious texts, or study religious materials in a non-disruptive manner when not engaged in school activities or instruction at school.<sup>8</sup> School authorities are permitted to regulate such activities, but must do so in a manner that does not discriminate against religious expression.<sup>9</sup> Additionally, the Florida Religious Freedom Restoration Act (RFRA) specifically protects a person's right to the free exercise of religion.<sup>10</sup> 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.<sup>11</sup>

### Religious Curriculum in Public Schools

While requiring public schools to have daily Bible readings has been found unconstitutional by the Supreme Court of the United States (SCOTUS), religious curriculum is permitted in public schools.<sup>12</sup> The SCOTUS held in *School District of Abington Township Pennsylvania et al. v. Shempp et al.*, that religious curriculum is constitutional if it is, "presented objectively as part of a secular program of education."<sup>13</sup> The court stated that the, "Bible is worthy of study for its literary and historic qualities. . . . [I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization."

According to the American Civil Liberties Union, Bible education is not unconstitutional if the course is designed to be objective.<sup>14</sup> According to the National Conference of State Legislatures, Arizona, Arkansas, Georgia, Iowa, Kentucky, Oklahoma, South Carolina, South Dakota, Tennessee, and Texas have adopted laws requiring school districts to provide Bible courses as electives.<sup>15</sup> Also, numerous states are currently introducing Bible literacy classes.<sup>16</sup>

Public schools may not provide religious instruction, but they may teach about religion, including the Bible or other scripture, the history of religion, comparative religion, the Bible or other scripture as literature, and the role of religion in the history of the United States and other countries.<sup>17</sup> Similarly, it is permissible to consider religious influences on art, music, literature, and social studies.<sup>18</sup>

### **State Law on Teaching a Course on the Bible or Religion**

Florida law permits, but does not require, public school districts to offer a course on the study of the Bible or religion. Any course on the Bible or religion must be a secular program of education that is an objective study.<sup>19</sup> Additionally, districts may allow a brief meditation period at the start of the school day or school week. The meditation period is for the purpose of silent prayer or meditation and may not exceed two minutes.<sup>20</sup>

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<sup>8</sup> 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](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) (last visited Mar. 1, 2019).

<sup>9</sup> *Board of Education of Westside Community Schools, etc. et al. v. Mergens et al.*, 496 U.S. 226 (1990).

<sup>10</sup> See ch. 761, F.S.

<sup>11</sup> Section 761.03, F.S.

<sup>12</sup> *School District of Abington Township Pennsylvania et al. v. Shempp et al.*, 374 U.S. 203 (1963).

<sup>13</sup> *Id.*

<sup>14</sup> American Civil Liberties Union, *Bible in Public Schools*, <https://www.aclu.org/bible-public-schools> (last visited Jan. 30, 2019).

<sup>15</sup> *Id.*

<sup>16</sup> E-mail from Benjamin Erwin, Research Analyst, Education Program, National Conference of State Legislatures, Feb. 18, 2019.

<sup>17</sup> U.S. Department of Education, *Religious Expression in Public Schools: A Statement of Principles*, Religious Expression, Teaching about Religion, Jun. 1998, <https://files.eric.ed.gov/fulltext/ED416591.pdf> (last visited Mar. 7, 2019).

<sup>18</sup> *Id.*

<sup>19</sup> Section 1003.45(1), F.S.

<sup>20</sup> Section 1003.45(2), F.S.

## Department of Education Course Code Directory

Courses funded through the Florida Education Finance Program (FEFP) and courses for which students may earn credit toward high school graduation must be listed in the Course Code Directory (CCD).<sup>21</sup> School, district, and postsecondary personnel are required to use the CCD when:<sup>22</sup>

- Scheduling students into any PreK-12 course, adult general education course, or postsecondary career and technical education course.
- Aggregating student assignments for course data.
- Identifying courses which may be used to fulfill graduation and program completion requirements.
- Determining appropriate educator certification for specified courses.

