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

5602--A

2011-2012 Regular Sessions

I N S E N A T E

June 6, 2011

Introduced by Sens. ZELDIN, BALL, GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the military law, in relation to the regulation of protests at military funerals

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

Section 1. The military law is amended by adding a new section 255 to read as follows:

S 255. REGULATION OF PROTESTS AT MILITARY FUNERALS. 1. LEGISLATIVE INTENT. THE LEGISLATURE FINDS AND DETERMINES THAT ALTHOUGH IT IS IMPORTANT FOR OUR STATE'S CITIZENS TO BE ABLE TO EXERCISE THEIR CONSTITUTIONALLY PROTECTED RIGHT TO FREE SPEECH, THERE IS ALSO A COMPELLING STATE INTEREST IN PRESERVING AND PROTECTING THE FAMILIES AND FRIENDS OF DECEASED MILITARY PERSONNEL, ESPECIALLY AT SUCH A SOLEMN TIME AS THE DECEASED MILITARY PERSONNEL'S FUNERAL, MEMORIAL SERVICE, WAKE, BURIAL OR PROCESSION TO OR FROM THE SAME.

THE LEGISLATURE FURTHER FINDS AND DETERMINES THAT IN ORDER TO BALANCE THE CONSTITUTIONALLY PROTECTED RIGHT TO FREE SPEECH, AND THE COMPELLING STATE INTEREST IN PRESERVING AND PROTECTING THE MOURNING FAMILIES AND FRIENDS OF DECEASED MILITARY PERSONNEL, THE STATE POLICE POWERS, AND THOSE OF ITS LOCALITIES, MAY BE EMPLOYED TO PROVIDE SUFFICIENT PROTECTION OF THE FAMILIES AND FRIENDS OF SUCH DECEASED MILITARY PERSONNEL, AT SUCH A SOLEMN TIME AS THE DECEASED MILITARY PERSONNEL'S FUNERAL, MEMORIAL SERVICE, WAKE, BURIAL OR PROCESSION TO OR FROM THE SAME.

THE LEGISLATURE FURTHER FINDS AND DETERMINES THAT IN ADDITION TO ANY STATE PROHIBITION WHICH MAY BE IMPOSED UNDER THE PENAL LAW, WITH RESPECT TO THE EXERCISE OF FREE SPEECH WITHIN A CERTAIN DISTANCE FROM A FUNERAL, MEMORIAL SERVICE, WAKE, BURIAL OR PROCESSION TO OR FROM THE SAME, THAT

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

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THERE IS ALSO A COMPELLING STATE INTEREST IN PROVIDING FOR A SAFETY AND PROTECTION BUFFER ZONE, WITHIN WHICH THE EXPRESSION OF SUCH FREE SPEECH RIGHTS MAY ONLY BE EXERCISED, PURSUANT TO A CONTROLLED, REGULATED, PERMITTED SYSTEM, IN ORDER THAT THE PUBLIC PEACE AND SAFETY OF THE MOURNERS, PROTESTERS, AND THE GENERAL PUBLIC CAN BE EFFECTIVELY MAINTAINED.

THE LEGISLATURE FURTHER FINDS AND DETERMINES THAT IT IS THE INTENT OF THIS LEGISLATION TO PROVIDE FOR THE STANDARDS OF SUCH SAFETY AND PROTECTION BUFFER ZONES, AND THAT IN SO DOING, SEEKS TO ESTABLISH THE REQUIRED BALANCE BETWEEN THE ABILITY OF OUR STATE'S CITIZENS TO EXERCISE THEIR CONSTITUTIONALLY PROTECTED RIGHT TO FREE SPEECH AND THE COMPELLING STATE INTEREST IN PRESERVING AND PROTECTING THE MOURNING FAMILIES AND FRIENDS OF A DECEASED MEMBER OF THE ACTIVE MILITARY SERVICE OF THE UNITED STATES OR THE FORCE OF THE ORGANIZED MILITIA.

