

RESTRICTIONS ON FUNERAL DEMONSTRATIONS

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Senate Bill 1256 as passed by the Senate

Sponsor: Sen. Roger Kahn, M.D.

House Committee: Intergovernmental, Urban, and Regional Affairs

Senate Committee: Local, Urban, and State Affairs

First Analysis (6-4-08)

BRIEF SUMMARY: The bill would authorize local officials to pass ordinances regulating activity within 500 feet *of the property line* of a building or other location where a funeral service, memorial service, or burial is being conducted.

FISCAL IMPACT: The bill would have no fiscal impact on state or local government.

THE APPARENT PROBLEM:

Protests at funerals of soldiers killed in Iraq and Afghanistan have spurred many state legislatures and the U.S. Congress to pass laws restricting disruptive demonstrations that interfere with a soldier's burial.

In Michigan, Public Acts 148 through 152 of 2006 prohibit a person from, and penalize a person for, engaging in certain disruptive actions within 500 feet of a funeral, memorial service, viewing of a deceased person, funeral procession, or burial.

The acts also allow officials in local units of government to pass ordinances requiring a permit to demonstrate on public property outside of a funeral home, a place of worship, or a cemetery. The ordinances can also prohibit certain kinds of conduct within 500 feet of these locations.

It is sometimes difficult to determine the territory that is covered by this 500-foot restriction. When that happens, protestors can get too close and disturb funeral proceedings.

It has been proposed that the allowable distance for local ordinances that is specified in the Michigan statute—that is, 500 feet from the location of a funeral service—be changed to 500 feet from the property line.

THE CONTENT OF THE BILL:

The bill would amend Public Act 152 of 2006 (MCL 123.1113), which authorizes local officials to pass ordinances regulating activity within 500 feet of a building or other location where a funeral service or memorial service is being conducted, to refer instead to activity within 500 feet *of the property line* of a building or other location where a funeral service, memorial service, or burial is being conducted.

Currently under the act, officials of local units of government (a city, village, township, or county) can pass ordinances "to protect and preserve the peace and respect" toward those attending or conducting a funeral or memorial service. Specifically, a local ordinance may prohibit any of the following within 500 feet of a building or other location where a funeral, memorial service, burial, or viewing of a deceased person is being conducted; or within 500 feet of a funeral procession in the hour immediately before, during, or in the two hours immediately following the procession:

- Making loud and raucous noise and continuing to do so after being asked to stop.
- Making any statement or gesture that would make a reasonable person under the circumstances feel intimidated, threatened, or harassed.
- Engaging in any other conduct that the person knows or should reasonably know will disturb, disrupt, or adversely affect the funeral, memorial service, viewing of the deceased person, funeral procession, or burial.

Under the bill, these provisions are all retained. Further, an ordinance could prohibit the behavior described above within 500 feet *of the property line* of a building or other location specified above.

HOUSE COMMITTEE ACTION:

The members of the House Intergovernmental, Urban, and Regional Affairs Committee reported out the Senate-passed version of Senate Bill 1256 without amendments.

BACKGROUND INFORMATION:

The following information, along with much of the other information in this analysis, is derived from the Senate Fiscal Agency analysis of this bill dated 5-30-08.

According to the National Conference of State Legislatures, as of May 2008, 42 states including Michigan have passed laws restricting funeral protests.

In May 2006, President George W. Bush signed into law the Respect for America's Fallen Heroes Act (Public Law 109-228), which prohibits certain demonstrations during the period beginning 60 minutes before and ending 60 minutes after a funeral, memorial service, or ceremony at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery. In December 2006, the President signed Public Law 109-464, which enacted similar restrictions for any funeral of a member or former member of the U.S. Armed Forces that is not located at a cemetery under the control of the National Cemetery Administration or part of Arlington National Cemetery.

Lawsuits challenging the constitutionality of state measures have been filed in Kentucky, Missouri, and Ohio. As of March 2007, decisions had been reached on requests for preliminary injunctions in Missouri and Kentucky, and a ruling was made regarding the constitutionality of the Ohio statute.

