

ARLINGTON NATIONAL CEMETERY BURIAL ELIGIBILITY
ACT

JULY 18, 2002.—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. 4940]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 4940) 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 June 13, 2002, the Honorable Bob Stump, along with the Chairman and Ranking Member of the Veterans' Affairs Committee, the Honorable Chris Smith and the Honorable Lane Evans, respectively, and the Chairman and Ranking Member of the Subcommittee on Benefits, the Honorable Mike Simpson and the Honorable Silvestre Reyes, respectively, introduced H.R. 4940, to enact into law eligibility requirements for burial in Arlington National Cemetery.

On June 11, 2002, the Subcommittee on Benefits held a hearing that included testimony on a discussion draft of H.R. 4940. On July 9, 2002, the Subcommittee on Benefits met and unanimously ordered H.R. 4940 reported favorably to the full Committee.

On July 16, 2002, the full Committee met and ordered H.R. 4940 reported favorably to the House by a roll call vote of 22-3.

SUMMARY OF THE REPORTED BILL

H.R. 4940 would:

1. Codify eligibility criteria for in-ground burial at Arlington National Cemetery. Eligible persons would be:
 - 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) members or former members of a reserve component who, but for age, would have been eligible for retired pay;
 - d) members of a reserve component who die in the performance of duty while on active duty training or inactive duty training;
 - e) 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;
 - f) former prisoners of war who die on or after November 30, 1993;
 - g) the President or any former President;
 - h) members of the Guard or Reserves who served on active duty, who are eligible for retirement, but who have not yet retired;
 - i) the spouse, surviving spouse, minor child and at the discretion of the Superintendent of Arlington, subject to certain requirements, unmarried adult children of a) through h).
2. Provide the President the authority to grant a waiver for burial at Arlington in the case of an individual not otherwise eligible for burial under the military service criteria outlined above but whose acts, service, or contributions to the Armed Forces are so extraordinary as to justify burial at Arlington; would allow the President to delegate the waiver authority only to the Secretary of the Army.
3. Codify existing regulatory eligibility for interment of cremated remains in the columbarium at Arlington. Generally, this includes all veterans with honorable service and their dependents.
4. Clarify that only memorials honoring military service may be placed at Arlington and set a 25-year waiting period.
5. Clarify that in the case of individuals buried in Arlington before the date of enactment, the surviving spouse is deemed to be eligible if buried in the same gravesite.

BACKGROUND AND DISCUSSION

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 led 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, as 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 1880s, the burials of General Pershing and President William Howard Taft in the 1920s, 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. At the end of December 2001, Arlington had a total capacity of 243,373 gravesites, with about 32,312 remaining available as of the end of March 2002.

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, unmarried children generally have been deemed 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 Guard, and the Reserve Officers Training Corps of the Army, Navy and Air Force, whose death occurred under honorable condi-

tions while serving on active duty. It also added the requirement that the Secretary of the Army seek the approval of the Secretary 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, currently published in federal regulations at 32 CFR 553.15, 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 in-ground Arlington burial of 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 servicemembers 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; 50,000 niches capable of holding two urns each are available.

After the Army imposed 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. It is projected that there will be 3,800 interments and 2,500 inurnments in fiscal year 2002, and 3,925 interments and 2,700 inurnments in fiscal year 2003. Given the expected burial rates, the Army projects that all gravesites will be occupied by 2025.

In 1973, Congress addressed the need for a coherent national burial policy and management system for national cemeteries. The National Cemeteries Act of 1973 (Public Law 93-43) established within the Veterans Administration (VA), now the Department of Veterans Affairs, a National Cemetery System consisting of cemeteries already under 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 burial in the cemeteries as called for under the 1959 Act, but transferred jurisdiction to the then-Administrator 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 VA and the Department of Defense on (1) the advisability of including Arlington National Cemetery within the National Cemetery System to be administered by VA, 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 Ar-

lington remain under the jurisdiction of the Department of the Army and that the existing regulatory criteria be maintained. Congress took no further legislative action.

Section 2 of the bill would codify, with the exceptions discussed below, existing regulatory eligibility criteria for burial at Arlington National Cemetery. The bill would 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 discussed in the bill summary. The bill would eliminate the current regulatory requirement that retired reservists be in receipt of their retirement pay under title 10, United States Code, to be eligible for in-ground burial. 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 “grey zone.” 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.

Burial space is limited at Arlington and the Committee appreciates the Army’s interest in maintaining its strict eligibility rules. However, over the years Congress has extended veterans’ benefits to members of the reserve components (the Selected Reserve and National Guard) that were previously available only to veterans who had served on active duty. 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.

