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FISCAL IMPACT REPORT

ORIGINAL DATE 2/01/07
 LAST UPDATED 2/19/07 HB _____

SPONSOR Sharer _____

SHORT TITLE Funeral & Memorial Service Demonstrations SB 158/a SJC _____

ANALYST McOlash _____

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 186.

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- New Mexico Attorney General (AG)
- New Mexico Public Defender Department (PDD)
- New Mexico Corrections Department (CD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment removes any ambiguity by deleting the word “veiled” as it applies to “threats” against a person; and “likely to be” as it applies to any disturbing noise as defined in the bill; and, such noise as defined in the bill must be “disturbing to the peace “and” “good order of a funeral” before it becomes a prohibited act.

Synopsis of Original Bill

Senate Bill 158 enacts the Demonstrations at Funerals and Memorial Services Act to create the crime of demonstrating at a funeral or memorial service, or engaging in disruptive or threatening behavior that interferes with a funeral service or its attendees.

The bill also provides that a court may enjoin demonstrations or disruptive conduct at funerals if there is credible evidence that a person may engage in such conduct and provides for injunctive relief for surviving members of the deceased person's immediate family who are threatened with loss or injury by reason of violation of this Act.

The bill defines "funeral," "funeral site," and "targeted residential picketing." The bill also describes the prohibited acts, such as loud noisemaking, use of abusive epithets, and obstructing other persons' ingress and egress to the funeral site.

House Bill 186 establishes the following penalties for violating sections of this Act:

- A. First offense – petty misdemeanor, with a fine of not more than \$500 and/or imprisonment not to exceed six months;
- B. Second offense – misdemeanor, with a fine not to exceed \$1,000 and/or less than one year imprisonment; and
- C. Third offense – fourth degree felony, with 18 months in prison and a possible \$5,000 fine.

The bill includes a severability clause and an emergency clause.

FISCAL IMPLICATIONS

No fiscal impact.

SIGNIFICANT ISSUES

In 2006, President Bush signed two bills protecting military funerals from protests. A bill, signed in May 2006 bans demonstrations at national cemeteries. In December 2006, the President signed a bill prohibiting demonstrations at military funerals at non-federal cemeteries.

The federal laws are necessarily limited to military funerals (because of Article I jurisdictional constraints). States, on the other hand, have sought to ban or regulate public "protests" at military funerals and, in a number of cases, at all funerals, making it illegal to protest at the funeral of anyone including Charles Manson or Lee Harvey Oswald. At least thirty-two states are now considering or have passed laws criminalizing funeral protests.

Leading free-speech experts agree that the funeral-picketing measures present troubling First Amendment issues. The rationale behind these laws is to stop an offensive type of expression (most people would agree this is offensive)," says [Robert D. Richards](#), director of the Pennsylvania Center for the First Amendment, "but that's the very type of expression the First Amendment continues to protect.

Eugene Volokh, from the UCLA School of Law, has made the following arguments (nationalreview.com, March 23, 2006):

1. The government may not ban picketing based on content – for instance, banning anti-gay or anti-military picketing.

2. The government also may not ban offensive picketing on the grounds that it might start fights. While “fighting words” can be banned, such bans are generally limited to epithets addressed to a particular, insulted person.
3. The government generally may not impose content-neutral bans on all picketing or all picketing at certain places – for example schools or abortion clinics.
4. The government may impose content-neutral limits on noisy picketing; picketing that blocks traffic, etc., but must do this by regulating the number or volume level of picketers and not through bans on picketing. Likewise, violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct may be banned.
5. Picketing can be banned immediately outside the targeted person’s home which might be extended to protect the privacy of grieving.
6. However, the power to ban residential picketing is not limitless. The Court has specifically rejected an injunction that banned residential picketing within 300 feet of the homes of abortion clinic employees.
7. Picketing bans even limited content-neutral ones, must be defined with sufficient precision to avoid constitutional questions.

The New Mexico Public defenders Department has argued that more general laws already exist that address the offensive conduct: “harassment,” see NMSA 1978, § 30-3A-2 (1997), “stalking,” NMSA 1978, § 30-3A-3 (1997), “disturbing lawful assembly,” see NMSA 1978, § 30-13-1 (1963), “disorderly conduct,” see NMSA 1978, § 30-20-1 (1967), and, potentially, “resisting, evading, or obstructing an officer,” see NMSA 1978, § 30-22-1 (1981), should the demonstrator fail to cooperate with officers who are attempting to enforce the law.

OTHER SUBSTANTIVE ISSUES

Starting with Kansas, 28 states have passed similar bills, according to legislative researchers. They typically ban or limit protests around funerals. Some bar noisy, disruptive behavior or signs with "fighting words." Some ban demonstrations at funeral times. Others make demonstrators stay 100 to 1,000 feet back.

In response to the pickets, a motorcyclist group called the Patriot Guard Riders formed in 2005. The group's members use flag-waving crowds and a screen of cyclists and roaring engines to shield mourners from picketers and chants.

Presumably, SB 158 would ban both groups.

BM/sb:csd