

TO AMEND TITLE 38, UNITED STATES CODE, TO ENACT INTO LAW ELIGIBILITY OF CERTAIN VETERANS AND THEIR DEPENDENTS FOR BURIAL IN ARLINGTON NATIONAL CEMETERY

DECEMBER 19, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of New Jersey, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 3423]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 3423) to amend title 38, United States Code, to enact into law eligibility of certain veterans and their dependents for burial in Arlington National Cemetery, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments (stated in terms of the page and line number of the introduced bill) are as follows:

Page 3, after line 9, add the following new section:

SEC. 2. PLACEMENT OF MEMORIAL IN ARLINGTON NATIONAL CEMETERY HONORING THE VICTIMS OF THE ACTS OF TERRORISM PERPETRATED AGAINST THE UNITED STATES ON SEPTEMBER 11, 2001.

(a) **AUTHORIZATION TO PLACE MEMORIAL.**—The Secretary of the Army is authorized to construct and place in Arlington National Cemetery a memorial marker honoring the victims of the acts of terrorism perpetrated against the United States on September 11, 2001.

(b) **CONSULTATION WITH FAMILIES OF VICTIMS BEFORE USE OF AUTHORITY.**—The Secretary of the Army shall consult with the families of victims of such acts of terrorism prior to the exercise of the authority provided for under subsection (a).

Amend the title so as to read:

A bill to amend title 38, United States Code, to enact into law eligibility of certain Reservists and their dependents for burial in Arlington National Cemetery, and for other purposes.

INTRODUCTION

The reported bill reflects the Committee's consideration of H.R. 3423, as amended.

On December 6, 2001, the Chairman of the Veterans' Affairs Committee, the Honorable Chris Smith, along with Honorable Michael Bilirakis, Honorable Steve Buyer, Honorable Mike Simpson, Honorable Richard Baker, Honorable Rob Simmons, Honorable Frank Wolf, and Honorable Tom Davis of Virginia, introduced H.R. 3423 to amend title 38, United States Code, to enact into law eligibility of certain veterans and their dependents for burial at Arlington National Cemetery.

On December 13, 2001, the Committee on Veterans' Affairs held a hearing on H.R. 3423. The Committee received testimony from Mr. John C. Metzler, Superintendent, Arlington National Cemetery; Mr. Bob Manhan, Assistant Director, National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Steven Garrett, Deputy Legislative Director, The Retired Enlisted Association; Mr. Richard C. Schneider, Director of State/Veterans Affairs, Non Commissioned Officers Association; Mr. Bob Norton, Director of Government Relations, The Retired Officers Association; and Mr. Patrick Eddington, Associate Director, Vietnam Veterans of America.

On December 13, 2001, the full Committee met and ordered H.R. 3423 reported favorably, as amended, to the House by unanimous voice vote.

SUMMARY OF THE REPORTED BILL

H.R. 3423, as amended, would:

1. Make eligible for in-ground burial at Arlington National Cemetery a member or former member of a reserve component of the Armed Forces who at the time of death was under 60 years of age and but for age, would have been eligible for military retired pay under title 10, United States Code. The bill would also extend eligibility to the member's dependents.
2. Make eligible for in-ground burial at Arlington National Cemetery a member of a reserve component of the Armed Forces who dies in the line of duty while on active duty for training or inactive duty training. The bill would also extend eligibility to the member's dependents.
3. Authorize the Secretary of the Army to construct and place a memorial at Arlington National Cemetery honoring the victims of the acts of terrorism perpetrated against the United States on September 11, 2001. The Secretary of the Army would be required to consult with the families of the victims of such acts of terrorism prior to the exercise of such authority.

BACKGROUND

Under Army regulations, 32 CFR 553.15, the persons specified below, whose last period of active duty in the Armed Forces ended honorably, are eligible for in-ground burial at Arlington National Cemetery:

1. Any active duty member of the Armed Forces, except those serving on active duty for training purposes only.
2. Any veteran retired from active military service with the Armed Forces.

