

ARLINGTON NATIONAL CEMETERY BURIAL ELIGIBILITY  
ACT

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MARCH 18, 1999.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. STUMP, from the Committee on Veterans' Affairs, submitted  
the following

REPORT

[To accompany H.R. 70]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 70) to amend title 38, United States Code, to enact into law eligibility requirements for burial in Arlington National Cemetery, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

INTRODUCTION

On January 6, 1999, the Chairman of the Veterans' Affairs Committee, the Honorable Bob Stump, along with the Honorable Lane Evans and the Honorable Michael Bilirakis, introduced H.R. 70, to enact into law eligibility requirements for burial in Arlington National Cemetery.

The full Committee met on March 18, 1999 and ordered H.R. 70 reported favorably to the House by voice vote.

## SUMMARY OF THE REPORTED BILL

The bill would codify, with exceptions discussed below, existing regulatory eligibility criteria for burial at Arlington National Cemetery. Other than the persons specifically enumerated in the proposed legislation, no other person could be buried at Arlington. In general, eligible persons would include:

- a) members of the Armed Forces who die on active duty;
- b) retired members of the Armed Forces, including Reservists who served on active duty;
- c) former members of the Armed Forces who have been awarded the Medal of Honor, Distinguished Service Cross, Air Force Cross, or Navy Cross, Distinguished Service Medal, Silver Star, or Purple Heart;
- d) former prisoners of war;
- e) the President or any former President;
- f) members of the Guard/Reserves who served on active duty and are eligible for retirement, but who have not yet retired;
- g) the spouse, surviving spouse, minor child and at the discretion of the Superintendent of Arlington, unmarried adult children of a) through f);
- h) the surviving spouse of certain individuals buried in Arlington before the date of enactment.

The bill would also eliminate the current practice of granting eligibility to Members of Congress and other high-ranking Government officials who are veterans but who do not meet the distinguished military service criteria outlined above. It also provides that this law would be the exclusive authority for burial eligibility. Congress could, however, on a case-by-case basis, enact a resolution on behalf of an individual whose accomplishments are deemed worthy of the honor of being buried at Arlington.

Additionally, the bill codifies existing regulatory eligibility standards for interment of cremated remains in the columbarium at Arlington. Generally, this includes all veterans with honorable service and their dependents.

Finally, the bill clarifies that only memorials honoring military service or events may be placed at Arlington and establishes a 25-year waiting period for such memorials.

## BACKGROUND

*This background is derived from material provided to the Committee by the Department of the Army, the General Accounting Office, and the Congressional Research Service.*

Until the Civil War, the nation's attention to interment of veterans was haphazard. The massive casualties resulting from that conflict required the government to establish procedures to make and preserve records of deceased soldiers and provide places for their burial. Congress' initial legislation to establish a national cemetery system, the Act of July 17, 1862, § 18, 12 Stat. 594, 596, provided that "the President of the United States shall have the power, whenever in his opinion it shall be expedient, to purchase cemetery grounds and cause them to be securely enclosed, to be used as a national cemetery for the soldiers who shall die in the

service of their country". At the conclusion of the War, Congress directed the Secretary of War to engage in a program to find, collect and identify the remains of the war dead. The task was completed in 1870 with the reinterment of nearly 300,000 remains in 73 national cemeteries.

The grounds of Arlington Mansion, the home of Martha Washington's grandson, George Washington Parke Custis, and his son-in-law, General Robert E. Lee, were appropriated by the federal government in May, 1861, for a fortification to defend Washington, D.C. Arlington National Cemetery was established on the estate on May 13, 1864, as one of the first national cemeteries because burial areas in the other previously designated national cemeteries—the Soldiers' Home in Washington, D.C., and at Alexandria, Virginia—were rapidly filling. On June 15, 1864, Secretary of War Stanton formally designated Arlington Mansion and the 200 acres surrounding it as a cemetery for the burial of soldiers dying in the vicinity of Washington.

The cemetery only gradually developed its aura as an historic national shrine with the burials of famous Civil War generals such as Phillip H. Sheridan in the 1880's, the burials of General Pershing and President William Howard Taft in the 1920's, and then with the dedication in 1932 of the Tomb of the Unknown Soldier. The mystique of the cemetery was heightened substantially after the assassination of President John F. Kennedy and his emotional funeral and burial there beside an eternal flame in November 1963. President Kennedy's gravesite and the cemetery generally became major public attractions and pressure increased for interments in the limited space available. Arlington has a total capacity of 263,639 grave sites, with about 59,206 remaining available as of the end of December, 1998.

From the Civil War until 1973, the primary responsibility for the "care and maintenance" of most national cemeteries, including Arlington, was vested in the Secretary of the Army or the Secretary of War. Administration of other cemeteries was placed under the supervision of agency heads, such as the Secretary of the Interior.

In 1948, Congress for the first time codified all previous precedent, practices, and legislation affecting eligibility for burial in national cemeteries. Under the law, four general classifications of persons were accorded the privilege of burial in a national cemetery: (1) those who die while serving honorably in the Armed Forces of the United States (2) former members of the Armed Forces (3) citizens of the United States who have served, or may serve, in the armed forces of a nation allied with the United States during war and (4) the wife, husband, widow, widower, minor children, and, at the discretion of the Secretary of the Army, adult, unmarried children of those otherwise eligible. Adult, unmarried children generally have been deemed eligible if at the time of death they were incapable of self-support by reason of physical or mental condition.

