

BILL ANALYSIS

Senate Research Center

S.B. 1396
By: Middleton
Education
3/27/2023
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Concerns have been raised regarding prayer not being allowed in public schools in some instances.

Overview:

S.B. 1396 would address these concerns by allowing the board of trustees of a school district or the governing body of an open-enrollment charter school not operated by or affiliated with a religious organization to, by record vote, adopt a policy requiring every campus or school to provide a period of prayer and readings from the Bible. No one would be allowed to be present during a prayer or Bible reading unless he or she has submitted a signed form acknowledging his or her free choice to hear or participate in the activity, stating he or she has no objections to hearing or participating in the activity, and waiving any constitutional claims he or she may assert against the school district or school officials.

As proposed, S.B. 1396 amends current law relating to a period of prayer and Bible reading in public schools.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 25, Education Code, by adding Section 25.0823, as follows:

Sec. 25.0823. PERIOD OF PRAYER AND BIBLE READING. (a) Authorizes the board of trustees of a school district or the governing body of an open-enrollment charter school that is not operated by or affiliated with a religious organization to by record vote adopt a policy requiring every campus of the district or school to provide students and employees with an opportunity to participate in a period of prayer and Bible reading on each school day in accordance with this section.

(b) Requires a policy adopted under Subsection (a) to prohibit:

(1) a student or employee of the school district or open-enrollment charter school from being permitted to participate in the period of prayer and Bible reading unless the employee or parent or guardian of the student submits to the district a signed consent form that includes:

(A) an acknowledgment that the student or employee has a choice as to whether to participate in the period of prayer and Bible reading;

(B) a statement that the person has no objection to the student's or employee's participation in or hearing of the prayers or Bible readings offered during the period; and

(C) an express waiver of the person's right to bring a claim under state or federal law arising out of the adoption of a policy under this section, including claims under the United States Supreme Court's interpretations of the Establishment Clause, which forever releases the school district and all school officials from any such claims that the signatory might assert in state or federal court; and

(2) the provision of a prayer or Bible reading over a public address system.

(c) Authorizes an employee or parent or guardian of a student to revoke the person's consent provided under Subsection (b)(1) by informing the appropriate school administrator, as determined by the school district or open-enrollment charter school, and provides that no student or employee whose consent has been withdrawn is authorized to continue participating in the period of prayer and readings from the Bible unless and until a new consent form is executed and submitted in accordance with Subsection (b)(1). Provides that a person who withdraws consent under this section remains bound by the waiver of claims described in Subsection (b)(1)(C).

(d) Requires that a policy providing for a period of prayer and Bible reading adopted under Subsection (a) include provisions ensuring a prayer or Bible reading is not provided in the physical presence or within the hearing of a person for whom a signed consent form has not been submitted under Subsection (b)(1) or has been revoked under Subsection (c), or in any manner that would inflict "injury in fact" on such a person under Article III (Legislative Department), of the Texas Constitution. Authorizes a policy, in order to comply with this subsection, to require that the period of prayer and Bible reading be provided:

(1) before normal school hours;

(2) only in classrooms or other areas in which a consent form under Subsection (b)(1) has been submitted for every employee and student, which is authorized to include an entire district or school campus if a consent form has been submitted for each employee and student at the campus; or

(3) by any other method recommended by the attorney general or legal counsel for the district or school.

(e) Requires the attorney general, on request from the board of trustees of a school district or the governing body of an open-enrollment charter school to:

(1) provide advice on best methods for a district or school to comply with the requirements of this section;

(2) provide a model consent form that is authorized to be used for purposes of providing consent under Subsection (b)(1); and

(3) defend the district or school in a cause of action arising out of the adoption of a policy providing for a period of prayer and Bible reading under Subsection (a).

(f) Provides that the state, if the attorney general defends a district or school under Subsection (e)(3), is liable for the expenses, costs, judgments, or settlements of the claims arising out of the representation. Authorizes the attorney general to settle or compromise any and all claims under this subsection. Prohibits

the state from being liable for any expenses, costs, judgments, or settlements of any claims arising out of the adoption of a policy providing for a period of prayer and Bible reading under Subsection (a) against a district or school not being represented by the attorney general.

(g) Provides that any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent a school district or open-enrollment charter school from adopting or implementing a policy providing for a period of prayer and Bible reading under Subsection (a) in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and reasonable attorney's fees, including interest, of the prevailing party, including the costs and reasonable attorney's fees that the prevailing party incurs in its efforts to recover costs and fees, notwithstanding any other law.

