

18A:36-4

LEGISLATIVE HISTORY CHECKLIST

(Moment of silence-public school students to observe)

NJSA 18A:36-4

LAWS 1982

CHAPTER 205

Bill No. A1064

Sponsor(s) Zangari and others

Date Introduced March 8, 1982

Committee: Assembly Education

Senate Education

Amended during passage Yes No

Date of Passage: Assembly May 24, 1982

Veto over-ride December 13, 1982

Senate October 18, 1982

Veto-over-ride December 16, 1982

Date of approval December 16, 1982

Following statements are attached if available:

Sponsor statement	Yes	<input type="checkbox"/> No
Committee Statement: Assembly	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Senate	Yes	<input checked="" type="checkbox"/> No
Fiscal Note	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Veto Message	Yes	<input checked="" type="checkbox"/> No
Message on signing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Following were printed:		
Reports	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Hearings	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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Sponsor's statement:

This bill allows each student to participate in a 1 minute period of voluntary silence to be used solely at the discretion of the individual student.

(OVER)

6/22/81

SEP 1983

Massachusetts case and statutes mentioned in senate statement -- attached

Tennessee case mentioned in Governor's veto message: Beck v. McElrath,
548 F Supp 1161 (1982) -- attached

Similar bills, proposed during earlier Legislative sessions:

A342 (1980)

A2197 (1980) vetoed by Gov. Byrne

A1028

A72 (1978)

S51 (1978)

A276 (1978)

See clipping file, "N.J.-Church and state - 1982" in New Jersey Reference Department
and "N.J.-Religion-1982"

VETO
OVERRIDDEN

CHAPTER 205 LAWS OF N. J. 1982
~~APPROVED~~ Filed 12-16-82

ASSEMBLY, No. 1064

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1982

By Assemblymen ZANGARI, PATERNITI, HERMAN, Assemblywoman PERUN, Assemblymen DEVERIN, OTLOWSKI, PELLY, HENDRICKSON, COWAN, JANISZEWSKI, NAPLES, Assemblywoman COSTA, Assemblymen PELLECCCHIA, GIRGENTI, RILEY, MARSELLA, DORIA, WATSON, Assemblywoman GARVIN, Assemblymen BOCCHINI, PATERO, DOYLE, KARCHER, MATTHEWS, CHARLES, BRYANT, PANKOK, VAN WAGNER, THOMPSON, VISOTCKY, BROWN, JACKMAN, FLYNN, BENNETT, T. GALLO, SHUSTED, CHINNICI, ROCCO, SCHUBER, KOSCO, MARKERT, Assemblywoman WRIGHT, Assemblymen FRANKS, ROD, MUZIANI, MEYER, HAINES, WOLF, KAVANAUGH, SMITH, PALAIA, MILLER, KELLY, GORMLEY and LITTELL

Referred to Committee on Education

AN ACT to allow students of public schools to participate in a 1 minute period of silence before the opening of each school day and supplementing chapter 36 of Title 18A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Principals and teachers in each public elementary and second-
2 dary school of each school district in this State shall permit stu-
3 dents to observe a 1 minute period of silence to be used solely at the
4 discretion of the individual student, before the opening exercises
5 of each school day for quiet and private contemplation or intro-
6 spection.

1 2. This act shall take effect immediately.

STATEMENT --

This bill allows each student to participate in a 1 minute period of voluntary silence to be used solely at the discretion of the individual student.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1064

STATE OF NEW JERSEY

DATED: MAY 17, 1982

Assembly Bill No. 1065 requires all principals and teachers in the public elementary and secondary schools of New Jersey to permit students to observe one minute of silence before the opening exercises of each school day. The bill provides that the one minute of silence is to be used solely at the discretion of the individual student for "quiet contemplation or introspection."

A statute similar to that proposed in Assembly Bill No. 1064 was enacted in Massachusetts and has been upheld by the U.S. District Court of Massachusetts (Civil Action No. 76-435-M, September 1, 1976).

SENATE EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1064

STATE OF NEW JERSEY

DATED: SEPTEMBER 23, 1982

Assembly Bill No. 1064 requires all principals and teachers in the public elementary and secondary schools of New Jersey to permit students to observe one minute of silence before the opening exercises of each school day. The bill provides that the one minute of silence is to be used solely at the discretion of the individual student for "quiet contemplation or introspection."