Similarly, section 2 of this legislation would extend burial eligibility to members of a reserve component who die in the performance 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 performance 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.

The bill would also extend to the President, or the Secretary of the Army at the President’s discretion, the authority to grant a burial waiver to an individual who does not otherwise meet the military service criteria for burial. Such a waiver would only be appropriate in the case of an individual whose acts, service, or contributions to the Armed Forces are so extraordinary as to justify burial at Arlington National Cemetery.

The bill would prohibit the Secretary and the Superintendent 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.

Section 3 of the bill would codify 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.

Section 4 of the bill would add a new section 2414 to codify regulations governing gravesite markers. It directs that graves be marked in accordance with section 2404 of title 38, United States

Code, which describes the types of markers which may be used in national cemeteries. Section 4 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 at the cemetery authorized as of January 1, 1947, for such markers. This section 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 of the bill would require that all monuments commemorate a military event or the military service of an individual or group of individuals. Placement of monuments in Arlington would be prohibited until 25 years have elapsed after the service or event being commemorated.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill would provide that this Act may be cited as the "Arlington National Cemetery Burial Eligibility Act".

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

Proposed section 2412(a) would establish 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, members or former members of a reserve component who served on active duty, was honorably discharged from such active duty service, who, at the time of death, was under 60 years of age and who would, but for age, have been eligible at the time of death for retired pay under title 10, United States Code; certain former members of the Armed Forces who were separated for disability prior to October 12, 1949; former members of the Armed Forces who were awarded any one of the following military awards: Medal of Honor, Distinguished Service Cross (Air Force Cross or Navy Cross), Distinguished Service Medal, Silver Star, or Purple Heart; any former POW who dies after November 30, 1993; any member of a reserve component of the Armed Forces who dies in the performance of duty while on active duty for training or inactive duty training; the President or any former President.

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

Section 2412(b)(1) would authorize burial of the spouse, surviving spouse (which includes any remarried surviving spouse, section 2402(5) of this title notwithstanding), minor child or at the discretion of the Superintendent of Arlington National Cemetery, the unmarried adult child, but only if buried in the same gravesite as that person.

Section 2412(b)(2)(A) would authorize burial of an active duty member's dependent in the same gravesite if such dependent dies while the member is on active duty.

Section 2412(b)(2)(B) would authorize burial of a former member whose dependent was buried at Arlington National Cemetery while the member was on active duty, but only if buried in the same gravesite.

Section 2412(b)(3) would authorize burial of the parents of a child buried at Arlington based on the eligibility of a parent, but only if buried in the same gravesite.

Section 2412(b)(4)(A) would authorize burial of certain dependents at the discretion of the Superintendent of a member of the Armed Forces whose body was not recovered or permanently listed as missing or missing in action.

Section 2412(b)(4)(B) would deny burial of dependents authorized in (4)(A) if a memorial to honor the memory of the member already exists elsewhere in the national cemetery system, but would authorize relocation of any such memorial to Arlington National Cemetery, thus reinstating eligibility of the dependent.

Section 2412(b)(5) would authorize 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) would authorize, without approval by the Superintendent, burial of a disabled unmarried adult child who is incapable of self-support up to the time of death if in the same gravesite as the eligible parent.

Section 2412(d) would provide that dependents of those listed in subsection (a) who are buried as part of a group burial may not be buried in the group gravesite.

Section 2412(e)(1) would provide that the exclusive authority for burial eligibility is section 2412 of title 38, United States Code.

Section 2412(e)(2)(A) would provide the President the authority to deem eligible for burial an individual, not otherwise eligible under subsection (a), whose acts, service, or contributions to the Armed Forces are so extraordinary as to justify burial in Arlington National Cemetery.

Section 2412(e)(2)(B) would require that the Secretary of the Army immediately notify the chairmen and ranking members of the Committee on Veterans' Affairs of the Senate and House of Representatives if the President deems an individual eligible for burial under subparagraph (A).

Section 2412(e)(2)(C)(i) would provide that the authority under subparagraph (A) may not be delegated.

Section 2412(e)(2)(ii) would provide that the President may only delegate the authority under subparagraph (A) to the Secretary of the Army.

Section 2412(f)(1) would require that a request for burial at Arlington National Cemetery must be made to the Secretary of the Army or to any other Federal official that the Secretary of the Army may specify.

Section 2412(f)(2) would prohibit the Secretary or other Federal official from considering a request for burial under paragraph (1) at Arlington National Cemetery prior to the death of the individual for whom burial is requested.