In 1959, Congress expanded burial eligibility to any member of a reserve component of the Armed Forces, the Army and Air National Guards, and the Reserve Officers Training Corps of the Army, Navy and Air Force, whose death occurred under honorable conditions while serving on active duty. It also added the requirement that the Secretary of the Army seek the approval of the Sec-

retary of Defense prior to issuing or amending regulations pertaining to national cemeteries under his jurisdiction.

Restrictive rules for in-ground burial at Arlington were first imposed in 1967. The Secretary of the Army was responding to concerns that the combination of increased interest in Arlington resulting from President Kennedy's burial and an aging veteran population would result in the rapid depletion of burial spaces. From 1962–1966, Arlington's interment rate rose from 4,000 to 7,000 per year. Had the trend continued, the cemetery would have been full by 1968.

The restrictive rules, now codified in federal regulations at 32 CFR 553.13 (1997), limited eligibility to those members of the Armed Forces who served the nation in an especially distinguished manner. These criteria have remained essentially unchanged since 1967 and provide for the in-ground Arlington burial for the following categories of persons:

- Active duty members of the Armed Forces, except those members serving on active duty for training;
- Retired members of the Armed Forces who have served on active duty, are on a retired list and are entitled to receive retirement pay;
- Former members of the Armed Forces discharged for disability before October 1, 1949, who served on active duty and would have been eligible for retirement under 10 U.S.C. 1202 had the statute been in effect on the date of separation;
- Honorably discharged members of the Armed Forces awarded the Medal of Honor, Distinguished Service Cross, Air Force Cross or Navy Cross, Distinguished Service Medal, Silver Star, or Purple Heart;
- Former prisoners of war who served honorably and who died on or after November 30, 1993;
- Provided they were honorably discharged from the Armed Forces, elected federal officials (the president, vice-president, and members of Congress), federal cabinet secretaries and deputies, agency directors and certain other high federal officials (level I and II executives); Supreme Court justices, and chiefs of certain diplomatic missions;
- The spouse, widow or widower, minor child (under 21 years of age) and, at the discretion of the Secretary of the Army, an unmarried adult child of any of the above, (a surviving spouse who has remarried and whose subsequent marriage is void, terminated by death, or dissolved by annulment or divorce by a court regains eligibility; an unmarried adult child may be interred in the same grave in which the parent has been or will be interred, provided that the child was incapable of self-support up to the time of death because of physical or mental condition);

- Surviving spouses of service members who are interred in the cemetery as part of a group burial, but not in the same grave as the deceased spouse;
- The surviving spouse, minor child, and at the discretion of the Secretary of the Army, the unmarried adult child of any person already buried at the cemetery;
- The parents of a minor child or unmarried adult child whose remains are already buried at the cemetery on the basis of the eligibility of a parent;

Veterans who do not meet these requirements may qualify for placement in Arlington's columbarium for cremated remains. Any honorably discharged veteran, spouse and dependent children may be interred in the same family niche at the columbarium. Since 1980, the Army has built four columbaria at the cemetery. Eventually, 50,000 niches capable of holding two urns each will be available. Additional columbaria could be built in the future to further increase the capacity for cremated remains.

After the Army imposed the restrictive eligibility requirements in 1967, the number of burials at Arlington declined sharply and then remained relatively constant until 1988. Since that time, the number of burials has gradually increased, with the cemetery averaging 2,887 burials per year. Given the expected burial rates, the Army projects that all gravesites will be full by 2025 unless the cemetery is expanded.

In 1973, Congress addressed the need for a coherent national burial policy and management system for national cemeteries. The National Cemeteries Act of 1973 (Pub. L. No. 93-43) established within the Veterans Administration (VA) a National Cemetery System consisting of cemeteries already under the Department of Veterans Affairs' (VA) jurisdiction and national cemeteries transferred to the VA from the Department of the Army. The legislation exempted Arlington National Cemetery and those cemeteries located at the military service academies, which were left under the authority of the Department of the Army.

The 1973 Act adopted nearly identical requirements for the cemeteries as called for under the 1959 Act, but transferred jurisdiction to the Secretary of Veterans Affairs. The law also made one significant addition by authorizing exceptions to the eligibility rules for "[s]uch other persons or classes of persons as may be designated by the Secretary," (38 U.S.C. 2402(6)). In explaining this addition, the Senate and House reports stated:

This additional category is consistent with authority currently based on VA Regulation 6200 (C), as revised June 2, 1966. Similar authority apparently resides in the Secretary of the Army pursuant to 32 C.F.R. 553.18(b)(1) which authorizes 'burial in National cemeteries under such regulations as the Secretary may, with the approval of the Secretary of Defense, provide.

The 1973 Act also preserved the previously exercised authorities of the military department secretaries with respect to cemeteries, memorials and monuments remaining under their jurisdiction.

Finally, Congress ordered that a joint study be conducted by the Veterans Administration and the Department of Defense on (1) the

advisability of including Arlington National Cemetery within the National Cemetery System to be administered by the Veterans Administration, and (2) the appropriateness of maintaining the present eligibility system for burial at Arlington. The study submitted to Congress on January 21, 1974, recommended that Arlington remain under Department of Army jurisdiction and that the existing regulatory criteria be maintained. Congress took no further legislative action.

