S T A T E O F N E W Y O R K

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I N S E N A T E

March 9, 2011

Introduced by Sens. ZELDIN, GRIFFO, BALL, SKELOS, ADDABBO, ALESI, AVELLA, BONACIC, DeFRANCISCO, FARLEY, FLANAGAN, FUSCHILLO, GALLIVAN, GOLDEN, GRISANTI, HANNON, JOHNSON, KLEIN, LANZA, LARKIN, LAVALLE, LIBOUS, LITTLE, MARCELLINO, MARTINS, MAZIARZ, McDONALD, NOZZOLIO, O'MARA, RANZENHOFER, RITCHIE, ROBACH, SALAND, SEWARD, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs -- reported favorably from said committee and committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general municipal law and the parks, recreation and historic preservation law, in relation to requiring permits for demonstrations at veteran funerals

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The article heading of article 7-A of the general municipal law, as added by chapter 871 of the laws of 1948, is amended to read as follows:

BURIAL OF VETERANS AND THEIR FAMILIES; CERTAIN PERMIT REQUIREMENTS

S 2. The general municipal law is amended by adding a new section 149 to read as follows:

S 149. PERMITS IN CERTAIN CIRCUMSTANCES. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

(A) "DEMONSTRATION" SHALL MEAN A PRE-PLANNED GATHERING OF TWELVE OR MORE PERSONS WHO ARE INVITED OR ORGANIZED BY AN ORGANIZER TO CONVENE FOR THE PURPOSE OF A PUBLIC EXHIBITION INCLUDING A PROCESSION, PARADE, PROTEST, PICKET, MARCH OR RALLY ON PUBLIC PROPERTY CONCERNING AND IN THE VICINITY OF A FUNERAL EVENT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(B) "FUNERAL EVENT" SHALL MEAN A WAKE, FUNERAL, BURIAL OR MEMORIAL SERVICE CONDUCTED WITHIN THIRTY DAYS AFTER THE DEATH OF THE PERSON WHO IS THE SUBJECT OF SUCH EVENT.

(C) "ORGANIZER" SHALL MEAN THE PERSON OR ORGANIZATION THAT PLANS OR COORDINATES A DEMONSTRATION FOR WHICH A PERMIT MAY BE REQUIRED PURSUANT TO THIS SECTION.

(D) "PERMIT AUTHORITY" SHALL MEAN THE GOVERNMENTAL ENTITY HAVING PRIMARY JURISDICTION FOR A LOCATION WHICH, IN THE CASE OF:

(I) A PARK, PARKWAY OR PROPERTY THAT IS SUBJECT TO THE JURISDICTION OF THE STATE UNIVERSITY OF NEW YORK, THE PERMIT AUTHORITY SHALL BE THE STATE UNIVERSITY OF NEW YORK;

(II) A COUNTY PARK, PARKWAY OR PROPERTY SHALL BE THE COUNTY PARK COMMISSION OR SUCH OTHER COUNTY AGENCY HAVING JURISDICTION, CONTROL AND/OR OPERATION OF SUCH PARK, PARKWAY OR PROPERTY;

(III) A CITY PARK, PARKWAY OR PROPERTY SHALL BE THE DULY CONSTITUTED LICENSING AGENCY THEREOF AND, IN THE ABSENCE OF SUCH AGENCY, SHALL BE AN OFFICER DESIGNATED BY LOCAL LAW FOR SUCH PURPOSE BY THE LEGISLATIVE BODY THEREOF;

(IV) A TOWN PARK, PARKWAY OR PROPERTY OUTSIDE OF THE TERRITORY OF A VILLAGE, SHALL BE AN OFFICER DESIGNATED BY LOCAL LAW FOR SUCH PURPOSE BY THE TOWN BOARD THEREOF; AND

(V) A VILLAGE PARK, PARKWAY OR PROPERTY SHALL BE AN OFFICER DESIGNATED BY LOCAL LAW FOR SUCH PURPOSE BY THE BOARD OF TRUSTEES THEREOF.

2. PERMITS ISSUED BY PERMIT AUTHORITY. IN ADDITION TO ANY OTHER LAW AUTHORIZING PERMITS, ANY PERMIT AUTHORITY MAY, BY LOCAL LAW OR REGULATION, REQUIRE THAT A PERMIT BE OBTAINED FOR A DEMONSTRATION THAT WILL TAKE PLACE WITHIN ONE THOUSAND FEET OF A FUNERAL EVENT AND DURING OR WITHIN ONE HOUR BEFORE OR AFTER SUCH FUNERAL EVENT. THE EXISTENCE AND REQUIREMENTS OF SUCH LOCAL LAW, AND ANY RELATED, LAWFUL REGULATIONS, SHALL BE PROMINENTLY POSTED IN A PUBLIC AREA OF THE OFFICE OF THE PERMITTING AUTHORITY, AND SHALL ALSO BE POSTED ON ANY WEBSITE ESTABLISHED OR AVAILABLE FOR THE USE OF THE PERMITTING AUTHORITY OR, IF NO SUCH WEBSITE IS AVAILABLE, BE POSTED BY ANNUAL PUBLICATION IN A NEWSPAPER OR NEWSPAPERS OF RECORD SERVING THE COMMUNITIES WITHIN THE JURISDICTION OF THE PERMIT AUTHORITY. SUCH LOCAL LAW MAY REQUIRE:

