

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Promote Personal Responsibility- This bill provides criminal penalties for disturbing a military funeral.

B. EFFECT OF PROPOSED CHANGES:

Military Funeral Honors for Any Veteran

The United States created a program that provides special recognition for veterans upon their death. The “Honoring Those Who Served” Program directs the Secretary of Defense to provide special Military Funeral Honors¹ for any² deceased veteran³ upon his or her family’s request. The codification of special funeral honors for deceased veterans by the United States Government recognizes both the special nature of their service and sacrifices while defending the country and the opportunity for such recognition at the time of their death.

The minimum requirements⁴ for Military Funeral Honors under the law are:

- A funeral honors detail with at least two persons from the armed forces in proper uniform, with at least one of those persons from the deceased veteran’s armed force⁵; and
- A ceremony that includes the playing of Taps by a bugler or recorded version followed by the folding and presentation of a United States flag to the decedent’s family.

The Department of Defense (DOD) has additional honors, such as, but not limited to, a firing party, which may augment the minimum requirements.

An eligible deceased veteran’s family may request a funeral with military honors by contacting their funeral director or a local veterans organization. In addition, DOD maintains a website (www.militaryfuneralhonors.osd.mil) to assist the public with Military Funeral Honors.

Over the last few years, according to numerous news accounts, protestors have been targeting certain high-profile funerals with pickets and sloganeering. More recently, these protestors have been organizing their protests at funerals honoring the nation’s fallen veterans. This has prompted many states, such as Oklahoma, Missouri, Indiana, Nebraska, South Dakota, Illinois, Kansas, Iowa, Mississippi, Virginia, Wisconsin, Tennessee, Kentucky, and West Virginia, to name a few, to enact or propose legislation to address protests at funerals.

Current Law

Section 871.01, F.S. provides, “[w]hoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose shall be guilty of a misdemeanor of the second degree⁶.”

¹ Title 10 U.S.C. s. 1491(a).

² Title 10 U.S.C. s. 985(a) provides certain exceptions to “any” veteran such as, but not limited to, a veteran convicted of a federal or state capital crime.

³ Title 10 U.S.C. s. 1491(h) defines veteran under this section as “a decedent who – (1) served in the active military, naval, or air service (as defined in section 101(24) of title 38) and who was discharged or released therefrom under conditions other than dishonorable; or (2) was a member or former member of the Selected Reserve described in section 2301(f) of title 38.”

⁴ Title 10 U.S.C. s. 1491(b) and (c).

⁵ The other members of the funeral detail may be retired military persons or members of veterans organizations.

⁶ Punishable by a definite term of imprisonment not exceeding 60 days and a fine of \$500. ss. 775.082(4)(b) and 775.083(1)(e), F.S.

In, S.H.B. v. State⁷, the Florida Supreme Court held,

To commit an offense under s. 871.01 a person must have deliberately acted to create a disturbance. That is, he must act with the intention that his behavior impede the successful functioning of the assembly in which he has intervened, or with reckless disregard of the effect of his behavior. The acts complained of must be such that a reasonable person would expect them to be disruptive. Finally, the acts must, in fact, significantly disturb the assembly. These elements are inherent in the statute as drafted.

Effect of this Bill

This bill expands s. 817.01, F.S., to make it a first degree misdemeanor⁸ to willfully interrupt or disturb any assembly of people met for the purpose of acknowledging the death of an individual with a military funeral honors detail pursuant to 10 U.S.C. s. 1491.

This bill also reenacts s. 871.02, F.S., to provide for the enforcement of s. 871.01, F.S., via indictment or information.

C. SECTION DIRECTORY:

Section 1. Amends s. 871.01, F.S., to provide penalties for disturbing a military funeral.

Section 2. Reenacts s. 871.02, F.S., relating to the enforcement of s. 871.01, F.S.

Section 3. Provides this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁷ 335 So.2d 1176, 1178 (Fla. 1978); Weidner v. State, 380 So.2d 1286, 1287 (Fla. 1980).

⁸ Punishable by a definite term of imprisonment not exceeding 1 year and a fine of \$1,000. ss. 775.082(4)(a) and 775.083(1)(d), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

HB 7127 may be challenged as violating the right to free speech. As noted above, the Florida Supreme Court in S.H.B. v. State⁹ set forth the elements that are inherent in s. 871.01, F.S. Although that case dealt with disruptive activities in school and HB 7127 expands s. 817.01, F.S., to address disruptive activities at a military funeral, both require the same conduct (whomever willfully interrupts or disturbs) just different places (school vs. Military funeral) where such conduct is prohibited.

In S.H.B. v. State, the Court held, “[b]ecause of the innumerable situations and types of conduct involved, the question of what conduct is forbidden must be determined largely on a case-by-case basis¹⁰.” The appellant in S.H.B. v. State contended that mere words, when used as a tool of communication, are constitutionally protected¹¹. The Court held, “the protection fails when, by the manner of their use, the words invade the right of others to pursue their lawful activities¹².” “It is the degree of loudness, and the circumstances in which they are uttered, which takes them out of the constitutionally protected area¹³.” The Court further held,

It should be noted that purported offences under section 871.01 are to be judged by the circumstances in which they occur. It takes more to disturb a parade than a church service. However, in a public school, appellant’s conduct coupled with strident profanity in defiance of school authorities, causing an interruption in the school’s activities, is forbidden under the statute.

In Weidner v. State, the appellant contended that s. 871.01, F.S., was unconstitutional as applied to him in that it is being used to punish him for engaging in constitutionally protected speech. The Court held, the state did not seek to punish speech, but rather to punish him for conduct that allegedly disturbed a public assembly¹⁴.

In light of these principles, an argument could be made that HB 7127 offends constitutional guarantees of free speech when s. 817.01, F.S., is used to punish speech used as a tool of communication; not conduct alone or speech coupled with conduct.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁹ 335 So.2d 1176, 1178.

¹⁰ Id.

¹¹ Id at 1179.

¹² Id.

¹³ Id citing white v. State, 330 So.2d 3,7 (Fla. 1976)

¹⁴ 380 So.2d 1286, 1287 (Fla. 1980); *see also* State v. Sweet, 616 So.2d 114 (2nd DCA 1993)(Conceivably, use of s. 871.01, F.S., to punish words when used as a tool of communication could offend constitutional guarantees of religious liberty and free speech).