(h) Provides that a party is considered a prevailing party, for the purposes of this section, if a state or federal court:

(1) dismisses any claim or cause of action brought against the party that seeks the declaratory or injunctive relief described by Subsection (g), regardless of the reason for the dismissal; or

(2) enters judgment in the party's favor on any such claim or cause of action.

(i) Authorizes a prevailing party to recover costs and attorney's fees under Subsection (h) only to the extent that those costs and attorney's fees were incurred while defending claims or causes of action on which the party prevailed.

(j) Authorizes a prevailing party under this section to bring a civil action to recover costs and attorney's fees against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by Subsection (g), regardless of whether a prevailing party sought to recover costs or attorney's fees in the underlying action, not later than the third anniversary of the date on which, as applicable:

(1) the dismissal or judgment described by Subsection (h) becomes final on the conclusion of appellate review; or

(2) the time for seeking appellate review expires.

(k) Provides that it is not a defense to an action brought under Subsection (j) that:

(1) a prevailing party under this section failed to seek recovery of costs or attorney's fees in the underlying action;

(2) the court in the underlying action declined to recognize or enforce the requirements of this section; or

(3) the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

(l) Provides that the state has sovereign immunity, its officers and employees have sovereign and official immunity, a school district or open-enrollment charter school has governmental immunity, and each member of the governing body of a school district or open-enrollment charter school and employee of a school district or open-enrollment charter school has governmental and official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this section, on

constitutional grounds or otherwise, unless that immunity has been abrogated or preempted by federal law in a manner consistent with the Constitution of the United States, notwithstanding any other law. Provides that the sovereign immunity conferred by this section upon the state and each of its officers and employees includes the constitutional sovereign immunity recognized by the Supreme Court of the United States in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*, 527 U.S. 706 (1999), which applies in both state and federal court and which is not authorized to be abrogated by Congress or by any state or federal court except pursuant to legislation authorized by Section 5 of the Fourteenth Amendment, by the Bankruptcy Clause of Article I, or by Congress's powers to raise and support Armies and to provide and maintain a Navy.

(m) Requires that the immunities conferred by Subsection (l) apply in every court, both state and federal, and in every adjudicative proceeding of any type whatsoever, notwithstanding any other law.

(n) Prohibits a provision of state law from being construed to waive or abrogate an immunity described by Subsection (l) unless it expressly waives or abrogates immunity with specific reference to this section, notwithstanding any other law.

(o) Provides that no attorney representing the state, its political subdivisions, or any officer, employee, or agent of this state or a political subdivision is authorized or permitted to waive an immunity described in Subsection (l) or take any action that would result in a waiver of that immunity, and requires that any such action or purported waiver be regarded as a legal nullity and an ultra vires act, notwithstanding any other law.

(p) Provides that no court of this state is authorized to award declaratory or injunctive relief, or any type of writ, that would declare or pronounce any provision or application of this section invalid or unconstitutional, or that would restrain the state, its political subdivisions, including a school district or open-enrollment charter school, any officer, employee, or agent of this state or a political subdivision, including each member of the governing body of a school district or open-enrollment charter school and employee of a school district or open-enrollment charter school, or any person from enforcing any provision or application of this section, notwithstanding certain statute, and provides that no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks such relief.

(q) Requires that nothing in this section be construed to prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this section as a defense to any action, claim, or counterclaim brought against that litigant.

(r) Requires that any judicial relief issued by a court of this state that disregards the immunities conferred by Subsection (l), or the jurisdictional and remedial limitations imposed by Subsection (p), be regarded as a legal nullity because it was issued by a court without jurisdiction, and prohibits it from being enforced or obeyed by any officer, employee, or agency of this state or a political subdivision, judicial or otherwise, notwithstanding any other law.

SECTION 2. Amends Section 25.901, Education Code, as follows:

Sec 25.901. EXERCISE OF CONSTITUTIONAL RIGHT TO PRAY. Deletes existing text prohibiting a person from encouraging a student to engage in or refrain from such prayer or meditation during any school activity.

SECTION 3. Requires each board of trustees of a school district and each governing body of an open-enrollment charter school to take a record vote not later than six months after the effective

date of this Act on whether to adopt a policy requiring every campus of the district or school to provide a period of prayer and Bible reading under Section 25.0823, Education Code, as added by this Act.

SECTION 4. Provides that this Act applies beginning with the 2023–2024 school year.

SECTION 5. Effective date: upon passage or September 1, 2023.