#### WAIVERS

The Army regulations for Arlington have never contained an explicit provision allowing for waivers or exceptions to the 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 individual cases. Unfortunately, such a practice has generally not been well known or commonly understood.

In May, 1997, the majority staff of the Committee was provided anonymous information which called the waiver process into question. The Subcommittee on Oversight and Investigations held a public hearing on January 28, 1998, to receive testimony on burial waivers at Arlington. At the request of the Chairman and Ranking Member of the Oversight Subcommittee, and the Ranking Democratic Member of the full Committee, GAO conducted an expedited review of the waiver process in December, 1997, and January, 1998. GAO presented its findings at the January 28 hearing, and outlined policy options concerning possible improvements to the eligibility process for burial at Arlington. The findings revealed a flawed waiver process marked by unclear standards and inconsistent application of waiver criteria.

In 1998, according to GAO, there had been a total of 340 documented waiver requests since 1967, 196 of which had been granted. GAO confirmed previous findings of Committee investigators that numerous waivers have been informally sought through the Superintendent's office, but were never documented in cemetery records. The review also found that the cemetery's responses to such requests from the general public were varied and inconsistent, adding to the confusion concerning eligibility standards for burial at Arlington.

GAO reviewed both Presidential and Secretary of the Army waivers: President Lyndon Johnson granted the first two Arlington waivers; President Richard Nixon granted three waivers; President Gerald Ford granted six; President Jimmy Carter individually granted 16 waivers, while the Army granted two more during his term of office; the Ronald Reagan administration granted a total of 63 waivers, 21 by Presidential action; during the Administration of President George Bush, the Secretary of the Army granted 32 waivers, none were Presidential; and the William Clinton administration had granted 73 waivers (to date, a total of 91), five by Presidential action.

At the Committee's request, both the American Law Division of the Congressional Research Service (CRS) and GAO counsel had conducted a legal analysis of such waiver authority. Although no express secretarial or presidential waiver authority was found, both

CRS and GAO agreed with the Army's long-standing position that it has such authority. Support can be found for this argument in the legislative history of the National Cemeteries Act of 1973.

In reporting the 1973 bill, the committees addressed the express waiver authority provided to the VA, and noted that "similar authority" apparently resided with the Secretary of the Army with respect to Arlington National Cemetery (Sen. Report No. 93-55 at 36; House Report No. 93-131 at 16). The Committee's Report accompanying the 1973 Act appears to have in effect approved the six waivers granted between 1967 and 1973. But the question of whether the Army should retain authority over Arlington was left open for further study since the 1973 Act made clear that all other national cemeteries fell within the VA's jurisdiction. As noted previously, the study submitted to the Congress in January, 1974, recommended that existing regulations and practices should be maintained, and that the Army should retain jurisdiction over Arlington Cemetery. Congress took no further action on this issue at that time.

Prior to the January 28, 1998, Subcommittee on Oversight and Investigations hearing, the Department of Defense, Department of the Army, and Arlington National Cemetery provided extensive information and documentation regarding secretarial and presidential waivers. Limited cooperation and few available documents and information from the White House restricted the ability of the Committee and GAO to review presidential waivers granted since 1993. The White House also did not respond to the Subcommittee's invitation to testify at its January 28 hearing regarding waivers granted during the current Administration. White House counsel asserted claims of executive privilege and refused to provide the Committee copies of several documents relating to waivers. Due to time constraints and limited Committee resources, the Committee was unable to extensively research the records of presidential libraries regarding waivers by previous presidential administrations.

Despite these obstacles, the Subcommittee was able to acquire extensive information concerning Arlington National Cemetery eligibility criteria and the waiver process since 1967. The Subcommittee's review found that most of the 196 waivers for burial at Arlington had been granted for family members of veterans (or members of the Armed Forces) eligible for burial at Arlington. In most cases, such waivers have not resulted in the displacement of an eligible veteran because the family members have been buried in the same plot as the veteran.

Waivers for individuals not meeting the ordinary eligibility criteria have been largely based on outstanding contributions to the nation or the military, or deaths under tragic circumstances while serving the nation in some noteworthy capacity. In all, fourteen waivers have been granted to persons with no military service, one of whom—still living—has since withdrawn his request for burial at Arlington. Given existing space limitations, the effect of such waivers has been to displace eligible veterans from burial at Arlington.

Some waivers resulting in the displacement of an eligible veteran had been for essentially "humanitarian," highly subjective reasons, and some appeared to lack any compelling basis. GAO's testimony

on this point highlighted “seemingly contradictory decisions and recommendations” by Army officials and “often undocumented” rationale for waiver decisions prior to 1991, when the tenure of the current cemetery Superintendent began. GAO also found that “the reasons for presidential waiver decisions are generally not explained,” and that “presidential decisions are typically made without explicit reference to criteria.”