(A) AN ORGANIZER OF SUCH A DEMONSTRATION SHALL BE REQUIRED TO APPLY FOR A PERMIT CONCERNING SUCH DEMONSTRATION. SUCH PERMIT APPLICATION PROCESS SHALL BE AVAILABLE FOR A REASONABLE PERIOD BEFORE SUCH FUNERAL EVENT IS ACTUALLY SCHEDULED TO BEGIN.

(B) UPON THE FILING OF SUCH AN APPLICATION, THE PERMIT AUTHORITY SHALL PROMPTLY REVIEW SUCH APPLICATION AND, IF THE APPLICATION SATISFIES THE REQUIREMENTS OF THIS SUBDIVISION AS WELL AS ANY ADDITIONAL REQUIREMENTS THE PERMIT AUTHORITY MAY, BY LAWFUL REGULATION, IMPOSE, THEN THE PERMIT AUTHORITY SHALL ISSUE TO THE ORGANIZER A PERMIT UNDER THIS SUBDIVISION. IN SUCH EVENT, THE PERMIT SHALL SPECIFY, EXPRESSLY AND IN DETAIL, THE TIME AND PLACE AND ANY LAWFUL RESTRICTIONS THAT MAY BE IMPOSED REGARDING SUCH DEMONSTRATION. IF SUCH PERMIT APPLICATION IS DENIED, THE PERMIT AUTHORITY SHALL ISSUE A WRITTEN DENIAL THAT SPECIFIES IN DETAIL THE MANNER IN WHICH THE APPLICATION IS DEFICIENT, TOGETHER WITH THE PROCEDURE BY WHICH THE ORGANIZER MAY OBTAIN TIMELY RECONSIDERATION OF SUCH DETERMINATION UNDER THIS SUBDIVISION.

(C) THE PERMIT ISSUED BY A PERMIT AUTHORITY UNDER THIS SUBDIVISION MAY, IN ACCORDANCE WITH APPLICABLE LAW, SPECIFY REASONABLE RESTRICTIONS ON THE TIME, PLACE AND MANNER OF THE DEMONSTRATION FOR WHICH THE PERMIT IS ISSUED.

3. PERMIT REQUIREMENT. A CITY, TOWN, VILLAGE OR COUNTY THAT, BY LOCAL LAW, ENACTS A PERMIT REQUIREMENT IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION MAY BY SUCH LAW ESTABLISH A REASONABLE CIVIL PENALTY FOR ANY PERSON WHO, AFTER PROPER NOTICE AND AN OPPORTUNITY FOR AN ADJUDICATORY HEARING, IS FOUND TO HAVE INTENTIONALLY ORGANIZED AND CONDUCTED A DEMONSTRATION WITHIN ONE THOUSAND FEET OF A FUNERAL EVENT, WITHOUT FIRST HAVING OBTAINED A REQUIRED PERMIT IN ACCORDANCE WITH SUCH LAW. SUCH LOCAL LAW MAY INCLUDE AN INCREASED MAXIMUM CIVIL PENALTY FOR A SECOND OR SUBSEQUENT VIOLATION.

4. PUBLIC SAFETY. THE STATE POLICE POWER AND THAT OF ITS LOCALITIES MAY BE EMPLOYED TO PROVIDE ADEQUATE PUBLIC SAFETY AND PROTECTION AT SUCH A FUNERAL EVENT AND THE PROCESSION TO OR FROM SUCH A FUNERAL EVENT.

S 3. The parks, recreation and historic preservation law is amended by adding a new section 13.31 to read as follows:

S 13.31 PERMITS FOR ACTIVITIES NEAR CERTAIN FUNERAL EVENTS. 1. FOR THE PURPOSES OF THIS SECTION:

(A) "DEMONSTRATION" SHALL MEAN A PRE-PLANNED GATHERING OF TWELVE OR MORE PERSONS WHO ARE INVITED OR ORGANIZED BY AN ORGANIZER TO CONVENE FOR THE PURPOSE OF A PUBLIC EXHIBITION INCLUDING A PROCESSION, PARADE, PROTEST, PICKET, MARCH OR RALLY ON PUBLIC PROPERTY CONCERNING AND IN THE VICINITY OF A FUNERAL EVENT.

(B) "FUNERAL EVENT" SHALL MEAN A WAKE, FUNERAL, BURIAL OR MEMORIAL SERVICE CONDUCTED WITHIN THIRTY DAYS AFTER THE DEATH OF THE PERSON WHO IS THE SUBJECT OF SUCH EVENT.

