

ASSEMBLY, No. 3776

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Authorizes recitation of Pledge of Allegiance by public body at public meeting; permits discretionary court award of certain fees and costs to public body.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the recitation of the Pledge of Allegiance at
2 public meetings, authorizing the court to award fees and costs to
3 a public body defendant in certain actions, and supplementing
4 Title 52 of the Revised Statutes.

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6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

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9 1. a. During the meeting of any public body, a person
10 authorized by the public body to do so may choose to honor the flag
11 of the United States by repeating the Pledge of Allegiance as
12 codified at 4 U.S.C. s.4. No person shall be required to repeat the
13 pledge, and any person may, for any reason, choose not to repeat
14 the Pledge of Allegiance.

15 b. In any action brought against a public body or a public
16 employee under this act, the court may, in its discretion, award
17 attorney fees and costs of suit to a defendant who prevails in such
18 action.

19 c. As used in this section:

20 (1) “Public body” means a commission, authority, board,
21 council, committee or any other group of two or more persons
22 organized under the laws of this State, and collectively empowered
23 as a voting body to perform a public governmental function
24 affecting the rights, duties, obligations, privileges, benefits, or other
25 legal relations of any person, or collectively authorized to spend
26 public funds including the Legislature, but does not mean or include
27 the judicial branch of the government, any grand or petit jury, any
28 parole board or any agency or body acting in a parole capacity, the
29 State Commission of Investigation, the Apportionment Commission
30 established under Article IV, Section III, of the Constitution, or any
31 political party committee organized under Title 19 of the Revised
32 Statutes.

33 (2) “Public employee” means any public employee, any person
34 holding a position by appointment or employment in the service of
35 a “public body” as that term is used in this section and shall include
36 any individual whose work has ceased as a consequence of, or in
37 connection with, any action instituted under this act.

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39 2. This act shall take effect immediately.

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STATEMENT

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44 This bill would authorize the recitation of the Pledge of
45 Allegiance to the flag of the United States of America during a
46 meeting of a public body. The Pledge of Allegiance is codified
47 under federal law at 4 U.S.C. s.4.

1 In addition, the bill would permit a court, in its discretion, to
2 award attorney fees and costs of suit in any action brought against a
3 public body or a public employee under the bill to a defendant who
4 prevails in such action.

5 Under New Jersey law, every school board in the State requires
6 students to salute the United States flag and repeat the Pledge of
7 Allegiance each school day. A student may choose not to salute the
8 flag or recite the pledge, but is required to show full respect to the
9 flag while the pledge is being given merely by standing at attention.
10 There is no provision under current statutory law which relates to
11 the recitation of the Pledge of Allegiance by a public body other
12 than a State school board.

13 A number of circuit courts have considered challenges to state
14 laws similar to the New Jersey statute requiring students to recite
15 the Pledge of Allegiance. These circuit courts have consistently
16 held that a state statute may mandate that a public school lead the
17 Pledge of Allegiance, so long as students are not forced to
18 participate.

19 This bill is consistent with these circuit court decisions, as it
20 does not require any person to recite the Pledge of Allegiance.
21 Under the bill, a person authorized by a public body to do so may
22 choose to honor the flag of the United States at a meeting of the
23 public body by repeating the Pledge of Allegiance. No person is
24 required to repeat the pledge, and may, for any reason, choose not
25 to participate in the recitation of the pledge.

26 It is the sponsor's intent to prevent the unnecessary expenditure
27 of public funds by establishing that a court may award attorney fees
28 and costs to a public body or public employee defendant who
29 prevails in an action challenging the recitation of the pledge as
30 authorized under the bill. In the sponsor's view, the provisions
31 related to an award of fees are warranted, particularly in light of the
32 consistency with which plaintiffs in other jurisdictions who
33 challenged statutes authorizing, but not requiring, the recitation of
34 the Pledge of Allegiance in public schools have not prevailed.

35 The bill would define "public body" to mean a commission,
36 authority, board, council, committee or any other group of two or
37 more persons organized under the laws of this State, and
38 collectively empowered as a voting body to perform a public
39 governmental function affecting the rights, duties, obligations,
40 privileges, benefits, or other legal relations of any person, or
41 collectively authorized to spend public funds including the
42 Legislature, but does not mean or include the judicial branch of the
43 government, any grand or petit jury, any parole board or any agency
44 or body acting in a parole capacity, the State Commission of
45 Investigation, the Apportionment Commission established under
46 Article IV, Section III of the Constitution, or any political party
47 committee organized under Title 19 of the Revised Statutes. The
48 bill defines "public employee" to mean any public employee, any

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- 1 person holding a position by appointment or employment in the
- 2 service of a “public body” as that term is used in the bill and shall
- 3 include any individual whose work has ceased as a consequence of,
- 4 or in connection with, any action instituted under the bill.