

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB10-089 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute the following:

3 **"SECTION 1. Legislative declaration.** (1) The general
4 assembly hereby finds and declares that:

5 (a) The United States Constitution and the Colorado Constitution
6 guarantee individuals certain basic religious rights;

7 (b) Many individuals are unaware of their existing constitutional
8 religious rights. Because these rights are coming under increasing attack
9 in the public school system, a method to recognize, promote, and enforce
10 these rights is of great importance to students, parents, teachers, and
11 employees.

12 (c) Public schools are facing an increasing number of lawsuits
13 from parents and children challenging restrictions or perceived
14 restrictions on their religious rights. Defending against these lawsuits has
15 cost and will continue to cost state taxpayers thousands of dollars
16 annually.

17 (d) It is beneficial to raising morals and obedience within the
18 public schools to foster an atmosphere that recognizes and encourages the
19 concept and understanding of religious liberty that was so important to the
20 founders of our nation;

1 (e) There is a growing perception among citizens that public
2 schools are hostile to individual expression and exercise of religious
3 beliefs. Parents or guardians who feel, and whose children feel, their
4 religious rights are being suppressed or threatened are removing their
5 children from public schools, thus substantially reducing the school
6 district's pupil count and therefore its revenue; and

7 (f) Just as hospitals are now required to post a patients' bill of
8 rights and responsibilities and businesses are required to post wage and
9 workers' compensation rights and responsibilities, public schools should
10 inform individuals connected to public schools of their constitutionally
11 protected religious rights.

12 (2) The general assembly therefore finds that it is in the best
13 interest of the citizens of the state of Colorado:

14 (a) To obtain from the state attorney general a comprehensive list
15 of commonly asked questions and answers pertaining to the
16 constitutionality of religious expression by individuals in public schools;
17 and

18 (b) To distribute that list of questions and answers to the school
19 districts and institute charter schools and to direct school districts and
20 institute charter schools to create religious bills of rights for individuals
21 connected to public schools, based on the list of questions and answers;
22 and

23 (c) To require each public school to provide copies of the list of
24 questions and answers to employees, students, and their parents or legal
25 guardians and to post the religious bill of rights in a prominent place and
26 to inform individuals connected to public schools of the religious bills of
27 rights.

28 **SECTION 2.** Part 1 of article 2 of title 22, Colorado Revised
29 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
30 read:

31 **22-2-138. Department of education - religious expression in**
32 **public schools - request for direction.** (1) (a) AS SOON AS
33 PRACTICABLE FOLLOWING THE EFFECTIVE DATE OF THIS SECTION, THE
34 COMMISSIONER SHALL SUBMIT TO THE ATTORNEY GENERAL A REQUEST

1 FOR:

2 (I) RESEARCH AND A LEGAL MEMORANDUM, INCLUDING CASE
3 CITATIONS, CONCERNING THE LEGAL JURISPRUDENCE OF, AT A MINIMUM,
4 THE UNITED STATES SUPREME COURT, THE TENTH CIRCUIT DISTRICT
5 COURTS AND COURT OF APPEALS, AND THE COURTS OF COLORADO
6 REGARDING THE INTERACTION WITHIN THE PUBLIC SCHOOLS OF THE
7 CONSTITUTIONAL RIGHT TO FREE SPEECH AS IT RELATES TO RELIGION, THE
8 CONSTITUTIONAL RIGHT TO THE FREE EXERCISE OF RELIGION, AND THE
9 CONSTITUTIONAL PROHIBITION AGAINST THE ESTABLISHMENT OF
10 RELIGION, INCLUDING, AT A MINIMUM, THE ISSUES SPECIFIED IN
11 PARAGRAPH (b) OF THIS SUBSECTION (1); AND

12 (II) CREATION OF A COMPREHENSIVE LIST OF COMMONLY ASKED
13 QUESTIONS AND ANSWERS, INCLUDING CASE CITATIONS, PERTAINING TO
14 THE CONSTITUTIONALITY OF RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS
15 THAT IS BASED ON THE RESEARCH CONDUCTED PURSUANT TO
16 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) AND ADDRESSES, AT A
17 MINIMUM, THE ISSUES SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION
18 (1).