#### DISCUSSION

H.R. 70 would provide no express or implied waiver or exception authority to any person. Thus, it would eliminate the authority to grant exceptions which resides in the Secretary of the Army and would also eliminate the authority of any other officer in the Executive Branch, including the President, to authorize the burial of persons who do not meet the statutory criteria. Under section 2, the bill would establish clear-cut criteria for primary eligibility under subsection (a) of section 2412 of title 38, United States Code, on which the Superintendent of Arlington could make ministerial decisions without the need for higher level discretionary decisions.

The Superintendent would also have a limited discretionary authority regarding burial of certain family members under subsection (b) of section 2412. The existing Army regulations governing Arlington place such discretion in the Secretary of the Army. The Committee believes such discretion is appropriate, albeit better placed with the Superintendent rather than the Secretary of the Army. As in the past, the Secretary of the Army would retain overall responsibility for the administration and operation of the cemetery.

The bill would prohibit the Secretary from considering any request for burial in advance of the death of the individual. It would also require the Secretary to maintain a public record of all individuals buried in Arlington. Finally, the bill would require the Secretary to publish an updated pamphlet describing eligibility criteria within 180 days of enactment and establishes the date of enactment as the effective date for all individuals seeking burial in Arlington.

Section 3 codifies regulations governing placement in the columbarium at Arlington National Cemetery. Generally, any veteran eligible for burial in a national cemetery operated by the Department of Veterans Affairs as defined in section 2412 of title 38 is eligible for the columbarium, including the spouse, minor child, or at the discretion of the Superintendent of Arlington National Cemetery, the unmarried adult child of an eligible veteran.

Section 3 adds a new section 2414 to codify regulations governing gravesite markers. It directs that graves be marked in accordance with section 2404 of title 38, which describes the types of markers which may be used in national cemeteries. Section 3 also prescribes the conditions under which a private marker may be placed on a gravesite in Arlington. In general, private markers are restricted to areas authorized as of January 1, 1947, for such markers. It also requires the private party to provide for the maintenance of such markers, limits the Secretary’s liability in case of damage, and requires the markers to be aesthetically compatible with Arlington National Cemetery.



Finally, section 4 requires that all monuments commemorate a military event or the military service of an individual or group of individuals. Monuments may not be placed in Arlington until 25 years have elapsed after the service or event.

#### SECTION-BY-SECTION ANALYSIS

Section 1 states the title of the Act is the “Arlington National Cemetery Burial Eligibility Act”.

Section 2 would amend chapter 24 of title 38 United States Code, by adding a new section 2412.

Proposed section 2412(a) establishes the primary eligibility for burial at Arlington. Persons eligible are members of the Armed Forces who die on active duty; veterans who are retired and receiving retired pay, or would be eligible for retired pay but for their age, or are eligible for retirement but remain in an active reserve status; certain former members of the Armed Forces who were separated for disability prior to October 1, 1949; former members of the Armed forces who were awarded any one of the following military awards: the Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, Silver Star or Purple Heart; any former POW who dies after November 30, 1993; the President or any former President.

Proposed section 2412(b) establishes the eligibility of certain family members of those eligible for burial under 2412(a) and the conditions of burial.

Subsection (b)(1) authorizes burial of the spouse, surviving spouse, minor child or at the discretion of the Superintendent of Arlington National Cemetery, the unmarried adult child.

Subsection (b)(2)(A) authorizes burial of an active duty member’s dependent in the same gravesite if such dependent dies while the member is on active duty.

Subsection (b)(2)(B) authorizes burial of a former member whose dependents were buried at Arlington National Cemetery while the member was on active duty.

Subsection (b)(3) authorizes burial of the parents of a child buried at Arlington based on the eligibility of a parent.

Subsection (b)(4)(A) authorizes burial of certain dependents of a member of the Armed Forces whose body was not recovered or permanently listed as missing or missing in action.

Subsection (b)(4)(B) denies burial of dependents authorized in (4)(A) if a memorial already exists elsewhere in the National Cemetery System, but authorizes relocation of any such memorial to Arlington National Cemetery, thus reinstating eligibility of the dependent.

Subsection (b)(5) authorizes the burial of certain dependents of members of the Armed Forces buried in a cemetery operated by the American Battle Monuments Commission.

Section 2412(c) authorizes, without approval by the Superintendent, burial of a disabled unmarried adult child who is incapable of self-support up to the time of death.

Section 2412(d) provides that dependents of those listed in subsection (a) who are buried in a mass grave may not be buried in the group gravesite, but may not be buried elsewhere in the cemetery.

Section 2412(e) states that the exclusive authority for burial eligibility is section 2412 of title 38 United States Code. The intent of this provision is to deny all waiver authority.

Section 2412(f) prohibits the Secretary of the Army from considering a request for burial at Arlington National Cemetery prior to the death of the individual for whom burial is requested. The intent of this provision is to prohibit any advance reservation of burial sites.

Section 2412(g) would require the Secretary of the Army to establish and maintain a public register of those buried at Arlington National Cemetery.

Section 2412(g)(2) would require the Secretary to provide a brief description of the basis of the individual's eligibility for interment. While the Committee understands the difficulties that may arise in compiling the names and locations of all those previously interred at Arlington, the Committee intends the register to be as complete a database as possible.

Section 3(a) would add a new section 2413 to title 38 United States Code titled "Arlington National Cemetery: persons eligible for placement in the columbarium".