2. MILITARY FUNERAL BUFFER ZONE PUBLIC SAFETY PROGRAM. ANY CITY, TOWN, VILLAGE OR COUNTY, MAY, BY LOCAL LAW, ESTABLISH A MILITARY FUNERAL BUFFER ZONE PUBLIC SAFETY PROGRAM. SUCH PROGRAM SHALL REQUIRE THAT ANY CITIZEN OR GROUP THAT CONDUCTS A PROTEST WITHIN TWO THOUSAND FIVE HUNDRED FEET OF A FUNERAL, MEMORIAL SERVICE, WAKE, BURIAL OR PROCESSION OF A DECEASED MEMBER OF THE ACTIVE MILITARY SERVICE OF THE UNITED STATES OR THE FORCE OF THE ORGANIZED MILITIA, MAY DO SO ONLY AFTER FIRST OBTAINING A PERMIT FROM THE NEW YORK STATE DIVISION OF MILITARY AND NAVAL AFFAIRS (HEREINAFTER "DIVISION"). UPON THE ISSUANCE OF A PERMIT UNDER THIS SUBDIVISION TO CONDUCT SUCH A PROTEST IN A LOCALITY, THE DIVISION, IN ADDITION TO WHATEVER REQUIREMENTS IT SHALL ESTABLISH BY REGULATION, SHALL REQUIRE THAT:

A. THE CITIZEN OR GROUP FILE AN APPLICATION FOR A PERMIT TO CONDUCT A PROTEST IN THE VICINITY OF A FUNERAL, MEMORIAL SERVICE, WAKE, BURIAL OR PROCESSION OF A DECEASED MEMBER OF THE ACTIVE MILITARY SERVICE OF THE UNITED STATES OR THE FORCE OF THE ORGANIZED MILITIA, WITH THE DIVISION, IN THE MANNER AND FORM AS MAY BE REQUIRED BY THE DIVISION PURSUANT TO REGULATION, NOT LESS THAN SEVEN BUSINESS DAYS PRIOR TO THE DATE OF THE PROTEST;

B. THE CITIZEN OR GROUP FILING SUCH APPLICATION, SHALL AT THE TIME OF THE FILING OF SUCH APPLICATION, ALSO POST A PUBLIC SECURITY BOND WITH THE DIVISION, IN THE MANNER AND FORM AS MAY BE REQUIRED BY THE DIVISION PURSUANT TO REGULATION, IN THE AMOUNT AS FOLLOWS:

(I) FOR A PROTEST WITH ONE TO FIVE PERSONS, FIVE THOUSAND DOLLARS;

(II) FOR A PROTEST WITH SIX TO TEN PERSONS, SEVEN THOUSAND FIVE HUNDRED DOLLARS;

(III) FOR A PROTEST WITH ELEVEN TO TWENTY-FIVE PERSONS, TEN THOUSAND DOLLARS;

(IV) FOR A PROTEST WITH TWENTY-SIX TO FIFTY PERSONS, FIFTEEN THOUSAND DOLLARS;

(V) FOR A PROTEST WITH FIFTY-ONE TO SEVENTY-FIVE PERSONS, TWENTY THOUSAND DOLLARS;

(VI) FOR A PROTEST WITH SEVENTY-FIVE TO ONE HUNDRED PERSONS, TWENTY-FIVE THOUSAND DOLLARS; AND

(VII) FOR A PROTEST WITH OVER ONE HUNDRED PERSONS, TWENTY-FIVE THOUSAND DOLLARS PLUS AN ADDITIONAL AMOUNT PER PROTESTOR AS SHALL BE ESTABLISHED PURSUANT TO REGULATION BY THE DIVISION;

C. WITHIN THREE BUSINESS DAYS OF THE FILING OF AN APPLICATION PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, TOGETHER WITH THE POSTING OF THE REQUIRED SECURITY BOND PURSUANT TO PARAGRAPH B OF THIS SUBDIVISION, THE DIVISION SHALL REVIEW SUCH APPLICATION AND SECURITY BOND, AND IF SUCH APPLICATION AND BOND SATISFY ALL THE REQUIREMENTS OF THIS SECTION, AS WELL AS ALL THE REQUIREMENTS THAT THE DIVISION MAY FURTHER IMPOSE BY

REGULATION, THEN THE DIVISION SHALL ISSUE TO THE APPLICANT, A PERMIT TO CONDUCT SUCH PROTEST, AND SUCH PERMIT SHALL EXPRESSLY, AND IN DETAIL, SET FORTH THE TIME, PLACE AND MANNER OF RESTRICTIONS OF THE PROTEST AS ALLOWABLE BY LAW;