19 (b) THE RESEARCH, LEGAL MEMORANDUM, AND LIST OF
20 COMMONLY ASKED QUESTIONS AND ANSWERS PREPARED BY THE
21 ATTORNEY GENERAL PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION
22 (1) SHALL, AT A MINIMUM, ADDRESS THE FOLLOWING ISSUES:

23 (I) RELIGIOUS EXPRESSION BY STUDENTS ENROLLED IN A PUBLIC
24 SCHOOL AND PERSONS EMPLOYED AT A PUBLIC SCHOOL, INCLUDING, BUT
25 NOT LIMITED TO, VERBAL EXPRESSIONS, WRITTEN EXPRESSIONS, AND
26 EXPRESSIONS EXHIBITED THROUGH CLOTHING, JEWELRY, OR OTHER
27 ACCESSORIES;

28 (II) THE USE OF SCHOOL PROPERTY FOR EXTRACURRICULAR
29 RELIGIOUS ACTIVITIES;

30 (III) THE RECOGNITION AND OBSERVANCE OF RELIGIOUS HOLIDAYS
31 IN PUBLIC SCHOOLS, INCLUDING, BUT NOT LIMITED TO, THE DEGREE TO
32 WHICH AND MANNER IN WHICH PERSONS IN A PUBLIC SCHOOL MAY
33 OBSERVE RELIGIOUS HOLIDAYS, THE USE OF RELIGIOUS MUSIC, THE
34 DISTRIBUTION OF GREETING OR OTHER CARDS WITH RELIGIOUS
35 REFERENCES, AND THE USE OF REFERENCES TO RELIGIOUS HOLIDAYS BY A

1 PUBLIC SCHOOL IN SCHEDULING OR CALENDARING;

2 (IV) THE DISTRIBUTION OR PLACEMENT OF RELIGIOUS MATERIALS
3 BY STUDENTS ENROLLED IN A PUBLIC SCHOOL OR BY PERSONS EMPLOYED
4 AT A PUBLIC SCHOOL;

5 (V) THE USE OF RELIGIOUS TEXTS IN THE CLASSROOM, INCLUDING
6 AS PART OF THE PUBLIC SCHOOL CURRICULUM, AS REFERENCE MATERIALS,
7 OR AS PART OF EXTRACURRICULAR ACTIVITIES;

8 (VI) THE DISPLAY OF RELIGIOUS SYMBOLS WITHIN A PUBLIC
9 SCHOOL;

10 (VII) A STUDENT'S RIGHT TO BE EXEMPTED FROM ACTIVITIES THAT
11 HAVE A RELIGIOUS COMPONENT OR ACTIVITIES OR CLASSES THAT MAY
12 OFFEND THE STUDENT'S RELIGIOUS BELIEFS;

13 (VIII) A TEACHER'S RIGHT TO REFUSE TO TEACH OR BE EXCUSED
14 FROM TEACHING MATERIAL THAT MAY OFFEND THE TEACHER'S RELIGIOUS
15 BELIEFS;

16 (IX) A STUDENT'S RIGHT TO EXPRESS HIS OR HER RELIGIOUS IDEAS
17 OR FAITH WHILE ON SCHOOL PROPERTY, INCLUDING, BUT NOT LIMITED TO,
18 CLASSROOM DISCUSSIONS, WRITTEN OR ORAL SCHOOL ASSIGNMENTS, AND
19 CONVERSATIONS WITH OTHER STUDENTS OR TEACHERS;

20 (X) WHETHER A SCHOOL DISTRICT OR PUBLIC SCHOOL MAY ALLOW
21 A RELIGIOUS DISPLAY INSIDE OR AROUND A PUBLIC BUILDING OR ON PUBLIC
22 LANDS BELONGING TO THE SCHOOL DISTRICT OR THE PUBLIC SCHOOL; AND

23 (XI) PLACEMENT OF NOTICE OF EVENTS OF A RELIGIOUS NATURE
24 OR THAT INCLUDE A RELIGIOUS COMPONENT AND THAT OCCUR ON OR OFF
25 OF SCHOOL PROPERTY.

26 (c) NOTHING IN THIS SUBSECTION (1) SHALL BE CONSTRUED AS
27 REQUIRING THE ATTORNEY GENERAL TO ISSUE AN INFORMAL OR FORMAL
28 LEGAL OPINION CONCERNING ANY OF THE ISSUES SPECIFIED IN THIS
29 SUBSECTION (1).