2413(a)(1) states that the cremated remains of anyone eligible for burial under section 2412 of title 38, United States Code in Arlington National Cemetery is eligible for placement in the columbarium.

2413(a)(2)(A) authorizes placement of any veteran whose last active duty ended honorably.

2413(a)(2)(B) authorizes placement of the cremated remains of the spouse, minor child and (at the discretion of the Superintendent of Arlington National Cemetery) an unmarried adult child of such a veteran.

Section 3(b) and (c) provides clerical and conforming amendments to the table of sections for chapter 24 of title 38 United States Code.

Section 3(d) sets the effective date of section 2413 as the date of enactment of the Act.

Section 4(a) adds a new section 2414 to title 38 United States Code titled Arlington National Cemetery: authorized headstones, markers and monuments.

Section 2414(a) directs that gravesite markers conform to section 2404 of title 38 United States Code.

Section 2414(b)(1) directs the Secretary of the Army to prescribe regulations for privately furnished gravesite markers.

Section 2414(b)(2)(A) specifies general design criteria for privately furnished headstones or markers.

Section 2414(b)(2)(B) requires that the person furnishing a private marker provide for maintenance.

Section 2414(b)(2)(C) stipulates the Secretary of the Army is not responsible for any maintenance or damage to privately furnished headstones or markers.

Section 2414(b)(2)(D) requires privately furnished markers to be aesthetically compatible with Arlington National Cemetery.

Section 2414(b)(2)(E) restricts placement of privately furnished headstones or markers to areas designated for such headstones or markers as of January 1, 1947.

Section 2414(c)(1) prohibits placement of monuments at Arlington National Cemetery unless the monument meets restrictions in either subsection (c)(2) or (c)(3).

Section 2414(c)(2) requires that a memorial must honor the military service of an individual or group, or a military event.

Section 2414(c)(3) requires a 25-year waiting period between the military service or event and placement of a monument at Arlington National Cemetery.

Section 2414(c)(4) restricts placement of monuments to areas designated by the Superintendent.

Section 4(b) makes a conforming amendment to the table of section of chapter 24 United States Code.

Section 4(c) establishes the effective date of section 2414 as the date of enactment.

Section 5 directs the Secretary of the Army to publish any regulations related to this Act in the Federal Register within one year of enactment.

#### OVERSIGHT FINDINGS

No oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

#### VIEWS OF THE ADMINISTRATION

STATEMENT BY MR. PATRICK T. HENRY, ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE AFFAIRS) AND MR. JOHN C. METZLER, JR. SUPERINTENDENT, ARLINGTON NATIONAL CEMETERY FOR THE HOUSE VETERANS' AFFAIRS BENEFITS SUBCOMMITTEE, FIRST SESSION, 106TH CONGRESS, REGARDING H.R. 70, PROVIDED ON MARCH 16, 1999

We appreciate the opportunity to provide comment on the pending legislation regarding eligibility criteria for burial at Arlington National Cemetery (ANC).

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 and those Americans who have made extraordinary contributions to the nation. It is a visible reflection of America's appreciation for those individuals whose acts and accomplishments reflect the highest service to the country.

Since its founding in 1864, the cemetery has functioned primarily as a military burial ground. Over the years, the symbolic significance of Arlington National Cemetery has evolved. The cemetery has become recognized as the nation's foremost national memorial to its military members and is the final resting place of Presidents and other leading public figures. It has also become the site of major memorial events and ceremonies, as well as a significant attraction for visitors to the Washington area.

Our intent is to outline for the committee our effort to enhance the regulations that govern eligibility criteria for burial in Arlington, and to provide our views on pending

legislation pertaining to the same. rules governing burial in Arlington are included in Title 32 of the Code of Federal Regulations. As a result of last year's hearing on this matter, we are in the process of revising the regulations that govern burial policy. The revised regulations, like H.R. 70, will continue the practice of allowing active members of the armed forces, retired members of the armed forces, highly-decorated veterans, former prisoners of war, and certain veterans discharged due to disability, to be buried in Arlington.

In addition, the revised regulations are similar to H.R. 70 in that the regulations identify those categories of persons who may be considered for burial in the cemetery based on their relationship to an eligible veteran. In the past, exceptions were required to allow close relatives and former spouses burial in the same gravesite as an eligible veteran. In the past 10 years, these types of exceptions have constituted 76 percent of those granted. We agree that these individuals should be provided burial consideration, and not be viewed as an exception.

Our revised regulations would differ from H.R. 70 in two major respects. first, H.R. 70 would eliminate the possibility of burial in Arlington that presently exists for former members of the armed forces who choose to continue their service to the country and attain high legislative, judicial and executive offices. This would include those in an elective office of the United States Government such as the Vice President, United States Senators, and Members of the United States House of Representatives; appointed officials which include the Chief Justice and Associate Justices of the Supreme Court of the United States; Ambassadors at our largest and most important overseas missions; cabinet members; and government officials at a level I and level II position.

Under the revised army regulations governing burial at Arlington, certain veterans who have served their country in these specific high government offices would continue to be allowed to be buried in Arlington based on their distinguished service to the nation. Changing this rule would constitute a significant departure from current burial policies and would fundamentally change the character of the cemetery. under the pending legislation, our military heroes will no longer lie next to our nation's most revered statesmen and supreme court justices, an attribute of the cemetery which distinguishes it as the nation's most revered burial grounds.

