

ARMY SPECIALIST JOSEPH P. MICKS FEDERAL FLAG  
CODE AMENDMENT ACT OF 2007

MAY 9, 2007.—Committed to the Committee of the Whole House on the State of the  
Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 692]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 692) to amend title 4, United States Code, to authorize the Governor of a State, territory, or possession of the United States to order that the National flag be flown at half-staff in that State, territory, or possession in the event of the death of a member of the Armed Forces from that State, territory, or possession who dies while serving on active duty, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007”.

### SEC. 2. FINDING.

Congress finds that members of the Armed Forces of the United States defend the freedom and security of the United States.

### SEC. 3. PROCEDURE FOR NATIONAL FLAG TO BE FLOWN AT HALF-STAFF IN THE EVENT OF THE DEATH OF A MEMBER OF THE ARMED FORCES.

(a) ISSUANCE OF PROCLAMATION.—Subsection (m) of section 7 of title 4, United States Code, is amended in the sixth sentence—

(1) by inserting “or the death of a member of the Armed Forces from any State, territory, or possession who dies while serving on active duty” after “present or former official of the government of any State, territory, or possession of the United States”; and

(2) by inserting before the period the following: “, and the same authority is provided to the Mayor of the District of Columbia with respect to present or former officials of the District of Columbia and members of the Armed Forces from the District of Columbia”.

(b) FEDERAL FACILITY CONSISTENCY WITH PROCLAMATION.—Such subsection is further amended by inserting after the sixth sentence the following new sentence: “When the Governor of a State, territory, or possession, or the Mayor of the District of Columbia, issues a proclamation under the preceding sentence that the National flag be flown at half-staff in that State, territory, or possession or in the District of Columbia because of the death of a member of the Armed Forces, the National flag flown at any Federal installation or facility in the area covered by that proclamation shall be flown at half-staff consistent with that proclamation.”.

## PURPOSE AND SUMMARY

Members of the Armed Forces of the United States defend the freedom and security of our Nation. Current law, which sets forth the circumstances under which our Nation’s flag may be flown at half-staff, including for whom may this honor be bestowed, however, does not include a member of the Armed Forces killed while serving on active duty.<sup>1</sup> H.R. 692 corrects this omission by authorizing the Governor of a State, territory, or possession as well as the Mayor of the District of Columbia to proclaim that the National flag be flown at half-staff in honor of a member of the Armed Forces of the United States who dies while serving on active duty. The proclamation would be binding on National flags flown at Federal facilities and installations in such State, territory, or possession, including the District of Columbia.

## BACKGROUND AND NEED FOR THE LEGISLATION

Representative Bart Stupak (D-MI) introduced H.R. 692, the “Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007,” on January 24, 2007. The bill is named for a 22-year old soldier from Representative Stupak’s district who was killed on July 8, 2006 by an improvised explosive device detonated near his vehicle during combat operations in Ar Ramadi, Iraq.<sup>2</sup> Army Spe-

<sup>1</sup> 4 U.S.C.A. §7(m) (2006).

<sup>2</sup> Letter from Rep. Bart Stupak to Pres. George W. Bush (July 21, 2006) (on file with the Subcommittee on the Constitution, Civil Rights and Civil Liberties); Press Release, Office of the Governor of the State of Michigan, Flags to be Flown Half-Staff Wednesday for Serviceman Killed in Iraq (July 17, 2006).

cialist Micks had been assigned to the 54th Engineer Battalion, 130th Engineer Brigade, Warner Barracks, Bamberg, Germany.<sup>3</sup>

Section 7(m) of title 4 of the United States Code specifies the criteria for which the National flag may be flown at half-staff.<sup>4</sup> For example, it directs how the flag should be hoisted, details the National holidays when the flag should be displayed at half-staff, and specifies who may direct that the flag be flown at half-staff and for whom.<sup>5</sup> In addition, the President may order the National flag to be flown at half-staff “whenever he deems it to be appropriate or desirable.”<sup>6</sup>

Notwithstanding this authority, Representative Stupak has been unable to persuade the President to issue a proclamation ordering that flags at Federal buildings in his State be flown at half-staff in honor of Michigan’s fallen soldiers.<sup>7</sup> Over the past 4 years, at least ten soldiers from Representative Stupak’s district have died in Iraq and Afghanistan, yet the National flags on some Federal buildings were not lowered in their honor, to the dismay of family members and friends of these brave soldiers.<sup>8</sup> H.R. 692 would provide an additional effective avenue for ensuring that our Nation’s fallen military heroes are honored and acknowledged.