30 (2) THE COMMISSIONER SHALL ENSURE THAT THE DEPARTMENT
31 POSTS THE COMPREHENSIVE LIST OF COMMONLY ASKED QUESTIONS AND

1 ANSWERS, INCLUDING CASE CITATIONS, RECEIVED FROM THE ATTORNEY
2 GENERAL PURSUANT TO SUBSECTION (1) OF THIS SECTION ON THE
3 DEPARTMENT'S WEB SITE ANDELECTRONICALLY DISTRIBUTES THE LIST TO
4 EACH SCHOOL DISTRICT IN THE STATE, THE STATE CHARTER SCHOOL
5 INSTITUTE, AND EACH PUBLIC SCHOOL AND INSTITUTE CHARTER SCHOOL
6 IN THE STATE.

7 (3) UPON THE REQUEST OF THE STATE CHARTER SCHOOL INSTITUTE
8 BOARD, A SCHOOL DISTRICT BOARD OF EDUCATION, OR A DISTRICT OR
9 INSTITUTE CHARTER SCHOOL, THE COMMISSIONER SHALL PROVIDE TO THE
10 REQUESTING PARTY A COPY OF THE LEGAL MEMORANDUM PREPARED BY
11 THE ATTORNEY GENERAL PURSUANT TO SUBSECTION (1) OF THIS SECTION.

12 **SECTION 3.** 22-30.5-507, Colorado Revised Statutes, is
13 amended BY THE ADDITION OF A NEW SUBSECTION to read:

14 **22-30.5-507 Institute charter school - requirements -**
15 **authority.** (12) THE GOVERNING BOARD FOR EACH INSTITUTE CHARTER
16 SCHOOL SHALL ADOPT A RELIGIOUS BILL OF RIGHTS FOR STUDENTS
17 ENROLLED IN THE INSTITUTE CHARTER SCHOOL AND EMPLOYEES OF THE
18 INSTITUTE CHARTER SCHOOL. THE GOVERNING BOARD SHALL BASE THE
19 RELIGIOUS BILL OF RIGHTS ON THE LEGAL MEMORANDUM AND THE LIST OF
20 COMMONLY ASKED QUESTIONS AND ANSWERS PREPARED AND PROVIDED
21 BY THE ATTORNEY GENERAL FOR THE COMMISSIONER OF EDUCATION
22 PURSUANT TO SECTION 22-2-138. THE GOVERNING BOARD SHALL POST
23 THE RELIGIOUS BILL OF RIGHTS AND THE LIST OF COMMONLY ASKED
24 QUESTIONS AND ANSWERS IN A PROMINENT PLACE WITHIN THE INSTITUTE
25 CHARTER SCHOOL AND ON THE INSTITUTE CHARTER SCHOOL'S WEB SITE, IF
26 ANY, AND SHALL DISTRIBUTE COPIES OF THE RELIGIOUS BILL OF RIGHTS
27 AND THE LIST OF COMMONLY ASKED QUESTIONS AND ANSWERS TO THE
28 EMPLOYEES OF THE INSTITUTE CHARTER SCHOOL AND TO THE STUDENTS
29 ENROLLED IN THE INSTITUTE CHARTER SCHOOL AND THEIR PARENTS OR
30 LEGAL GUARDIANS. EACH GOVERNING BOARD SHALL ENSURE THAT THE
31 INSTITUTE CHARTER SCHOOL'S RELIGIOUS BILL OF RIGHTS IS EFFECTIVE NO
32 LATER THAN THE FALL SEMESTER OF THE 2011-12 ACADEMIC YEAR.

33 **SECTION 4.** 22-32-109 (1), Colorado Revised Statutes, is
34 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

35 **22-32-109. Board of education - specific duties.** (1) In addition
36 to any other duty required to be performed by law, each board of



1 education shall have and perform the following specific duties:

2 (oo) (I) TO ADOPT A RELIGIOUS BILL OF RIGHTS FOR STUDENTS
3 ENROLLED IN THE SCHOOL DISTRICT AND EMPLOYEES OF THE SCHOOL
4 DISTRICT. THE BOARD OF EDUCATION SHALL BASE THE RELIGIOUS BILL OF
5 RIGHTS ON THE LEGAL MEMORANDUM AND THE LIST OF COMMONLY ASKED
6 QUESTIONS AND ANSWERS PREPARED AND PROVIDED BY THE ATTORNEY
7 GENERAL FOR THE COMMISSIONER OF EDUCATION PURSUANT TO SECTION
8 22-2-138. THE BOARD OF EDUCATION SHALL POST THE RELIGIOUS BILL OF
9 RIGHTS AND THE LIST OF COMMONLY ASKED QUESTIONS AND ANSWERS IN
10 A PROMINENT PLACE WITHIN EACH PUBLIC SCHOOL AND ON THE SCHOOL
11 DISTRICT'S WEB SITE, IF ANY, AND SHALL DISTRIBUTE COPIES OF THE
12 RELIGIOUS BILL OF RIGHTS AND THE LIST OF COMMONLY ASKED QUESTIONS
13 AND ANSWERS TO SCHOOL DISTRICT EMPLOYEES AND TO THE STUDENTS
14 ENROLLED IN THE PUBLIC SCHOOLS OF THE SCHOOL DISTRICT AND THEIR
15 PARENTS OR LEGAL GUARDIANS. EACH BOARD OF EDUCATION SHALL
16 ENSURE THAT THE RELIGIOUS BILL OF RIGHTS IS EFFECTIVE NO LATER THAN
17 THE FALL SEMESTER OF THE 2011-12 ACADEMIC YEAR.