Second, the pending legislation precludes any discretion to grant exceptions under any circumstances. we believe that there should always be the opportunity for individuals who have made extraordinary public contributions to be considered for burial at Arlington, and for an exception to be granted, if appropriate.

Arlington should be preserved as a national shrine honoring the men and women who have served in the armed

forces and a limited number of exceptional americans who have made or will make extraordinary public contributions, the vast majority of which are veterans of our armed forces.

If there is one thing we know, it is that life is uncertain. we believe that there must be a mechanism to deal with facts and events that are impossible to predict with certainty today. we believe that the President, through his designee, the Secretary of the Army, should have the discretion to grant exceptions to allow for burial in Arlington of individuals whose acts, services, or contributions, on behalf of the armed forces or the nation, are extraordinary and substantially similar to the acts, services, or contributions made by the individuals who are entitled to burial.

To keep the public and the Congress informed of exceptions that are granted, we require a public disclosure form be signed by each requestor and, with each approval, we notify the appropriate Congressional Oversight Committees. We believe that current procedures for handling exception requests are highly-effective, due to the fact that decisions concerning burials are time-sensitive, extremely emotional, and require prompt action.

Finally, the pending legislation includes a provision that addresses the placement of memorials and monuments, other than private markers at individual gravesites. we support efforts to limit these memorials and monuments to those that commemorate service in the armed forces by an individual or group, and those that commemorate particular military events. we also approve of restricting the placement of memorials or monuments commemorating military events until twenty-five years after the event. this time period ensures that the event being commemorated is of fitting historical significance.

The Army takes very seriously its responsibility to administer and to uphold the sanctity of Arlington National Cemetery as we pay final tribute to men and women who have served our country with distinction. in this regard, the Army has recently completed a master plan, which is designed to ensure that Arlington will remain active as the nation's foremost military cemetery. this plan requires a review of the eligibility standards every five years to determine what standards are appropriate given land availability. The plan also identifies fourteen parcels of land that are located in close proximity to the cemetery and that could be used for future burials. We intend to examine those parcels that would be made available so that the future needs of the cemetery are met. these parcels include contiguous land sites that will be vacated by the Army, Navy, and Marine Corps, including the Navy Annex and a portion of Fort Myer. We solicit your support for this initiative. funds are included in the President's Budget for Fiscal Years 1999-2003 to prepare concept plans to develop those parcels of land owned by the Federal government when they become excess to government needs in the

near future. Acquisition of this property will allow for continued operation of the cemetery through the twenty-first century.

Thank you for the opportunity to comment on this important issue.

#### ROLL CALL VOTES

During Committee consideration of H.R. 70, there was a recorded vote on an amendment offered by Mr. Filner to provide the Secretary of the Army with the authority to allow burial of a person who does not meet the statutory criteria set forth in H.R. 70. The amendment was rejected on a roll call vote of 16–7. The vote of Committee Members is as follows:

Date: Thursday, March 18, 1999  
 Call to Order: 2:30 p.m.  
 Adjourn: 3:12 p.m.  
 Subject: Markup of H.R. 70, the Arlington National Cemetery Burial Eligibility Act

NAME	YEA	NAY	NOT VOTING
Bob Stump, AZ, Chairman .....		X	
Chris Smith, NJ, Vice Chairman .....		X	
Michael Bilirakis, FL .....		X	
Floyd Spence, SC .....			X
Terry Everett, AL .....		X	
Steve Buyer, IN .....			X
Jack Quinn, NY .....		X	
Cliff Stearns, FL .....		X	
Jerry Moran, KS .....		X	
J.D. Hayworth, AZ .....		X	
Helen Chenoweth, ID .....			X
Ray LaHood, IL .....		X	
Jim Hansen, UT .....		X	
Howard (Buck) McKeon, CA .....		X	
Jim Gibbons, NV .....		X	
Mike Simpson, ID .....		X	
Richard Baker, LA .....		X	
Lane Evans, IL, Ranking .....	X		
Bob Filner, CA .....	X		
Luis Gutierrez, IL .....	X		
Corrine Brown, FL .....			X
Mike Doyle, PA .....		X	
Collin Peterson, MN .....		X	
Julia Carson, IN .....	X		
Silvestre Reyes, TX .....			X
Vic Snyder, AR .....	X		
Ciro Rodriguez, TX .....			X
Ronnie Shows, MS .....	X		
Shelley Berkley, NV .....	X		
TOTAL .....	7	16	

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, February 24, 1999

Hon. BOB STUMP,  
 Chairman, Committee on Veterans' Affairs,  
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: At your request, the Congressional Budget Office (CBO) has prepared the enclosed cost estimate for H.R. 70, the Arlington National Cemetery Burial Eligibility Act.

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

Sincerely,

DAN L. CRIPPEN,  
 Director.

Attachment

*H.R. 70. Arlington National Cemetery Burial Eligibility Act. As introduced on January 6, 1999*

H.R. 70 would codify many current regulations governing eligibility for burial in Arlington National Cemetery and interment in its columbarium. The bill would allow certain close family members of eligible veterans to be buried in the same grave without the need for a waiver, and it would prohibit burial in other special cases. Under the bill, future memorials or markers must commemorate service in the armed forces. H.R. 70 would require the Secretary of the Army to maintain a public register that would describe the basis for the eligibility of each individual buried in Arlington National Cemetery after January 1, 1998. The Secretary would also be required to publish a pamphlet describing eligibility requirements for burial.