(C) "ORGANIZER" SHALL MEAN THE PERSON OR ORGANIZATION THAT PLANS OR COORDINATES A DEMONSTRATION FOR WHICH A PERMIT MAY BE REQUIRED PURSUANT TO THIS SECTION.

2. THE COMMISSIONER MAY PROMULGATE REGULATIONS TO REQUIRE THAT A PERMIT BE OBTAINED FOR A DEMONSTRATION THAT WILL TAKE PLACE IN A STATE PARK, STATE PARKWAY OR OTHER STATE PROPERTY, WITHIN ONE THOUSAND FEET OF A FUNERAL EVENT, AND DURING OR WITHIN ONE HOUR BEFORE OR AFTER SUCH FUNERAL EVENT. THE EXISTENCE AND REQUIREMENTS OF SUCH LAWFUL REGULATIONS SHALL BE PROMINENTLY POSTED IN A PUBLIC AREA OF THE OFFICE OR HEADQUARTERS OF EACH PARK UNDER THE JURISDICTION OF THE STATE DEPARTMENT OF PARKS AND RECREATION AND SHALL ALSO BE POSTED ON ANY WEBSITE ESTABLISHED OR AVAILABLE FOR THE USE OF THE OFFICE. SUCH REGULATIONS MAY REQUIRE:

(A) AN ORGANIZER OF SUCH A DEMONSTRATION TO APPLY FOR A PERMIT CONCERNING SUCH DEMONSTRATION PROVIDED, HOWEVER, THAT SUCH PERMIT APPLICATION PROCESS SHALL BE AVAILABLE FOR A REASONABLE PERIOD BEFORE SUCH FUNERAL EVENT IS ACTUALLY SCHEDULED TO BEGIN.

(B) UPON FILING SUCH AN APPLICATION, THE OFFICE SHALL PROMPTLY REVIEW SUCH APPLICATION AND, IF THE APPLICATION SATISFIES THE REQUIREMENTS OF THIS SUBDIVISION AS WELL AS ANY ADDITIONAL REQUIREMENTS THE COMMISSIONER MAY, BY LAWFUL REGULATION, IMPOSE, THEN THE OFFICE SHALL ISSUE TO THE ORGANIZER A PERMIT UNDER THIS SUBDIVISION. IN SUCH EVENT, THE PERMIT SHALL SPECIFY, EXPRESSLY AND IN DETAIL, THE TIME AND PLACE AND ANY LAWFUL RESTRICTIONS THAT MAY BE IMPOSED REGARDING SUCH DEMONSTRATION. IF SUCH PERMIT APPLICATION IS DENIED, THE OFFICE SHALL ISSUE A WRITTEN DENIAL THAT SPECIFIES IN DETAIL THE MANNER IN WHICH THE APPLICATION IS DEFICIENT, TOGETHER WITH THE PROCEDURE BY WHICH THE ORGANIZER MAY OBTAIN TIMELY RECONSIDERATION OF SUCH DETERMINATION UNDER THIS SUBDIVISION.

(C) THE PERMIT ISSUED BY THE OFFICE UNDER THIS SUBDIVISION MAY, IN ACCORDANCE WITH APPLICABLE LAW, SPECIFY REASONABLE RESTRICTIONS ON THE TIME, PLACE AND MANNER OF THE DEMONSTRATION FOR WHICH THE PERMIT IS ISSUED.

(D) THE COMMISSIONER MAY REQUIRE THE ORGANIZER TO PAY A REASONABLE FEE WITH THE PERMIT APPLICATION IN ORDER TO REDUCE ADMINISTRATIVE AND PROCESSING COSTS.

3. ANY PERSON WHO, AFTER PROPER NOTICE AND OPPORTUNITY FOR AN ADJUDICATORY HEARING, IS FOUND TO HAVE INTENTIONALLY ORGANIZED AND CONDUCTED A DEMONSTRATION WITHIN ONE THOUSAND FEET OF A FUNERAL EVENT WITHOUT FIRST HAVING OBTAINED A REQUIRED PERMIT UNDER THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF UP TO FIVE HUNDRED DOLLARS FOR THE FIRST SUCH VIOLATION DETERMINED TO HAVE BEEN COMMITTED, UP TO ONE THOUSAND DOLLARS FOR A SECOND SUCH VIOLATION DETERMINED TO HAVE BEEN COMMITTED WITHIN THREE YEARS OF THE FIRST SUCH VIOLATION, AND UP TO TWO THOUSAND DOLLARS FOR A THIRD SUCH VIOLATION DETERMINED TO HAVE BEEN COMMITTED WITHIN SUCH THREE YEAR PERIOD. THE STATE POLICE POWER AND THAT OF ITS LOCALITIES MAY BE EMPLOYED TO PROVIDE ADEQUATE PUBLIC SAFETY AND PROTECTION AT SUCH A FUNERAL EVENT AND THE PROCESSION TO OR FROM SUCH FUNERAL EVENT.

S 4. This act shall take effect on the sixtieth day after it shall have become a law.