#### HEARINGS

The Committee on the Judiciary held no hearings on H.R. 692.

#### COMMITTEE CONSIDERATION

On April 25, 2007, the Committee met in open session and ordered the bill, H.R. 692, favorably reported with an amendment, by voice vote, a quorum being present.

#### COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee’s consideration of H.R. 692.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

<sup>3</sup>Press Release, Office of the Governor of the State of Michigan, Flags to be Flown Half-Staff Wednesday for Serviceman Killed in Iraq (July 17, 2006).

<sup>4</sup>Section 7(m) defines “half-staff” to mean “the position of the flag when it is one-half the distance between the top and bottom of the staff.” 4 U.S.C.A. § 7(m) (2006).

<sup>5</sup>*Id.*

<sup>6</sup>4 U.S.C.A. § 10 (2006).

<sup>7</sup>Letter to Pres. George W. Bush from Rep. Bart Stupak 1 (July 21, 2006) (on file with the Subcommittee on the Constitution, Civil Rights and Civil Liberties).

<sup>8</sup>Jeff Kart, *Bill Proposes Flag Lowering for Soldiers to Extend to Federal Buildings*, BAY CITY TIMES, Nov. 27, 2006, at 3A.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 692, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 1, 2007.*

Hon. JOHN CONYERS, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 692, the Army Specialist Joseph P. Micks Federal Flag Code Amendments Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford, who can be reached at 226–2860.

Sincerely,

PETER R. ORSZAG,  
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.  
Ranking Member

*H.R. 692—Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007*

H.R. 692 would amend Federal law to allow the governor of a state, territory, or possession to fly the U.S. flag at half-staff following the death of a member of the active-duty armed forces. The legislation also would allow the mayor of the District of Columbia to fly the U.S. flag at half-staff following the death of former officials as well as members of the active-duty armed forces. In addition, when a governor or the mayor of the District of Columbia has issued a proclamation to display flags at half-staff, the legislation would require that flags at all Federal facilities in the locality also be flown at half-staff.

Because the U.S. flag is displayed daily at Federal facilities, CBO estimates that implementing H.R. 692 would have no significant cost. Enacting the bill would not affect direct spending or revenues.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no cost on state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R.692, as amended, ensures that our Nation's fallen military heros are properly honored in their home states by authorizing the Governor of a State, territory or possession, or the Mayor of the District of Columbia, to proclaim that the National flag be flown at half-staff for a member of the Armed Forces who dies while serving on active duty.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 17 of the Constitution.

#### ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 692 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

*Sec. 1. Short title.* Section 1 sets forth the short title of the bill as the "Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007."

*Sec. 2. Finding.* Section 2 states that Congress finds that members of the Armed Forces of the United States defend the freedom and security of the United States.

*Sec. 3. Procedure for National Flag to be flown at half-staff in the event of the death of a member of the Armed Forces.* Section 3(a) amends section 7(m) of title 4 of the United States Code to authorize the Governor of a State, territory, or possession, as well as the Mayor of the District of Columbia, to proclaim that the National flag be flown at half-staff in honor of a member of the Armed Forces of the United States who dies while serving on active duty. Section 3(b) provides that the proclamation would be binding on National flags flown at Federal facilities and installations in the State, territory, or possession involved, including the District of Columbia.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

SECTION 7 OF TITLE 4, UNITED STATES CODE

§ 7. Position and manner of display

The flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

(a) \* \* \*

\* \* \* \* \*

(m) The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. On Memorial Day the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, or in accordance with recognized customs or practices not inconsistent with law. In the event of the death of a present or former official of the government of any State, territory, or possession of the United States *or the death of a member of the Armed Forces from any State, territory, or possession who dies while serving on active duty*, the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff, *and the same authority is provided to the Mayor of the District of Columbia with respect to present or former officials of the District of Columbia and members of the Armed Forces from the District of Columbia. When the Governor of a State, territory, or possession, or the Mayor of the District of Columbia, issues a proclamation under the preceding sentence that the National flag be flown at half-staff in that State, territory, or possession or in the District of Columbia because of the death of a member of the Armed Forces, the National flag flown at any Federal installation or facility in the area covered by that proclamation shall be flown at half-staff consistent with that proclamation.* The flag shall be flown at half-staff 30 days from the death of the President or a former President; 10 days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President, or the Governor of a State, territory, or possession; and on the day of death and the following day for a Member of Congress. The flag shall be flown at half-staff on Peace Officers Memorial Day, unless that day is also Armed Forces Day. As used in this subsection—

(1) \* \* \*

\* \* \* \* \*