CBO estimates that the costs of implementing H.R. 70 would not be significant. Most categories of veterans and family members covered by the bill's eligibility criteria are already eligible under current regulations. The bill would grant eligibility to family members who are presently ineligible for burial at Arlington National Cemetery, but because these individuals are small in number and have tended to receive waivers, the bill would not lead to a significant increase in the number of burials at the cemetery. CBO estimates that the costs of producing the register and pamphlet would be negligible. Because the legislation would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, and would not effect the budgets of state, local or tribal governments.

The estimate was prepared by Charles Riemann, who can be reached at 226-2840. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

The enactment of the reported bill would have no inflationary impact.

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 certain Department of Veterans Affairs and Department of Defense programs and benefits recipients.

STATEMENT OF FEDERAL MANDATES

The reported bill would not establish a federal mandate under the Unfunded Mandates 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 Defence 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHAPTER 24 OF TITLE 38, UNITED STATES CODE

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

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

\* \* \* \* \*

2412. *Arlington National Cemetery: persons eligible for burial.*

2413. *Arlington National Cemetery: persons eligible for placement in columbarium.*

2414. *Arlington National Cemetery: authorized headstones, markers, and monuments.*

\* \* \* \* \*

§ 2402. Persons eligible for interment in national cemeteries

Under such regulations as the Secretary may prescribe and subject to the provisions of section 6105 of this title, the remains of the following persons may be buried in any open national cemetery under the control of the National Cemetery Administration:

(1) \* \* \*

\* \* \* \* \*

(5) The spouse, surviving spouse (which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or di-



voice), minor child (which for purposes of this chapter, *except section 2412(b)(1) of this title*, includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution), and, in the discretion of the Secretary, unmarried adult child of any of the persons listed in paragraphs (1) through (4) and paragraph (7).

\* \* \* \* \*

(7) Any person who at the time of death was entitled (*or but for age would have been entitled*) to retired pay under chapter **[67]** 1223 of title 10 **[or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age]**.

\* \* \* \* \*

**§2412. Arlington National Cemetery: persons eligible for burial**

(a) **PRIMARY ELIGIBILITY.**—*The remains of the following individuals may be buried in Arlington National Cemetery:*

(1) *Any member of the Armed Forces who dies while on active duty.*

(2) *Any retired member of the Armed Forces and any person who served on active duty and at the time of death was entitled (or but for age would have been entitled) to retired pay under chapter 1223 of title 10, United States Code.*

(3) *Any former member of the Armed Forces separated for physical disability before October 1, 1949, who—*

(A) *served on active duty; and*

(B) *would have been eligible for retirement under the provisions of section 1201 of title 10 (relating to retirement for disability) had that section been in effect on the date of separation of the member.*

(4) *Any former member of the Armed Forces whose last active duty military service terminated honorably and who has been awarded one of the following decorations:*

(A) *Medal of Honor.*

(B) *Distinguished Service Cross, Air Force Cross, or Navy Cross.*

(C) *Distinguished Service Medal.*

(D) *Silver Star.*

(E) *Purple Heart.*

(5) *Any former prisoner of war who dies on or after November 30, 1993.*

(6) *The President or any former President.*

(b) **ELIGIBILITY OF FAMILY MEMBERS.**—*The remains of the following individuals may be buried in Arlington National Cemetery:*

(1) *The spouse, surviving spouse (which for purposes of this paragraph includes any remarried surviving spouse, section 2402(5) of this title notwithstanding), minor child, and, at the discretion of the Superintendent, unmarried adult child of a person listed in subsection (a), but only if buried in the same gravesite as that person.*

(2)(A) *The spouse, minor child, and, at the discretion of the Superintendent, unmarried adult child of a member of the*

*Armed Forces on active duty if such spouse, minor child, or unmarried adult child dies while such member is on active duty.*

*(B) The individual whose spouse, minor child, and unmarried adult child is eligible under subparagraph (A), but only if buried in the same gravesite as the spouse, minor child, or unmarried adult child.*

*(3) The parents of a minor child or unmarried adult child whose remains, based on the eligibility of a parent, are already buried in Arlington National Cemetery, but only if buried in the same gravesite as that minor child or unmarried adult child.*

*(4)(A) Subject to subparagraph (B), the surviving spouse, minor child, and, at the discretion of the Superintendent, unmarried adult child of a member of the Armed Forces who was lost, buried at sea, or officially determined to be permanently absent in a status of missing or missing in action.*

*(B) A person is not eligible under subparagraph (A) if a memorial to honor the memory of the member is placed in a cemetery in the national cemetery system, unless the memorial is removed. A memorial removed under this subparagraph may be placed, at the discretion of the Superintendent, in Arlington National Cemetery.*

*(5) The surviving spouse, minor child, and, at the discretion of the Superintendent, unmarried adult child of a member of the Armed Forces buried in a cemetery under the jurisdiction of the American Battle Monuments Commission.*

