



Diana Fox

Bill Analysis
Legislative Service Commission

H.B. 570

124th General Assembly
(As Introduced)

Reps. Faber, Clancy, Calvert, Seitz, Fessler, Carey, Carmichael, Cirelli, Evans, Willamowski, Schneider, Latta, Brinkman, Schaffer, Collier, Allen, Niehaus, Webster, Aslanides, Schmidt, Cates, Reidelbach, Husted, Grendell, Blasdel, Callender, Flowers, Raga, Gilb, Hoops, Reinhard

BILL SUMMARY

- Requires school boards to set aside a period of time each day for the oral recitation of the Pledge of Allegiance to the Flag.

CONTENT AND OPERATION

Required time for recitation of the Pledge of Allegiance to the Flag

(sec. 3313.602)

Current law requires each school district to adopt a policy specifying whether or not the Pledge of Allegiance to the Flag must be recited orally in its schools. If the district mandates the recitation of the Pledge, then it must also establish the time and manner for the recitation. The bill changes the permissive nature of this provision by *requiring* school districts to set aside a period of time each school day for the oral recitation of the Pledge. Each district must designate in its policy the time and manner in which the recitation will occur.

Am. Sub. H.B. 394 of the 124th General Assembly contained an amendment to current law (effective August 1, 2002) prohibiting school districts from requiring any student to say the Pledge. In addition, to protect those students who choose not to participate, the amendment required each district's policy to also prohibit the intimidation of a student by staff members or other students who seek to coerce the student's participation. The bill does not change these provisions.

COMMENT

Statutes concerning the recitation of the Pledge of Allegiance to the Flag in public schools typically have been upheld by the courts when the recitation is voluntary. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), the United States Supreme Court struck down a West Virginia law that required students to recite the Pledge of Allegiance while saluting the flag. Students who did not participate in the ritual were expelled from school. Although the Court acknowledged that schools could require the recitation of the Pledge of Allegiance, it found that imposing a penalty for nonparticipation was unconstitutional. The Court argued that the refusal of a student to recite the Pledge of Allegiance did not constitute a threat to society serious enough to justify an infringement of the student's First Amendment rights.

Recent cases have adhered to the *Barnette* precedent. For example, in *Sherman v. Community Consolidated School District 21 of Wheeling Township*, 980 F.2d 437 (7th Cir., 1992), the U.S. Seventh Circuit Court of Appeals upheld an Illinois statute that required elementary students to recite the Pledge of Allegiance. The court's decision was based on the fact that there was not sufficient evidence to demonstrate that the plaintiff, who objected to reciting the Pledge of Allegiance on religious grounds, suffered any consequence for remaining silent during the recitation. Upon appeal, the United States Supreme Court denied certiorari, allowing the lower court's ruling to stand (508 U.S. 950 (1993)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-24-02	p. 1720

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