D. UPON ISSUING A PERMIT TO CONDUCT A PROTEST UNDER THIS SECTION, THE DIVISION SHALL ALSO TRANSMIT A COPY OF THE PERMIT, TOGETHER WITH THE APPLICATION FOR THE SAME, TO THE LOCALITY IN WHICH THE APPLICANT SEEKS TO CONDUCT THE PROTEST;

E. UPON RECEIVING A PERMIT FROM THE DIVISION, AND NOT LESS THAN FORTY-EIGHT HOURS PRIOR TO THE CONDUCT OF THE PROTESTS, THE APPLICANT SHALL ALSO FILE WITH EACH CITY, TOWN, VILLAGE, AND COUNTY, IN WHICH THE PROTEST IS AUTHORIZED TO OCCUR, A COPY OF THE PERMIT ISSUED BY THE DIVISION;

F. THE PERMIT ISSUED BY THE DIVISION SHALL PROVIDE THAT THE PROTEST, FOR WHICH A PERMIT WAS ISSUED BY THE DIVISION, AND FOR WHICH A SECURITY BOND WAS FILED, SHALL BE CONDUCTED EXCLUSIVELY IN THE MANNER, PLACE AND TIME, AS SPECIFIED AND AUTHORIZED IN THE PERMIT;

G. IN NO EVENT SHALL ANY PROTEST EVER BE CONDUCTED, NOR SHALL THE DIVISION EVER ISSUE A PERMIT FOR THE CONDUCT OF ANY PROTEST, WITHIN FIVE HUNDRED FEET OF ANY FUNERAL, MEMORIAL SERVICE, WAKE, BURIAL, OR PROCESSION TO OR FROM THE SAME, OF A MEMBER OF THE ACTIVE MILITARY SERVICE OF THE UNITED STATES OR THE FORCE OF THE ORGANIZED MILITIA;

H. WITHIN THIRTY DAYS OF THE DATE OF THE PROTEST FOR WHICH THE PERMIT WAS ISSUED BY THE DIVISION, THE GOVERNING BODY OF THE LOCALITY IN WHICH SUCH PROTEST WAS HELD, BY A MAJORITY VOTE OF THE MEMBERS OF SUCH GOVERNING BODY, SHALL MAKE A DETERMINATION AS TO WHETHER SUCH PROTEST COMPLIED IN ALL RESPECTS WITH ALL THE REQUIREMENTS OF THE PERMIT, AND SHALL THEREUPON NOTIFY THE DIVISION OF SUCH DETERMINATION;

I. UPON THE NOTIFICATION BY A LOCALITY THAT A PROTEST WAS HELD WHICH COMPLIED IN ALL RESPECTS WITH ALL THE REQUIREMENTS OF THE PERMIT, THE DIVISION SHALL, WITHIN THIRTY DAYS, RELEASE AND REFUND THE SECURITY BOND FILED BACK TO THE APPLICANT, UNLESS REQUIRED TO DO OTHERWISE BY A COURT OF COMPETENT JURISDICTION;

J. IN THE EVENT THAT AN APPLICANT FILES A SECURITY BOND WITH THE DIVISION, AND THEREAFTER FILES A WITHDRAWAL OF THE APPLICATION, DUE EITHER TO THE FACT THAT THE PROTEST NEVER OCCURRED OR THAT THE APPLICANT NO LONGER DESIRED TO HOLD A PROTEST, THE DIVISION, UPON FINDING THAT SUCH APPLICATION FOR WITHDRAWAL IS MERITORIOUS, SHALL, WITHIN THIRTY DAYS, RELEASE AND REFUND THE SECURITY BOND FILED BACK TO THE APPLICANT, UNLESS REQUIRED TO DO OTHERWISE BY A COURT OF COMPETENT JURISDICTION;

K. IN THE EVENT THAT THE GOVERNING BODY OF THE LOCALITY IN WHICH SUCH PROTEST WAS HELD MAKES A DETERMINATION, BY A MAJORITY VOTE OF THE MEMBERS OF SUCH GOVERNING BODY, THAT SUCH PROTEST DID NOT COMPLY IN ALL RESPECTS WITH ALL THE REQUIREMENTS OF THE PERMIT, THEN THE DIVISION, PURSUANT TO REGULATIONS, SHALL CONDUCT A HEARING, WHEREUPON IT SHALL MAKE A DETERMINATION AS TO WHETHER THE APPLICANT SHALL FORFEIT ALL OR ANY PART OF THE BOND, WITH THE PROCEEDS OF THE BOND BEING AWARDED TO:

