

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

**BILL #:** HB 15

**FINAL HOUSE FLOOR ACTION:**

**SPONSOR(S):** Rooney; Eagle and others

116 Y's

0 N's

**COMPANION (CS/SB 118)  
BILLS:**

**GOVERNOR'S ACTION:** Approved

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**SUMMARY ANALYSIS**

HB 15 passed the House on March 13, 2013, and subsequently passed the Senate on March 27, 2013.

The bill expands current law targeting funeral disturbances by prohibiting a wider scope of conduct in a broader range of instances. Specifically, the bill makes it a first degree misdemeanor to knowingly engage in protest activities or knowingly cause protest activities to occur:

- Within 500 feet of the property line of any location where a funeral or burial is being conducted,
- During or within 1 hour before or 1 hour after the conducting of the funeral or burial.

The bill defines "protest activities" as "any action, including picketing, which is undertaken with the intent to interrupt or disturb a funeral or burial."

The bill may have a negative jail bed impact on local governments in that it creates a new first degree misdemeanor offense.

The bill was approved by the Governor on April 10, 2013, ch. 2013-19, L.O.F., and will become effective on October 1, 2013.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Current Situation**

Florida law currently contains a number of provisions that make it unlawful to incite riots, breach the peace, and disturb lawful assemblies. A summary of these statutes follows.

#### Section 877.03, F.S.

Section 877.03, F.S., relates to breach of the peace and disorderly conduct. The statute makes it a second degree misdemeanor<sup>1</sup> for a person to commit acts that:

- Corrupt public morals;
- Outrage the sense of public decency;
- Affect the peace and quiet of persons who may witness them;
- Engage in brawling or fighting; or
- Engage in such conduct as to constitute a breach of peace or disorderly conduct.

Courts have narrowed the construction of this language to prohibit speech that constitutes “fighting words”<sup>2</sup> or words that “inflict injury or tend to incite immediate breach of peace.”<sup>3</sup>

#### Section 870.01, F.S.

Section 870.01, F.S., makes it a first degree misdemeanor<sup>4</sup> for a person to commit an affray. The statute also makes it a third degree felony<sup>5</sup> for a person to riot, or incite or encourage a riot. Although the terms “affray” and “riot” are not defined, the courts have upheld the statute against vagueness challenges.<sup>6</sup>

#### Section 870.02, F.S.

Section 870.02, F.S., relates to unlawful assemblies. The statute makes it a second degree misdemeanor for three or more persons to meet together to commit a breach of the peace,<sup>7</sup> or to do any other unlawful act.

#### Section 871.01, F.S.

Section 871.01(1), F.S., makes it a second degree misdemeanor to willfully interrupt or disturb any lawful assembly, including schools and assemblies gathered for the worship of God. The Florida Supreme Court upheld this statute against First Amendment and overbreadth challenges.<sup>8</sup>

In 2006, in response to various groups creating public disturbances at high profile military funerals, subsection (2) was added to s. 871.01, F.S.<sup>9</sup> Section 871.01(2), F.S., makes it a first degree misdemeanor for a person to willfully interrupt or disturb a group of people who are assembled to acknowledge the death of a person with a “military funeral honors detail” as defined by 10 U.S.C. s. 1491. A military honors detail includes the presence of two uniformed members of the armed forces, the playing of Taps, the folding of the United States flag and its presentation to the family.<sup>10</sup>

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<sup>1</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> *Macon v. State*, 854 So.2d 834, 837 (Fla. 5th DCA 2003).

<sup>3</sup> *United States v. Lyons*, 403 F.3d 1248, 1254 (11th Cir. 2005).

<sup>4</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>5</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>6</sup> *See D.L.B. v. State*, 707 So.2d 844, 845 (Fla. 2d DCA 1998) (finding that statute sufficiently defines “affray,” given that “readily available dictionaries define “affray” as a public fight or brawl”); *State v. Beasley*, 317 So.2d 750, 753 (Fla. 1975) (upholding Section 870.01(2), F.S., as constitutional upon the Court’s authoritative, limiting construction).

<sup>7</sup> Breach of the peace is described in s. 877.03, F.S.

<sup>8</sup> *S.H.B. v. State*, 355 So.2d 1176 (Fla. 1978).

<sup>9</sup> Chapter 2006-264, L.O.F. *Also see*, Florida House of Representatives Staff Analysis, House Bill 7127 (2006).

<sup>10</sup> 10 U.S.C. s. 1491.

Although s. 871.01, F.S., does not define the phrase “interrupt or disturb,” the Supreme Court of Florida has described the phrase as follows:

[A] person must have deliberately acted to create a disturbance...the person must have acted with the intention that his behavior impede the successful functioning of the assembly or with reckless disregard of the effect of his behavior; additionally, the acts complained of must be such that a reasonable person would expect them to be disruptive and the acts must, in fact, significantly disturb the assembly.<sup>11</sup>

### **Effect of the Bill**

The bill creates s. 871.015, F.S., which targets conduct that takes place within a specified time and distance of a funeral or burial. The bill expands current law targeting funeral disturbances by prohibiting a *wider scope of conduct* in a *broader range of instances*.

The bill makes it a first degree misdemeanor to knowingly engage in protest activities or knowingly cause protest activities to occur:

- Within 500 feet of the property line of any location,<sup>12</sup>
- During or within 1 hour before or 1 hour after the conducting of a funeral or burial at that place.

This bill does not prohibit protest activities that occur adjacent to that portion of a funeral procession which extends beyond 500 feet of the property line of the location of the funeral or burial.

The bill defines:

- “Protest activities” as “any action, including picketing, which is undertaken with the intent to interrupt or disturb a funeral or burial.”
- “Funeral or burial” as “a service or ceremony offered or provided in connection with the final disposition, memorialization, internment, entombment, or inurnment of human remain or cremated human remains.”
- “Funeral procession” as “two or more vehicles accompanying the body of a deceased person, or traveling to the church, chapel, or other location at which the funeral service is to be held, in the daylight hours, including a funeral lead vehicle or a funeral escort vehicle.”

The distinction between s. 871.01, F.S., and the bill’s provisions are subtle but significant. Section 871.01, F.S., prohibits a person from acting with the intention to interrupt or disturb an assembly *and that does in fact significantly disturb the assembly*. The bill prohibits “any action...that is undertaken with the intent to interrupt or disturb” a funeral or burial under the specified conditions, regardless of whether those actions *do in fact cause* such a disturbance.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>11</sup> *S.H.B. v. State*, 355 So.2d 1176, 1178 (Fla. 1977) (finding “[t]hese elements are inherent in the statute as drafted.”).

<sup>12</sup> Including but not limited to a residence, cemetery, funeral home, or house of worship.

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact local government revenues.

2. Expenditures:

The bill may have a negative jail bed impact on local governments in that it creates a new first degree misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.