Section 2412(f)(3) would prohibit the President or the Secretary as the case may be, from considering a request for burial under subsection (e)(2) that is made before the death of the individual for whom burial at Arlington National Cemetery is requested.

Section 2412(g)(1) 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 with respect to each such individual buried on or after January 1, 2002.

Section 2(b) of the bill would require, not later than 180 days after the date of enactment, the Secretary of the Army to publish an updated pamphlet describing eligibility for burial in Arlington National Cemetery, as reflected by the provisions of section 2412 of title 38, United States Code, as added by subsection (a).

Sections 2(c) through (e) of the bill would provide clerical, technical, and conforming amendments to chapter 24 of title 38, United States Code.

Section 2(f) of the bill would provide an effective date, except as provided in paragraph (2), section 2412 of title 38, United States Code, as added by subsection (a) applying to individuals dying on or after the date of enactment of this Act.

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

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

Section 2413(a)(2)(A) would authorize placement in the columbarium of the cremated remains of any veteran whose last active duty service (other than active duty for training) ended honorably.

Section 2413(a)(2)(B) would authorize placement in the columbarium of the cremated remains of the spouse, minor child and (at the discretion of the Superintendent of Arlington) an unmarried adult child of such a veteran.

Sections 3(b) and (c) of the bill provide clerical and conforming amendments to the table of sections for chapter 24 of title 38, United States Code.

Section 3(d) of the bill would provide an effective date for section 2413 as the date of enactment of the Act.

Section 4(a) of the bill would add a new section 2414 to title 38, United States Code, titled "Arlington National Cemetery: authorized headstones, markers, and monuments".

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

Section 2414(b)(1) would direct the Secretary of the Army to prescribe regulations for privately furnished gravesite headstones or markers.

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

Section 2414(b)(2)(B) would require that the person furnishing a private marker provide for maintenance in the event repairs are necessary.

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

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

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

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

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

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

Section 2414(c)(4) would restrict placement of monuments to areas designated by the Secretary of the Army.

Section 4(c) of the bill would establish the effective date of section 2414 as the date of enactment.

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

PERFORMANCE GOALS AND OBJECTIVES

The reported bill would codify burial eligibility for Arlington National Cemetery. The Cemetery's performance goals and objectives are established in annual performance plans and are subject to the Committee's regular oversight.

STATEMENT OF THE VIEWS OF THE ADMINISTRATION

STATEMENT BY THURMAN HIGGINBOTHAM, DEPUTY SUPERINTENDENT, ARLINGTON NATIONAL CEMETERY BEFORE BENEFITS SUBCOMMITTEE ON VETERANS AFFAIRS, UNITED STATES HOUSE OF REPRESENTATIVES, SECOND SESSION, 107TH CONGRESS, JUNE 11, 2002, PROPOSED CHANGES IN BURIAL ELIGIBILITY

I appreciate the opportunity to appear before this committee to discuss eligibility for burial at Arlington National Cemetery and the "Arlington National Cemetery Burial Eligibility Act."

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.

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.

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.

Title 32 of the Code of Federal Regulations sets forth the criteria for burial eligibility in Arlington National Cemetery. The Army, as the Executive Agent for the Cemetery, strives to implement these regulations fairly and consistently. We must

endeavor to preserve Arlington as a National Shrine honoring the men and women who have served in the Armed Forces and those Americans who have made extraordinary public contributions to our Nation and our Armed Forces.

Although we acknowledge that the “Arlington National Cemetery Burial Eligibility Act” provides exception authority, we nonetheless object to the legislation. We believe that burial eligibility standards at Arlington should continue to be governed through regulations promulgated by the Secretary of the Army, rather than by statute. We believe that these procedures have been effective in attaining the goals of fairness, consistency and efficient use of space. The current regulatory regime provides the Army, as Executive Agent, the framework and flexibility needed to address unusual cases in a timely, fair and appropriate manner.

We note that the “Arlington National Cemetery Burial Eligibility Act” would expand burial eligibility to several categories that are not now recognized under the regulations in effect. These include members of a reserve component who at the time of death were under 60 years of age and who, but for age, would have been eligible for retired pay; members of the Armed Forces who die in the line of duty while on active duty for training; and certain remarried surviving spouses.

The Army is very concerned that expanding burial eligibility to new categories of individuals will create inequities. While the Army appreciates the actions of the Congress and this Committee in making additional land available to the Cemetery, space will eventually run out. In light of these constraints, expanding burial eligibility will eventually cause the denial of the privilege to other eligible persons. Expanding burial eligibility may also create difficulties for those families whose loved ones had been denied burial privileges prior to the changes.