A statute similar to that proposed in Assembly Bill No. 1064 was enacted in Massachusetts and has been upheld by the U. S. District Court of Massachusetts (Civil Action No. 76-435-M, September 1, 1976).

RELEASE: IMMEDIATELY

CONTACT: CARL GOLDEN

WEDNESDAY, DECEMBER 2, 1982

A-1064

Governor Thomas H. Kean today announced his intention to veto legislation which would require a moment of silence at the start of each school day in New Jersey's public schools.

"It is unlikely that the bill could pass Constitutional muster," the Governor said in his veto message.

Kean noted in his message that teachers currently have the authority to mandate a moment of silence as part of ordinary disciplinary procedures in the classroom.

"I prefer to leave it to the discretion of individual teachers to decide if their students need quiet time for contemplation and introspection and when their students may participate in such sessions," Kean said.

The Governor noted, further, that public statements by some legislators "reveal a constitutionally impermissible motive," particularly a comment that passage of the bill would "bring prayer back into the schools through the front door."

A copy of the Governor's veto message is attached.

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STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

December 6, 1982

ASSEMBLY BILL NO. 1064

To the General Assembly:

Pursuant to Article V, Section 1, paragraph 14 of the Constitution, I herewith return Assembly Bill No. 1064 without my signature.

This bill requires New Jersey public schools to conduct a one-minute moment of silence at the beginning of each school day to be used solely at the discretion of the individual student for quiet and private contemplation or introspection.

I am concerned that this bill violates the Establishment Clause of the First Amendment of the United States Constitution which provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

The Fourteenth Amendment applies this proscription to the states.

On October 7, 1982, Federal District Judge Morton of the Middle District of Tennessee struck down a Tennessee statute which provided "a period of silence not to exceed one minute of duration... [to] be observed for meditation or prayer or personal beliefs." In using the three-prong test set forth by the United States

Supreme Court in determining whether State action violates the Establishment Clause, Judge Morton found "that a moment of silence in and of itself is non-discriminatory and may serve a secular purpose in aid of the education function."

Yet, in analyzing the constitutional question, the Federal Judge found that while meditation and reflection can be viewed as carrying meanings that do not touch upon religion, individual terms within a statute cannot be construed in an abstract sense or in a vacuum. He reviewed all the terms together (including prayer) and concluded that the legislative purpose was advancement of religious exercises. Judge Morton did not stop at this point and he went on to say at best the statute was ambiguous, and as such the court had to consider the underlying legislative history.

All courts faced with these types of statutes look to the legislative history in determining their constitutionality. Judge Morton looked with great diligence to the record of debate upon the statute in the Tennessee Houses. He found that the overwhelming intent among the legislators supporting the bill, including the sponsor, was to establish prayer as a daily fixture in the public schoolrooms of Tennessee. Even if that was said to be passed off as political rhetoric, Judge Morton found it was rhetoric clearly inconsistent with standards set in place by the Constitution, and therefore, reflected upon an inappropriate secular purpose.

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STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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Public statements of New Jersey Legislators likewise reveal a constitutionally impermissible motive. Legislative discussion in the Senate revealed that the bill's adoption would mean "bringing prayer back into the schools through the front door." One proponent of the bill said that restoration of prayer in the schools would result in fewer problems in classrooms and that the bill would not harm any school-age child, but rather, it would restore the child's faith in his creator.

Putting the constitutional issue aside, the necessity for this type of State-imposed mandate must be addressed. The bill in essence is a mandatory/voluntary minute of silence. New Jersey public school teachers do not need a legislative mandate of one minute of silence in order to maintain order in their classrooms. Rather, teachers already have the discretion to silence their classes for one minute, five minutes or twenty minutes as they in their wisdom choose. I prefer to leave it to the discretion of individual teachers to decide if their students need quiet time for contemplation and introspection and when their students may participate in such sessions.

The voluntary aspect of the State-imposed mandate also bothers me for I am not sure what children who voluntarily choose not to participate in this moment of silence are able to do. Are the children permitted to make noise or leave the room? Guidelines are not set up in the bill.

I respect the sponsor's zeal and conviction in obtaining passage of A-1064, but I nonetheless must return it without my approval. It is unlikely that the bill could pass constitutional muster, and teachers currently have the authority to call for moments of silence for introspection if such a period is deemed necessary.

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards

Chief Counsel to the Governor