

AMENDING TITLE 38, UNITED STATES CODE, TO PROVIDE FOR THE BURIAL OF THE CREMATED REMAINS OF PERSONS WHO SERVED AS WOMEN'S AIR FORCES SERVICE PILOTS IN ARLINGTON NATIONAL CEMETERY

MARCH 21, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of Florida, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 4336]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 4336) to amend title 38, United States Code, to provide for the burial of the cremated remains of persons who served as Women's Air Forces Service Pilots in Arlington National Cemetery, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. BURIAL OF CREMATED REMAINS IN ARLINGTON NATIONAL CEMETERY OF CERTAIN PERSONS WHOSE SERVICE IS DEEMED TO BE ACTIVE SERVICE.

(a) IN GENERAL.—Section 2410 of title 38, United States Code, is amended by adding at the end the following new subsection:

“(c)(1) The Secretary of the Army shall ensure that under such regulations as the Secretary may prescribe, the cremated remains of any person described in paragraph (2) are eligible for inurnment in Arlington National Cemetery with military burial honors in accordance with section 1491 of title 10.

“(2) A person described in this paragraph is a person whose service has been determined to be active duty service pursuant to section 401 of the GI Bill Improvement Act of 1977 (Public Law 95–202; 38 U.S.C. 106 note) as of the date of the enactment of this Act.”.

(b) APPLICABILITY.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply with respect to—

(A) the remains of a person that are not formally interred or inurned as of the date of the enactment of this Act; and

(B) a person who dies on or after the date of the enactment of this Act.

(2) FORMALLY INTERRED OR INURNED DEFINED.—In this subsection, the term “formally interred or inurned” means interred or inurned in a cemetery, crypt, mausoleum, columbarium, niche, or other similar formal location.

SEC. 2. REPORT ON CAPACITY OF ARLINGTON NATIONAL CEMETERY.

Not later than 180 days after the date of the enactment of this Act, the Secretary of the Army shall submit to the Committees on Veterans’ Affairs and the Committees on Armed Services of the House of Representatives and the Senate a report on the interment and inurnment capacity of Arlington National Cemetery, including—

(1) the estimated date that the Secretary determines the cemetery will reach maximum interment and inurnment capacity; and

(2) in light of the unique and iconic meaning of the cemetery to the United States, recommendations for legislative actions and nonlegislative options that the Secretary determines necessary to ensure that the maximum interment and inurnment capacity of the cemetery is not reached until well into the future, including such actions and options with respect to—

(A) redefining eligibility criteria for interment and inurnment in the cemetery; and

(B) considerations for additional expansion opportunities beyond the current boundaries of the cemetery.

PURPOSE AND SUMMARY

H.R. 4336 was introduced by Representative Martha McSally of Arizona on January 6, 2016. H.R. 4336, as amended, would ensure that the cremated remains of persons who have been determined to be Active Duty Service as of the date of enactment are eligible for inurnment¹ with military burial honors in Arlington National Cemetery. Furthermore, within 180 days after the date of enactment, the bill would require the Secretary of the Army to submit to the Committees on Veterans’ Affairs of the Senate and House of Representatives and the Committees on Armed Services of the Senate and House of Representatives a report on the interment and inurnment capacity of Arlington National Cemetery. Such report would include the estimated future date that the cemetery will reach maximum interment and inurnment capacity. Moreover, the report would include the Secretary’s recommendations for legislative actions and non-legislative options that the Secretary deter-

¹Inurnment is generally the placement of a veteran’s cremated remains in a columbarium or a niche wall.

mines would be necessary to extend the cemetery's capacity well into the future.

BACKGROUND AND NEED FOR LEGISLATION

Congress enacted the GI Bill Improvement Act of 1977² (Act), which extended veterans benefits to persons who served as Women Airforce Service Pilots (WASPs) during World War II. The Act also authorized the Secretary of Defense to designate certain other civilian groups who provided exceptional service to our nation during periods of war. Since the Act was passed in 1977, the Secretary of Defense has recognized 35 civilian groups as "Active Duty Designees." These Active Duty Designees are eligible for benefits administered by the Secretary of Veterans Affairs, including burial in National Cemeteries administered by the National Cemetery Administration.

However, Arlington National Cemetery is operated by the Department of the Army. On June 10, 2002, then-Superintendent of Arlington National Cemetery, John C. Metzler, Jr., issued a memorandum which extended eligibility for inurnment with military burial honors in Arlington National Cemetery to Active Duty Designees.

On March 23, 2015, after the Army had conducted a review of Arlington National Cemetery's interment and inurnment policies, then-Secretary of the Army John M. McHugh issued a memorandum which revoked the eligibility of Active Duty Designees to be inurned in Arlington National Cemetery. The March 23, 2015, memorandum explained that the Army General Counsel's office had concluded that former-Superintendent Metzler did not have the authority to extend eligibility for military burial benefits in Arlington National Cemetery to Active Duty Designees. Furthermore, the Army General Counsel concluded that extending military burial benefits in Arlington National Cemetery to Active Duty Designees was not supported by current Federal law.