For these reasons, the Army opposes legislation that would expand categories of eligible individuals beyond those contained in the regulations now in effect. In December 2001, the Army provided testimony to this Subcommittee expressing concern with H.R. 3423, which would extend burial privileges in Arlington National Cemetery to certain current and former reserve component members of the Armed Forces and their dependents. While the long-term impact of the proposed expansions is uncertain, we objected to H.R. 3423 based on the impact on space availability and the fact that the expansion would eventually require denial of this privilege to eligible persons in categories that have existed for decades. At the same time, the Army values greatly the major contribution being made by members of our reserve components each and every day. The over 30,000 members currently serving on active duty in the Reserves and the Guard are eligible for burial in Arlington National Cemetery, if they should die while they are currently serving.

We also note that the “Arlington National Cemetery Burial Eligibility Act” would eliminate burial eligibility for several narrowly defined categories. The Army believes that these individuals, including top leadership in the Department of Defense and other high-level government officials, should continue to receive, by virtue of their service to Nation, the special honor afforded by burial in Arlington.

Thank you for providing me with the opportunity to present our views on the “Arlington National Cemetery Burial Eligibility Act.” I look forward to answering your questions.

ROLL CALL VOTES

During Committee consideration of H.R. 4940, there was a recorded vote on ordering the bill reported favorably to the House. The vote was 22–3 in favor of reporting the bill.

Date: Tuesday, July 16, 2002
 Call to Order: 9:35 a.m.
 Adjourn: 11:10 a.m.
 Subject: MARKUP – Motion to report H.R. 4940 favorably to the House

NAME	YEA	NAY	NOT VOTING
Chris Smith, NJ, Chairman	x		
Bob Stump, AZ			x
Michael Bilirakis, FL, Vice Chairman			x
Terry Everett, AL			x

NAME	YEA	NAY	NOT VOTING
Steve Buyer, IN		X	
Jack Quinn, NY	X		
Cliff Stearns, FL	X		
Jerry Moran, KS	X		
Howard (Buck) McKeon, CA	X		
Jim Gibbons, NV			X
Mike Simpson, ID	X		
Richard Baker, LA			X
Rob Simmons, CT	X		
Ander Crenshaw, FL			X
Henry Brown, SC	X		
Jeff Miller, FL	X		
John Boozman, AR	X		
Lane Evans, IL, Ranking	X		
Bob Filner, CA		X	
Luis Gutierrez, IL	X		
Corrine Brown, FL	X		
Julia Carson, IN	X		
Silvestre Reyes, TX	X		
Vic Snyder, AR		X	
Ciro Rodriguez, TX	X		
Ronnie Shows, MS	X		
Stephen Lynch, MA	X		
Shelley Berkley, NV	X		
Baron P. Hill, IN	X		
Tom Udall, NM	X		
Susan Davis, CA	X		
TOTAL	22	3	6

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, July 17, 2002.

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. 4940, 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 Melissa E. Zimmerman, who can be reached at 226-2840.

Sincerely,

DAN L. CRIPPEN,
Director.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 4940, ARLINGTON NATIONAL CEMETERY BURIAL ELIGIBILITY ACT,
AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON VETERANS'
AFFAIRS ON JULY 16, 2002

H.R. 4940 would codify, with minor changes, 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, grant eligibility for burial to members of the armed services who die in the performance of duty during training, and grant eligibility to certain members and former members of reserve components of the armed forces. H.R. 4940 also would prohibit burial of any individual who would otherwise be ineligible, unless the President authorizes burial because of a candidate's extraordinary contributions to the armed forces. Under the bill, future memorials or markers must commemorate service in the armed forces.

H.R. 4940 would require the Secretary of the Army to maintain a public register that would describe the eligibility of each individual buried in Arlington National Cemetery after January 1, 2002. The bill would also require the Secretary to publish a pamphlet describing eligibility requirements for burial at Arlington National Cemetery.

CBO estimates that the costs of implementing H.R. 4940 would not be significant. Most categories of veterans and family members covered under 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 the cemetery, but because these individuals are small in number and have often received waivers in the past, CBO estimates that this new eligibility would not lead to a significant increase in the numbers of burials.

H.R. 4940 also would grant burial eligibility to certain members of the armed services who were previously ineligible. CBO estimates that less than 1,000 veterans and close family members a year would become eligible for burial under the bill, but that only a small portion would request burial at Arlington National Cemetery. Thus, CBO estimates that implementing these new eligibility criteria would not lead to a significant increase in the number of burials at the cemetery.