18 (II) NOTWITHSTANDING ANY PROVISION OF SUBPARAGRAPH (I) OF
19 THIS PARAGRAPH (oo) TO THE CONTRARY, A BOARD OF EDUCATION MAY
20 ALLOW THE GOVERNING BOARD OF ANY CHARTER SCHOOL OF THE SCHOOL
21 DISTRICT TO ADOPT ITS OWN RELIGIOUS BILL OF RIGHTS BASED ON THE
22 LEGAL MEMORANDUM AND THE LIST OF COMMONLY ASKED QUESTIONS
23 AND ANSWERS PREPARED BY THE ATTORNEY GENERAL, SO LONG AS THE
24 CHARTER SCHOOL COMPLIES WITH THE DISTRIBUTION AND EFFECTIVE DATE
25 REQUIREMENTS SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (oo).

26 **SECTION 5.** 24-31-101, Colorado Revised Statutes, is amended
27 BY THE ADDITION OF A NEW SUBSECTION to read:

28 **24-31-101. Powers and duties of attorney general.** (7) (a) THE
29 ATTORNEY GENERAL, PURSUANT TO SECTION 22-2-138, C.R.S., AND AT
30 THE REQUEST OF THE COMMISSIONER OF EDUCATION MADE PURSUANT TO
31 SAID SECTION, SHALL PREPARE A LEGAL MEMORANDUM AND
32 COMPREHENSIVE LIST OF COMMONLY ASKED QUESTIONS AND ANSWERS, AS
33 DESCRIBED IN SECTION 22-2-138, C.R.S., REGARDING THE INTERACTION
34 WITHIN THE PUBLIC SCHOOLS OF THE CONSTITUTIONAL RIGHT TO FREE
35 SPEECH AS IT RELATES TO RELIGION, THE CONSTITUTIONAL RIGHT TO THE
36 FREE EXERCISE OF RELIGION, AND THE CONSTITUTIONAL PROHIBITION
37 AGAINST THE ESTABLISHMENT OF RELIGION. IN WRITING THE LEGAL

1 MEMORANDUM AND THE LIST OF COMMONLY ASKED QUESTIONS AND
2 ANSWERS, THE ATTORNEY GENERAL SHALL USE PLAIN ENGLISH TO THE
3 GREATEST EXTENT PRACTICABLE. THE ATTORNEY GENERAL SHALL
4 COMPLETE AND DELIVER TO THE COMMISSIONER OF EDUCATION THE LEGAL
5 MEMORANDUM AND COMPREHENSIVE LIST OF COMMONLY ASKED
6 QUESTIONS AND ANSWERS AS SOON AS PRACTICABLE FOLLOWING RECEIPT
7 OF THE REQUEST, BUT NO LATER THAN DECEMBER 31, 2010.

8 (b) NOTHING IN THIS SUBSECTION (7) SHALL BE CONSTRUED AS
9 REQUIRING THE ATTORNEY GENERAL TO ISSUE AN INFORMAL OR FORMAL
10 LEGAL OPINION CONCERNING ANY OF THE ISSUES SPECIFIED IN SECTION
11 22-2-138, C.R.S.

12 **SECTION 6. Act subject to petition - effective date.** This act
13 shall take effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly (August
15 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
16 referendum petition is filed pursuant to section 1 (3) of article V of the
17 state constitution against this act or an item, section, or part of this act
18 within such period, then the act, item, section, or part shall not take effect
19 unless approved by the people at the general election to be held in
20 November 2010 and shall take effect on the date of the official
21 declaration of the vote thereon by the governor."

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