## The Bible

The Bible is most widely distributed, and bestselling, book in the world.<sup>23</sup> The Old Testament is comprised of the Hebrew Scriptures compiled before the birth of Jesus Christ. The New Testament is comprised of the Gospels, Acts of the Apostles, Epistles, and the Book of the Apocalypse (Revelation).<sup>24</sup> The Bible took its current form at the Council of Carthage in the 4<sup>th</sup> century A.D.<sup>25</sup> It was divided into chapters in the 13<sup>th</sup> century, and the chapters were divided into verses in the 16<sup>th</sup> century.<sup>26</sup>

There are several translations and compilations of the Bible. These differences can be significant. For example, Judaism does not include the Christian New Testament in its sacred scripture, and the Catholic Old Testament has 46 books while the Protestant Old Testament has 39 books.<sup>27</sup> Popular English Bible translations include the Revised Standard Version, Douay-Rheims, New Living Translation, New International Version, King James Version, English Standard Version, Common English Bible, and New American Standard Bible.<sup>28</sup>

## Hebrew Scriptures

The Hebrew Scriptures are a collection of writings that are the sacred books of the Jewish people. The Hebrew Scriptures are commonly called the Tanakh and consist of the Torah, Nevi'im and Kethuvim.<sup>29</sup> They are often supplemented with the Talmud, which is a collection of rabbinical teachings of Jewish law.<sup>30</sup> The Hebrew Scriptures are a fundamental part of the Bible and are the building blocks of Judaism and Christianity.<sup>31</sup> While the Hebrew Scriptures are the foundation of the Judaism and Christianity, religious leaders are not in agreement on which compilation of writings should be contained in the Hebrew Scriptures.<sup>32</sup>

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<sup>21</sup> Rule 6A-1.09441, F.A.C.

<sup>22</sup> Florida Department of Education, Course Code Directory and Instructional Personnel Assignments, *2018-2019 Course Code Directory*, <http://www.fldoe.org/policy/articulation/ccd/2018-2019-course-directory.stml> (last visited Mar. 5, 2019).

<sup>23</sup> Guinness World Records, Best-selling book of non-fiction, The Bible, <http://www.guinnessworldrecords.com/world-records/best-selling-book-of-non-fiction> (last visited Feb. 8, 2019).

<sup>24</sup> Douay-Rhemis Bible, <http://drbo.org/> (last visited Feb. 8, 2019).

<sup>25</sup> Christianity Today, Christian History, *How We Got Our Bible: Christian History Timeline*, Philip W. Comfort, <https://www.christianitytoday.com/history/issues/issue-43/how-we-got-our-bible-christian-history-timeline.html> (last visited Feb. 8, 2019).

<sup>26</sup> Catholic Answers, *Where did the Chapter and Verse Numbers of the Bible Originate?*, Aug. 4, 2011, <https://web.archive.org/web/20120505012549/http://www.catholic.com/quickquestions/where-did-the-chapter-and-verse-numbers-of-the-bible-originate> (last visited Feb. 8, 2019).

<sup>27</sup> First Amendment Center, *The Bible and Public School: A First Amendment Guide, Which Bible?*, p. 8, [http://www.religiousfreedomcenter.org/wp-content/uploads/2014/08/bible\\_guide\\_graphics.pdf](http://www.religiousfreedomcenter.org/wp-content/uploads/2014/08/bible_guide_graphics.pdf) (last visited Mar. 1, 2019).

<sup>28</sup> Email from Summer Ingram, National Director of Prayer and Mobilization, Congressional Prayer Caucus Foundation, Feb. 20, 2019.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Telephone Interview with Rev. J. Leon Hooper, S.J., Director, Georgetown University Woodstock Jesuit Library, (Feb. 8, 2019).