(I) THE LOCALITY;

(II) A PERSON OR PERSONS CONNECTED WITH THE FUNERAL, MEMORIAL SERVICE, WAKE, BURIAL OR PROCESSION WHICH WAS THE SUBJECT OF THE PROTEST;

(III) THE APPLICANT; OR

(IV) ANY COMBINATION OF THE ABOVE; AND

L. IN THE EVENT THAT THE DIVISION MAKES A DETERMINATION THAT ALL OR ANY PART OF THE SECURITY BOND SHALL NOT BE RETURNED AND REFUNDED TO THE APPLICANT, THE DIVISION SHALL MAKE PAYMENT TO THOSE PARTIES THAT IT DETERMINED SHOULD RECEIVE THE PROCEEDS OF SUCH SECURITY BOND, WITHIN

THIRTY DAYS OF MAKING SUCH DETERMINATION, UNLESS REQUIRED TO DO OTHERWISE BY A COURT OF COMPETENT JURISDICTION.

3. THE DIVISION, AND ANY LOCALITY, SHALL NOT REQUIRE A PERMIT, OR SECURITY BOND, FOR ANY PROTEST OF ANY FUNERAL, MEMORIAL SERVICE, WAKE, BURIAL, OR PROCESSION TO OR FROM THE SAME, OF A MEMBER OF THE ACTIVE MILITARY SERVICE OF THE UNITED STATES OR THE FORCE OF THE ORGANIZED MILITIA, WHERE SUCH PROTEST IS CONDUCTED EXCLUSIVELY AT A DISTANCE OF MORE THAN TWO THOUSAND FIVE HUNDRED FEET FROM ANY SUCH FUNERAL, MEMORIAL SERVICE, WAKE, BURIAL, OR PROCESSION TO OR FROM THE SAME.

4. VIOLATIONS OF MILITARY FUNERAL BUFFER ZONE PUBLIC SAFETY PROGRAM. ANY CITY, TOWN, VILLAGE OR COUNTY, WHICH HAS BY LOCAL LAW, ESTABLISHED A MILITARY FUNERAL BUFFER ZONE PUBLIC SAFETY PROGRAM, WHEREBY SUCH LOCALITY HAS REQUIRED THAT ANY CITIZEN OR GROUP THAT CONDUCTS A PROTEST IN THE VICINITY OF A FUNERAL, MEMORIAL SERVICE, WAKE, BURIAL, OR PROCESSION TO OR FROM THE SAME, OF A DECEASED MEMBER OF THE ACTIVE MILITARY SERVICE OF THE UNITED STATES OR THE FORCE OF THE ORGANIZED MILITIA, MUST FIRST OBTAIN A PERMIT FROM THE DIVISION, IN ORDER TO CONDUCT SUCH A PROTEST, UPON RECEIVING A PERMIT, UNDER THIS SECTION TO CONDUCT SUCH A PROTEST, MAY POST A POLICE OFFICER FROM SUCH CITY, TOWN, VILLAGE OR COUNTY, AT THE SITE OF THE PROTEST, IN ORDER TO ASSURE THE MAINTENANCE OF CIVIL OBEDIENCE AND THE PUBLIC PEACE. IN THE EVENT THAT AFTER THE CONDUCT OF SUCH PROTEST, A COURT OF THE CITY, TOWN, VILLAGE OR COUNTY DETERMINES THAT THE PROTEST WAS EITHER INTENTIONALLY OR UNINTENTIONALLY NOT CONDUCTED IN EXPRESS ACCORDANCE WITH THE PERMIT ISSUED BY THE DIVISION, THEN SUCH COURT MAY IMPOSE A CIVIL PENALTY UPON EACH AND EVERY PROTESTER WHO PARTICIPATED IN ANY PROTEST FOUND TO BE IN VIOLATION OF THE PERMIT ISSUED BY THE DIVISION. THE AMOUNT OF SUCH CIVIL PENALTY SHALL NOT EXCEED FIVE HUNDRED DOLLARS. THE INTENTIONAL VIOLATION BY A PROTESTER, OF A PERMIT ISSUED BY THE DIVISION, SHALL BE A CLASS A MISDEMEANOR.

S 2. This act shall take effect immediately.