*(c) DISABLED ADULT UNMARRIED CHILDREN.—In the case of an unmarried adult child who is incapable of self-support up to the time of death because of a physical or mental condition, the child may be buried under subsection (b) without requirement for approval by the Superintendent under that subsection if the burial is in the same gravesite as the gravesite in which the parent, who is eligible for burial under subsection (a), has been or will be buried.*

*(d) FAMILY MEMBERS OF PERSONS BURIED IN A GROUP GRAVESITE.—In the case of a person eligible for burial under subsection (a) who is buried in Arlington National Cemetery as part of a group burial, the surviving spouse, minor child, or unmarried adult child of the member may not be buried in the group gravesite.*

*(e) EXCLUSIVE AUTHORITY FOR BURIAL IN ARLINGTON NATIONAL CEMETERY.—Eligibility for burial of remains in Arlington National Cemetery prescribed under this section is the exclusive eligibility for such burial.*

*(f) APPLICATION FOR BURIAL.—A request for burial of remains of an individual in Arlington National Cemetery made before the death of the individual may not be considered by the Secretary of the Army or any other responsible official.*

*(g) REGISTER OF BURIED INDIVIDUALS.—(1) The Secretary of the Army shall maintain a register of each individual buried in Arlington National Cemetery and shall make such register available to the public.*

*(2) With respect to each such individual buried on or after January 1, 1998, the register shall include a brief description of the basis of eligibility of the individual for burial in Arlington National Cemetery.*

*(h) DEFINITIONS.—For purposes of this section:*

- (1) The term “retired member of the Armed Forces” means—
- (A) any member of the Armed Forces on a retired list who served on active duty and who is entitled to retired pay;
  - (B) any member of the Fleet Reserve or Fleet Marine Corps Reserve who served on active duty and who is entitled to retainer pay; and
  - (C) any member of a reserve component of the Armed Forces who has served on active duty and who has received notice from the Secretary concerned under section 12731(d) of title 10, of eligibility for retired pay under chapter 1223 of title 10, United States Code.
- (2) The term “former member of the Armed Forces” includes a person whose service is considered active duty service pursuant to a determination of the Secretary of Defense under section 401 of Public Law 95–202 (38 U.S.C. 106 note).
- (3) The term “Superintendent” means the Superintendent of Arlington National Cemetery.

**§2413. Arlington National Cemetery: persons eligible for placement in columbarium**

The cremated remains of the following individuals may be placed in the columbarium in Arlington National Cemetery:

- (1) A person eligible for burial in Arlington National Cemetery under section 2412 of this title.
- (2)(A) A veteran whose last period of active duty service (other than active duty for training) ended honorably.
- (B) The spouse, surviving spouse, minor child, and, at the discretion of the Superintendent of Arlington National Cemetery, unmarried adult child of such a veteran.

**§2414. Arlington National Cemetery: authorized headstones, markers, and monuments**

(a) *GRAVESITE MARKERS PROVIDED BY THE SECRETARY.*—A gravesite in Arlington National Cemetery shall be appropriately marked in accordance with section 2404 of this title.

(b) *GRAVESITE MARKERS PROVIDED AT PRIVATE EXPENSE.*—(1) The Secretary of the Army shall prescribe regulations for the provision of headstones or markers to mark a gravesite at private expense in lieu of headstones and markers provided by the Secretary of Veterans Affairs in Arlington National Cemetery.

(2) Such regulations shall ensure that—

- (A) such headstones or markers are of simple design, dignified, and appropriate to a military cemetery;
- (B) the person providing such headstone or marker provides for the future maintenance of the headstone or marker in the event repairs are necessary;
- (C) the Secretary of the Army shall not be liable for maintenance of or damage to the headstone or marker;
- (D) such headstones or markers are aesthetically compatible with Arlington National Cemetery; and
- (E) such headstones or markers are permitted only in sections of Arlington National Cemetery authorized for such headstones or markers as of January 1, 1947.

(c) *MONUMENTS.—(1) No monument (or similar structure as determined by the Secretary of the Army in regulations) may be placed in Arlington National Cemetery except pursuant to the provisions of this subsection.*

(2) *A monument may be placed in Arlington National Cemetery if the monument commemorates—*

(A) *the service in the Armed Forces of the individual, or group of individuals, whose memory is to be honored by the monument; or*

(B) *a particular military event.*

(3) *No monument may be placed in Arlington National Cemetery until the end of the 25-year period beginning—*

(A) *in the case of commemoration of service under paragraph (1)(A), on the last day of the period of service so commemorated; and*

(B) *in the case of commemoration of a particular military event under paragraph (1)(B), on the last day of the period of the event.*

(4) *A monument may be placed only in those sections of Arlington National Cemetery designated by the Secretary of the Army for such placement.*

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**SECTION 11201 OF TITLE 46, UNITED STATES CODE**

**§ 11201. Eligibility for veterans’ burial and cemetery benefits**

(a) **ELIGIBILITY.—**

(1) **IN GENERAL.—**The qualified service of a person referred to in paragraph (2) shall be considered to be active duty in the Armed Forces during a period of war for purposes of eligibility for benefits under the following provisions of title 38:

(A) \* \* \*

\* \* \* \* \*

(C) *Section 2413 (relating to placement in the columbarium in Arlington National Cemetery).*

\* \* \* \* \*