The Ohio law prohibits a person from picketing or engaging in other protest activities, and prohibits an association or corporation from causing picketing or other protest activities to occur, within 300 feet of a residence, cemetery, funeral home, church, synagogue, or other establishment during or within one hour before or after an actual funeral or burial service at that place or within 300 feet of a funeral procession. In *Phelps-Roper v Taft*, the United States District Court for the Northern District of Ohio upheld the provision of the Ohio statute pertaining to the "fixed buffer zone" (300 feet from an establishment), but found the provision relating to a "floating buffer zone" (300 feet from a funeral procession) to be unconstitutional. According to the March 23, 2007, opinion, "[T]he language of the statute applicable to floating buffer zones is not narrowly tailored, in that it burdens substantially more speech than necessary to serve the State of Ohio's interest protecting its citizens from disruption during the events associated with a funeral or burial service."

In *McQueary v Stumbo*, on September 26, 2006, the United States District Court for the Eastern District of Kentucky issued a preliminary injunction preventing the state from enforcing its funeral protest restriction law because of First Amendment concerns. Among other things, the Kentucky statute provides that a person is guilty of interference with a funeral if he or she, at any time on any day, congregates, pickets, patrols, demonstrates, or enters on a public right-of-way or private property that is within 300 feet of a funeral, wake, memorial service, or burial. It also prohibits a person, without authorization from the family of the deceased or person conducting the service, from doing any of the following during a funeral, wake, memorial service, or burial:

- Singing, chanting, whistling, shouting, yelling, or using a bullhorn, auto horn, sound amplification equipment, or other sounds or images observable to or within earshot of participants in the funeral, wake, memorial service, or burial.
- Distributing literature or any other item.

The U.S. District Court stated, "The 300-foot zone would encompass public sidewalks and streets and would restrict private property owners' speech on their own property. The zone is large enough that it would restrict communications intended for the general public on a matter completely unrelated to the funeral as well as messages targeted at funeral participants." The Court concluded that the statutory measures "restrict substantially more speech than that which would interfere with a funeral or that which would be so obtrusive that funeral participants could not avoid it. Accordingly, the provisions are not narrowly tailored to serve a significant government interest but are instead unconstitutionally overbroad."

In *Phelps-Roper v Nixon et al.*, the United States Court of Appeals for the Eighth Circuit overturned the District Court for the Western District of Missouri and granted a preliminary injunction banning the enforcement of Missouri's law. The Missouri law prohibits a person from engaging in picketing or other protest activities in front of or about any location at which a funeral is held, within one hour prior to or following any funeral. Under the law, "funeral" means the ceremonies, processions, and memorial services held in connection with the burial or cremation of the dead. In its January 26,

2007, decision granting a preliminary injunction, the Court of Appeals referred to the U.S. District Court decisions in Ohio and Kentucky. It stated that the floating buffer zones provide no guidance as to what locations are to be picket-free zones and at what times. The Court also stated that the Missouri statute "does not limit itself to activity which targets, disrupts, or is otherwise related to the funeral, memorial service or procession". The Court emphasized that it was not determining the constitutionality of the statute, but was holding only that the plaintiff was entitled to a preliminary injunction.

ARGUMENTS:

For:

Under Public Act 152 of 2006, the distance that a protester must remain from funeral proceedings is "500 feet from a building or other location" where such proceedings are taking place. Because the act does not indicate the part of a location from which the distance should be measured, it is possible that these measurements will be subject to dispute and therefore will be difficult to enforce. By clarifying the distance that protesters must remain from funerals, the bill would ensure that violations of an ordinance could be easily determined and would help prevent protesters from disturbing mourners.

Against:

The U.S. Constitution protects a person's freedom of speech and right to assemble. Courts have ruled that buffer zones, which restrict the exercise of these rights to certain distances from a funeral proceeding and may include public property as well as private property, are unconstitutional.

POSITIONS:

No positions were advanced.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.