H.R. 4336, as amended, would clarify that Congress intends that current Active Duty Designees are eligible for inurnment in Arlington National Cemetery. However, the bill would limit eligibility for inurnment in Arlington National Cemetery to the remains of a person that was not formally interred as of the date of the enactment.

Furthermore, H.R. 4336, as amended, would require that the Secretary of the Army submit a report to better inform legislative proposals that would address eligibility for interment and inurnment in Arlington National Cemetery. H.R. 4336, as amended, would require the Secretary of the Army to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives and the Committees on Armed Services of the Senate and House of Representatives a report on the interment and inurnment capacity of Arlington National Cemetery within 180 days after the date of enactment. Additionally, the report would include the estimated future date that the cemetery will reach maximum interment and inurnment capacity and the Secretary's recommendations for legislative and non-legislative actions that the Secretary determines would be necessary to extend the cemetery's capacity well into the future.

²Public Law 95-202, 91 Stat. 1433; 38 U.S.C. § 106 note.

HEARINGS

There were no Subcommittee or Full Committee hearings held on hearings on H.R. 4336.

COMMITTEE CONSIDERATION

On February 25, 2016, the Full Committee met in open markup session, a quorum being present, and ordered H.R. 4336, as amended, reported favorably to the House of Representatives by voice vote.

During consideration of the bill, the following amendments were offered and agreed to by voice vote:

An amendment in the nature of a substitute to H.R. 4336, offered by Mr. Abraham of Louisiana, which expanded the eligibility to be inurned in Arlington National Cemetery to any person who has engaged in qualified service, if the service of the person has been determined to have been active duty service pursuant to section 401 of the Act (38 U.S.C. 106 note) as of the date of enactment of the Act. Additionally, the amendment in the nature of a substitute would place certain limitations on the ability of remains cremated prior to the enactment of the Act to be transferred to Arlington National Cemetery for inurnment.

An amendment to the amendment in the nature of a substitute offered by Ms. Brown of Florida, which would require the Secretary of the Army to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives and the Committees on Armed Services of the Senate and House of Representatives, a report on the interment and inurnment capacity of Arlington National Cemetery within 180 days after the date of enactment. The report would include the estimated future date that the cemetery will reach maximum interment and inurnment capacity, and the Secretary's recommendations for legislative and non-legislative actions that the Secretary determines would be necessary extend the cemetery's capacity well into the future.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 4336, as amended, reported to the House. A motion by Ranking Member Corrine Brown of Florida to report H.R. 4336, as amended, favorably to the House of Representatives was agreed to by voice vote.

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ROBERT L. SIMMONS, STAFF DIRECTOR

March 16, 2016

The Honorable Jeff Miller
 Chairman, Committee on Veterans' Affairs
 U.S. House of Representatives
 Washington, D.C. 20515


Dear Mr. Chairman:

I write concerning H.R. 4336, the *Women Airforce Service Pilot Arlington Inurnment Restoration Act*, as amended, which has been referred to the Committee on Armed Services. I am writing to confirm that, although there are certain provisions in the bill that fall within the Rule X jurisdiction of the Committee on Armed Services, the committee will forgo action on this bill in order to expedite this legislation for floor consideration.

I am glad we agree that forgoing consideration of the bill does not prejudice the Committee on Armed Services with respect to any future jurisdictional claim over the provisions contained in the bill or similar legislation that fall within the committee's Rule X jurisdiction. I request you urge the Speaker to appoint members of the committee to any conference committee convened to consider such provisions.

Please place a copy of this letter and your response acknowledging our jurisdictional interest into the *Congressional Record* during consideration of the measure on the House floor.

Sincerely,


 William M. "Mac" Thornberry
 Chairman

cc: The Honorable Paul D. Ryan, Speaker of the House
 The Honorable Adam Smith, Ranking Member, Committee on Armed Services
 The Honorable Corrine Brown, Ranking Member, Committee on Veterans' Affairs
 Mr. Thomas J. Wickham, Jr., Parliamentarian

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March 17, 2016

The Honorable William M. "Mac" Thornberry
 Chairman
 Committee on Armed Services
 U.S. House of Representatives
 Washington, D.C. 20515

Dear Chairman Thornberry:

In reference to your letter of March 16, 2016, I write to confirm our mutual understanding regarding H.R. 4336, as amended.

I appreciate the House Committee on Armed Services' waiver of consideration of the provisions under its jurisdiction and its subject matter as specified in your letter. I acknowledge that the waiver was granted only to expedite floor consideration of H.R. 4336, as amended, and does not in any way waive or diminish the House Committee on Armed Services' jurisdictional interests over this legislation or similar legislation. I will support a request from the House Committee on Armed Services for appointment to any House-Senate conference on H.R. 4336, as amended.