CBO estimates that the costs of maintaining the register and producing the pamphlet would be negligible. Because the legislation would not affect direct spending or receipts, pay-asyou-go procedures would not apply.

H.R. 4940 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.

On July 11, 2002, CBO transmitted a cost estimate for H.R. 4940, as introduced on June 13, 2002. The two versions of the bill are identical, as are the two estimates.

The CBO staff contact is Melissa E. Zimmerman. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

STATEMENT OF FEDERAL MANDATES

The preceding Congressional Budget Office cost estimate states that the bill contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act.

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 (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.	<i>Arlington National Cemetery: persons eligible for burial.</i>
2413.	<i>Arlington National Cemetery: persons eligible for placement in columbarium.</i>
2414.	<i>Arlington National Cemetery: authorized headstones, markers, and monuments.</i>
	* * * * *

§ 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, *except section 2412(b)(1) of this title*, includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce), minor child (which for purposes of this chapter 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, unmar-

ried adult child of any of the persons listed in paragraphs (1) through (4) and paragraph (7).

* * * * *

§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)(A) *Any retired member of the Armed Forces.*

(B) *Any member or former member of a reserve component of the Armed Forces—*

(i) *who served on active duty;*

(ii) *who was honorably discharged from such active duty service;*

(iii) *who, at the time of death, was under 60 years of age;*

and

(iv) *who, but for age, would have been eligible at the time of death for retired pay under chapter 1223 of title 10.*

(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) *Any member of a reserve component of the Armed Forces who dies in the performance of duty while on active duty for training or inactive duty training.*

(7) *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.**—(1) *Eligibility for burial of remains in Arlington National Cemetery prescribed under this section is the exclusive eligibility for such burial.*

(2)(A) *In the case of an individual not otherwise eligible for burial under subsection (a) whose acts, service, or contributions to the Armed Forces are so extraordinary as to justify burial in Arlington National Cemetery, the President may deem such individual eligible for burial under subsection (a).*

(B) *If the President deems an individual eligible for burial in Arlington National Cemetery under subparagraph (A), the Secretary of the Army shall immediately notify the chairmen and the ranking members of the Committee on Veterans' Affairs of the Senate and House of Representatives.*

(C)(i) *Except as provided in clause (ii), the authority under subparagraph (A) may not be delegated.*

(ii) *The President may only delegate the authority under subparagraph (A) to the Secretary of the Army.*

(f) **APPLICATION FOR BURIAL.**—(1) *A request for burial of remains of an individual in Arlington National Cemetery shall be made to*

the Secretary of the Army or to any other Federal official that the Secretary of the Army may specify.

(2) The Secretary, or other Federal official, may not consider a request referred to in paragraph (1) that is made before the death of the individual for whom burial in Arlington National Cemetery is requested.

(3) The President, or the Secretary, as the case may be, may not consider a request to deem an individual eligible for burial in Arlington National Cemetery under subsection (e)(2) that is made before the death of the individual for whom burial in Arlington National Cemetery is requested.

(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, 2002, 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.*

SECTION 1176 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994

[SEC. 1176. ELIGIBILITY OF FORMER PRISONERS OF WAR FOR BURIAL IN ARLINGTON NATIONAL CEMETERY.

[(a) ELIGIBILITY FOR BURIAL.—Former prisoners of war described in subsection (b) are eligible for burial in Arlington National Cemetery, Arlington, Virginia.

[(b) ELIGIBLE FORMER POWS.—A former prisoner of war referred to in subsection (a) is a former prisoner of war—

[(1) who dies on or after the date of the enactment of this Act; and

[(2) who, while a prisoner of war, served honorably in the active military, naval, or air service, as determined under regula-

tions prescribed by the Secretary of the military department concerned.

[(c) SAVINGS PROVISION.—This section may not be construed to make ineligible for burial in Arlington National Cemetery a former prisoner of war who is eligible to be buried in that cemetery under another provision of law.

[(d) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of the Army. Those regulations may prescribe a minimum period of internment as a prisoner of war for purposes of eligibility under this section for burial in Arlington National Cemetery.

[(e) DEFINITIONS.—For purposes of this section:

[(1) The term “former prisoner of war” has the meaning given such term in section 101(32) of title 38, United States Code.

[(2) The term “active military, naval, or air service” has the meaning given such term in section 101(24) of such title.]

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).*

* * * * *