3. Any veteran who is retired from the Reserves is eligible upon reaching the age of 60 and who is drawing retired pay, and who served a period of active duty (other than for training).
4. Any former member of the Armed Forces separated honorably prior to October 1, 1949, for medical reasons with a 30 percent or greater disability rating effective on the day of discharge.
5. Any former member of the Armed Forces awarded one of the following decorations:
 - Medal of Honor;
 - Distinguished Service Cross (Air Force Cross or Navy Cross);
 - Distinguished Service Medal;
 - Silver Star; or
 - Purple Heart.
6. The current and any former President of the United States.
7. Any former member of the Armed Forces who served on active duty (other than for training purposes) and held any of the following positions:
 - An elective office of the U.S. Government;
 - Office of the Chief Justice of the United States or an Associate Justice of the Supreme Court of the United States;
 - An office listed, at the time the individual held the position, in 5 USC 5312 or 5313 (Levels I and II of the Executive Schedule); or
 - The chief of a mission who at the time during his/her tenure was classified in Class I under the provisions of Section 411, Act of 13 August 1946, 60 Stat. 1002, as amended (22 USC 866) or as listed in State Department memorandum dated March 21, 1988.
8. Any former prisoner of war (POW) who, while a POW, served honorably in the active military, naval or air service, whose last period of service terminated honorably and who died on or after November 30, 1993.
9. The spouse, widow or widower, minor children, permanently dependent children, and certain unmarried adult children of any above eligible veterans.
10. The widow or widower of:
 - A member of the Armed Forces lost or buried at sea, or officially determined missing in action;
 - A member of the Armed Forces buried in a U.S. military cemetery overseas maintained by the American Battle Monuments Commission; or,
 - A member of the Armed Forces interred in Arlington National Cemetery as part of a group burial.
11. The parents of a minor child, or permanently dependent child whose remains, based on the eligibility of a parent, are buried in Arlington National Cemetery. A spouse divorced from the primary eligible, or widowed and remarried, is not eligible for interment.

12. The surviving spouse, minor children, and permanently dependent children of any eligible veteran buried in Arlington National Cemetery.
13. Provided certain conditions are met, a former member of the Armed Forces may be buried in the same grave with a close relative who is buried in Arlington National Cemetery and who is the primary eligible.

Army regulations governing Arlington National Cemetery have never contained an explicit provision providing for waivers to eligibility requirements. Since 1967, however, the Secretary of the Army and the President have granted what the Army has termed “exceptions” to the general eligibility requirements in extraordinary individual cases.

Waivers for individuals not meeting the ordinary eligibility criteria have largely been based on outstanding contributions to the military or the Nation itself, or death under tragic circumstances while serving the Nation in some noteworthy capacity. A small number of these waivers have allowed in-ground burial at Arlington for retired reserve members who died before age 60 or who died while in training status.

Under the Army regulations, Captain Charles Burlingame III, the pilot of the airliner that crashed into the Pentagon on September 11, 2001, was ineligible for a burial plot at Arlington because, although he had retired from the Navy Reserve after a distinguished career as a fighter pilot, he was 51 years old at the time of his death. The Secretary of the Army granted a waiver and on December 12, 2001, Captain Burlingame was interred at Arlington.

Veterans and their dependents who are eligible for in-ground burial in national cemeteries other than Arlington are also currently eligible for inurnment of their cremated remains at the Arlington columbarium.

DISCUSSION OF THE REPORTED BILL

H.R. 3423, as amended, would revise existing law by eliminating the requirement that retired reservists be in receipt of their retirement pay under title 10, United States Code, to be eligible for in-ground burial at Arlington National Cemetery. Retired reservists must be 60 years old in order to receive retirement pay. Retirees from reserve service who are not yet 60 years old are often referred to as being in the “gray zone.” The bill would also make eligible for in-ground burial members of reserve components who die in the line of duty during active duty for training or inactive duty training.

Burial space is limited at Arlington and the Committee appreciates the Army’s interest in maintaining its strict eligibility rules. Over the years, Congress has extended veterans’ benefits to members of the reserve components (the Reserve and National Guard) that were previously available only to veterans who had served on active duty. For example, section 301 of Public Law 106–419 expanded the definition of active military service so that a reservist or National Guard member who suffers a heart attack or stroke during inactive duty training now qualifies for certain veterans’ benefits.

Reservists play an essential role in the total force concept of today's military. The reserve components are responsible for providing many critical skills and mission capabilities. During the Persian Gulf War, 106,047 members of reserve components were mobilized, and in the war against terrorism, 75,229 members of reserve components (as of December 18, 2001) have been mobilized. The Committee believes it is inequitable that a reservist who serves our Nation for a minimum of 20 years should be ineligible for in-ground burial at Arlington because he or she had the misfortune to die prior to age 60.

Similarly, this legislation would also extend burial eligibility to members of a reserve component who die in the line of duty while performing training duty. The Committee sees no reason why a reservist's eligibility for burial at Arlington should be based on whether that person was—or was not—in training status when he or she died in the line of duty. In today's military, there is no practical difference, and members of the reserve components make a direct contribution to the defense of the Nation when technically in "training" status.

H.R. 3423, as amended, would also authorize the Secretary of the Army to construct and place at Arlington a memorial honoring the victims of the acts of terrorism perpetrated against the United States on September 11, 2001. Before taking action under this discretionary authority, the Secretary of the Army would be required to consult with the families of the victims of these terrorist acts.