<sup>32</sup> *Id.*

## Objective Study of Religion or the Bible

Any study of religion or the Bible must be an objective study. An objective study of religion or the Bible means a historical study that is not intended to convert or evangelize the student.<sup>33</sup> It looks at how literature, arts, history, forms of government, archaeology, civilizations, and cultures have been influenced by the Bible. This is very different from a devotional study of religion or the Bible. A devotional study of religion or the Bible accepts it as divinely inspired. Unlike an objective study, it has the goal of evangelizing and converting the student. It attempts to help the student determine how to live according to religious or biblical principles.<sup>34</sup>

Teaching religion or the Bible from an objective point of view could include studying the:<sup>35</sup>

- Contents of the Old or New Testament.
- Literary style and structure of the Old or New Testament.
- Customs, cultures, and religions of the people and societies recorded in the Old or New Testament.
- History and geography of the times and places referred to in the Old or New Testament.
- Influence of the Old or New Testament on law, history, government, literature, art, music, customs, morals, values, and culture.
- Methods and tools of writing during the period when the Old or New Testament was written.
- Means by which the Old or New Testament book was preserved.
- Languages in which the Old or New Testament book was written.
- Historical and cultural events that led to the translation of the Old or New Testament book into English.

Families entrust public schools with the education of their children and condition their trust on the understanding that the classroom will not purposely be used to advance religious views which may conflict with a student's private beliefs.<sup>36</sup> With that in mind, the American Association of School Administrators (AASA) published recommended best practices for school districts offering a Bible elective. The AASA's *Guidelines for a Bible-Based Course Election* offers the following guidance for school districts:<sup>37</sup>

- Be open and inclusive from the start about the course's aims and parameters.
- Be certain everyone understands the course is for academic enrichment, not spiritual instruction.
- Be selective about who teaches the course.
- Find an inservice program or other training if the teacher assigned to the course does not have a background in scholarly religious studies.
- Allow students to use the Bible of their choice.
- Focusing on the Bible as literature can be less problematic than teaching it as a history course.
- After the course begins, monitor it carefully to make sure it is properly taught.

### **Effect of Proposed Changes:**

The bill amends s. 1003.45, F.S., and requires school districts to offer high school elective courses on an objective study of religion or the Bible. Courses must be offered to students in grades 9 through 12. The Florida Department of Education (DOE) must include the new elective courses in the DOE's Course Code Directory.

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<sup>33</sup> *Supra*, note 30.

<sup>34</sup> The Society of Biblical Literature, *Bible Electives in Public Schools: A Guide*, p. 9, <https://www.sbl-site.org/assets/pdfs/SchoolsGuide.pdf> (last visited Jan. 30, 2019).

<sup>35</sup> *Supra* note 27.

<sup>36</sup> *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

<sup>37</sup> American Association of School Administrators, School Administrator, Number 9, Vol. 69, *Guidelines for a Bible-Based Course Elective*, by Paul Riede, Oct. 2012, <https://www.aasa.org/content.aspx?id=25026> (last visited Feb. 11, 2019).

For courses on the Bible, the bill requires districts to offer courses on:

- The Hebrew Scriptures and the Old Testament of the Bible;
- The New Testament of the Bible; and
- The Hebrew Scriptures, the Old Testament of the Bible, and the New Testament of the Bible.

The district and schools may not require a student to use a specific translation of the Hebrew Scriptures or the Bible as the sole text for a course. The district must ensure that a course follows all state and federal laws and guidelines regarding religious neutrality, and accommodates diverse religious views, traditions, and perspectives of all students in the school. The bill prohibits showing a hostility toward particular religions or religious perspectives.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1003.45, F.S., requiring each school district to offer elective courses relating to religion, the Hebrew Scriptures, and the Bible; requiring the courses be included in the Course Code Directory; providing course requirements.

**Section 2.** Provides an effective date of July 1, 2019.

**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:

The cost is indeterminate.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The school districts may incur costs related to developing curriculum, hiring staff, purchasing books, and other related items. The cost is indeterminate.

**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.