SECTION-BY-SECTION ANALYSIS

Section 1 would create a new section 2412 of title 38, United States Code, entitled "Arlington National Cemetery: eligibility of certain persons for burial".

Section 1(a) would make eligible for in-ground burial at Arlington the remains of a member or former member of a reserve component of the Armed Forces who was under 60 years of age and who, but for age, would have been eligible at the time of death for retirement pay under chapter 1223 of title 10, United States Code, on the same basis as the remains of members of the Armed Forces entitled to retired pay under that chapter; it would also accord eligibility to the member's dependents.

Section 1(b) would make eligible for in-ground burial at Arlington the remains of a member of a reserve component of the Armed Forces who dies in the line of duty while on active duty for training or inactive duty training on the same basis as the remains of a member of the Armed Forces who dies while on active duty; it would also accord eligibility to the member's dependents.

Section 2 would make the effective date of this provision applicable to interments occurring on or after the date of enactment of this Act.

Section 3 would authorize the Secretary of the Army to construct and place in Arlington National Cemetery a memorial marker honoring the victims of the acts of terrorism perpetrated against the United States on September 11, 2001. The section would also require the Secretary of the Army to consult with the families of victims of such acts of terrorism prior to the exercise of such authority.

PERFORMANCE GOALS AND OBJECTIVES

The reported bill changes burial eligibility for Arlington National Cemetery and provides the Secretary of the Army discretionary authority to place a memorial there. The Committee conducts regular oversight of Arlington National Cemetery.

STATEMENT OF ADMINISTRATIONS VIEWS

DEPARTMENT OF THE ARMY

[December 13, 2001]

COMPLETE STATEMENT OF JOHN C. METZLER, SUPERINTENDENT ARRLINGTON NATIONAL CEMETERY BEFORE THE COMMITTEE ON VETERANS AFFAIRS, UNITED STATES HOUSE OF REPRESENTATIVES ON PROPOSED CHANGES IN BURIAL ELIGIBILITY

Mr. Chairman and Distinguished Members of the Committee:

Introduction

I appreciate the opportunity to appear before this committee to discuss proposed legislation regarding eligibility criteria for burial at Arlington National Cemetery. The Secretary of the Army is responsible for burial policy at Arlington National Cemetery. I am here to provide the Army's comments on the proposed legislation and answer any questions you may have.

Arlington National Cemetery is America's most prominent National Cemetery and serves as a shrine honoring the men and women who have served in the Armed Forces. It is a visible reflection of America's appreciation for those individuals whose acts and accomplishments reflect the highest service to the country.

Funerals

In Fiscal Year 2001, there were 3,727 interments and 2,212 inurnments. In Fiscal Year 2002, we estimate there will be 3,800 interments and 2,500 inurnments. Looking ahead to Fiscal Year 2003, we estimate there will be 3,925 interments and 2,700 inurnments.

Ceremonies and Visitation

Thousands of visitors visit Arlington National Cemetery to participate in ceremonial events and pay their respects to our fallen heroes. During Fiscal Year 2001, about 3,000 ceremonies were conducted at this treasured National Cemetery. The President of the United States attended ceremonies we conducted commemorating Veterans Day and Memorial Day.

Proposed Legislation

As you know, the space that we have available in Arlington Cemetery is limited and has required the establishment of rules to regulate burial eligibility. The rules governing burial eligibility in Arlington National Cemetery are set forth in Title 32 of the Code of Federal Regulations. The Army, as the executive agent for the Cemetery, strives to implement these regulations fairly and consistent with the space limitations we face.

The Army is troubled with the proposed legislation contained in H.R. 3423, regarding the extension of burial privileges in Arlington National Cemetery to certain current and former reserve component members of the Armed Forces and their dependents. The legislation expands eligibility for burial in Arlington National Cemetery beyond that which can be supported by current space constraints and will likely cause the denial of this privilege to other eligible persons.

Under current projections, the group of newly eligible reservists under the proposed legislation would exceed 188,000, not to mention their dependents, whose number I do not know. While the long-term effect of such an expansion is not now known, clearly the number of eligible veterans will be greatly expanded at a time when we are already projecting that Arlington National Cemetery will exhaust its current space by 2025.

The Army leadership was aware that Senators Warner and Stevens had introduced legislation (Section 3135 of H. R. 3338) that narrowly tailors expansion of the eligibility criteria to authorize individual interment in Arlington National Cemetery for those retired members of the Armed Forces reserves, not otherwise eligible, who died in the September 11th terrorist attacks. The Secretary was also sensitive to the fact that any legislative proposal would likely not be enacted in time to accommodate a request for burial on December 12th as an exception to the burial policy. Thus, to honor the intent of the proposed legislation and to spare the family any further grief, the Secretary of the Army granted an exception to allow the burial of retired Naval Reserve Captain Charles F. Burlingame, III, in a separate grave in Arlington National Cemetery.

Conclusion

Mr. Chairman, this concludes my remarks. I will be pleased to respond to questions from the committee.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 18, 2001.

Hon. CHRISTOPHER H. SMITH
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3423, a bill to amend title 38, United States Code, to enact into law eligibility of certain veterans and their dependents for burial in Arlington National Cemetery.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Michelle S. Patterson, who can be reached at 226-2840.

Sincerely,

DAN L. CRIPPEN,
Director.

Enclosure.

H.R. 3423, A BILL TO AMEND TITLE 38, UNITED STATES CODE, TO ENACT INTO LAW ELIGIBILITY OF CERTAIN VETERANS AND THEIR DEPENDENTS FOR BURIAL IN ARLINGTON NATIONAL CEMETERY, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON VETERANS' AFFAIRS ON DECEMBER 13, 2001

H.R. 3423 would amend the eligibility requirements for burial in Arlington National Cemetery to allow more reservists and their spouses to be buried there. CBO estimates that implementing this bill would cost less than \$500,000 a year, subject to the availability of appropriated funds. Because this bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

Under current law, only reservists who are eligible for retirement pay and have reached age 60 or who were killed while on active duty may be buried in Arlington National Cemetery. This bill would eliminate the requirement that current and retired reservists be at least 60 years old. It also would allow those killed while on active duty for training or inactive-duty training to be eligible

for burial in Arlington National Cemetery. Spouses of these reservists would also be eligible.

Based on data from the Department of Defense, CBO estimates that about 800 reservists die each year who would be eligible for burial in Arlington National Cemetery under this bill. Because Arlington is not centrally located in the United States and many families would likely choose to have their loved one buried close to home, CBO assumes that less than 10 percent of those eligible would actually be buried in Arlington National Cemetery. This percentage is consistent with a recent survey conducted by the Department of Veterans Affairs which found that about 12 percent of veterans are buried in a state or national veterans cemetery. Of those surveyed who expressed no desire to be buried in a veterans cemetery, almost half cited distance or an existing family plot as the reason. With burial costs of about \$1,000 per grave, CBO estimates that this bill would increase spending by less than \$500,000 a year, assuming appropriation of the necessary amounts.

This bill would also give the Secretary of the Army the authority to build a memorial to the victims of the September 11 terrorist attacks in Arlington National Cemetery after consulting with the victims' families. Assuming that a memorial would be built in this location, CBO cannot estimate the eventual cost since the design and scope of the memorial are unknown at this time. A smaller monument, such as the one in Arlington National Cemetery memorializing the astronauts of the Space Shuttle *Challenger*, could cost about \$15,000 to design and build. A larger monument, such as the obelisk commemorating the Third Infantry Division on Memorial Drive in the cemetery, could cost about \$125,000. In recent years, monuments to other victims of terrorism and disaster have been largely funded by private groups.

H.R. 3423 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact is Michelle S. Patterson, who can be reached at 226-2840. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

APPLICABILITY TO LEGISLATIVE BRANCH

The reported bill would not be applicable to the legislative branch under the Congressional Accountability Act, Public Law 104-1, because the bill would only affect burial eligibility for Arlington National Cemetery.

STATEMENT OF FEDERAL MANDATES

The reported bill would not establish a federal mandate under the Unfunded Reform Act, Public Law 104-4.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART II—GENERAL BENEFITS

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CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

Sec.
2400. Establishment of National Cemetery Administration; composition of Administration.

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2412. *Arlington National Cemetery: eligibility of certain persons for burial.*

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§2412. *Arlington National Cemetery: eligibility of certain persons for burial*

(a)(1) *The remains of a member or former member of a reserve component of the Armed Forces who at the time of death was under 60 years of age and who, but for age, would have been eligible at the time of death for retired pay under chapter 1223 of title 10 may be buried in Arlington National Cemetery on the same basis as the remains of members of the Armed Forces entitled to retired pay under that chapter.*

(2) *The remains of the dependents of a member whose remains are permitted under paragraph (1) to be buried in Arlington National Cemetery may be buried in that cemetery on the same basis as dependents of members of the Armed Forces entitled to retired pay under such chapter 1223.*

(b)(1) *The remains of a member of a reserve component of the Armed Forces who dies in the line of duty while on active duty for training or inactive duty training may be buried in Arlington National Cemetery on the same basis as the remains of a member of the Armed Forces who dies while on active duty.*

(2) *The remains of the dependents of a member whose remains are permitted under paragraph (1) to be buried in Arlington National Cemetery may be buried in that cemetery on the same basis as dependents of members on active duty.*

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