Again, thank you for your assistance with these matters.

With warm personal regards, I am

Sincerely,

JEFF MILLER
 Chairman

JM/cmd

cc: The Honorable Paul D. Ryan, Speaker of the House
 The Honorable Elijah E. Cummings
 The Honorable Corrine Brown
 Mr. Thomas J. Wickham, Jr., Parliamentarian

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance goals and objectives for this legislation:

The Army will use this authority to inurn current Active Duty Designees with military burial honors in Arlington National Cemetery. The Army will also use the authority granted by this legislation to submit a report to determine the estimated future date that Arlington National Cemetery will reach interment and inurnment capacity. Furthermore, such report would assist in forming policies to extend the cemetery's capacity into the future.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 4336, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 4336, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 4336, as amended, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 17, 2016.

Hon. JEFF MILLER,
*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. 4336, a bill to amend title 38, United States Code, to provide for the burial of the cremated remains of persons who served as Women's Air Forces Service Pilots in Arlington National Cemetery.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

ROBERT A. SUNSHINE
(For Keith Hall, Director).

Enclosure.

H.R. 4336—A bill to amend title 38, United States Code, to provide for the burial of the cremated remains of persons who served as Women's Air Forces Service Pilots in Arlington National Cemetery

H.R. 4336 would expand the number of individuals who are eligible to have their cremated remains inurned in Arlington National Cemetery (ANC), and direct the Secretary of the Army to submit a report on the remaining capacity of ANC for both interments and inurnments. CBO estimates that implementing H.R. 4336 would cost less than \$500,000 over the 2017–2021 period; such spending would be subject to the availability of appropriated funds.

Enacting H.R. 4336 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 4336 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Public Law 95–202 deemed the service of certain groups of women, civilians, and foreigners who served the United States during World War II as active duty for purposes of eligibility for benefits administered by the Department of Veterans Affairs. Nearly 35 groups were made eligible for veterans' benefits through that law including: the Women's Air Forces Service Pilots, Signal Corps Female Telephone Operator Units, U.S. merchant seamen who served on blockships in support of Operation Mulberry, male civilian ferry pilots, and U.S. civilians of the American Field Service.

Under current law, the cremated remains of groups made eligible under Public Law 95–202 may be inurned in all cemeteries under the jurisdiction of the Department of Veterans Affairs. Their remains are not, however, eligible to be inurned in ANC, which is under the jurisdiction of the Department of Defense (DoD). Section 1 of H.R. 4336 would allow them to be inurned in ANC, if they have not been formally interred or inurned elsewhere as of the date of enactment of the bill.

According to DoD, because ANC has limited capacity and resources, increasing the pool of persons eligible to be inurned would increase wait times for inurnment but would not increase the total

number of inurnments at ANC. Eligible persons would be inurned in the order in which requests were submitted until no more inurnments were possible. Therefore, CBO estimates that there would be no additional costs associated with implementing section 1.

Section 2 would require DoD to submit a report, within 180 days of enactment, on the remaining capacity for both interments and inurnments at ANC and on options for expanding that capacity. CBO estimates that implementing section 2 would cost less than \$500,000 in 2017.

H.R. 4336 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Dwayne M. Wright. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 4336, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 4336, as amended.

CONSTITUTIONAL AUTHORITY STATEMENT

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."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee finds that no provision of H.R. 4336, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee estimates that H.R. 4336, as amended, contains no di-

rected rule making that would require the Secretary to prescribe regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1—Burial of cremated remains in Arlington National Cemetery of certain person whose service is deemed to be active service

Section 1(a) would require the Secretary of the Army to inurn the cremated remains of any person who has been determined to be active duty service pursuant to section 401 of the GI Bill Improvement Act of 1977 (Public Law 95–202; 38 U.S.C. 106 note) as of the date of enactment of that Act.

Section 1(b) would limit eligibility for inurnment in Arlington National Cemetery to the remains of persons that are not formally interred as of the date of the enactment.

Section 2—Report on capacity of Arlington National Cemetery

Section 2 would require the Department of the Army to complete a report on the interment and inurnment capacity of Arlington National Cemetery, including:

- (1) the estimated date that the Secretary determines the cemetery will reach maximum interment and inurnment capacity; and,
- (2) the Secretary’s recommendation for legislation and non-legislative actions the Secretary determines necessary to extend the capacity of Arlington National Cemetery. Such recommendations would include any proposal that would: (A) redefine the eligibility criteria for interment and inurnment in the cemetery; and (B) any expansion opportunities beyond the current boundaries of the cemetery.

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 italic, existing law in which no change is proposed is shown in roman):

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 italic and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART II—GENERAL BENEFITS

* * * * *

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

* * * * *

§ 2410. Burial of cremated remains in Arlington National Cemetery

(a) The Secretary of the Army shall designate an area of appropriate size within Arlington National Cemetery for the unmarked interment, in accordance with such regulations as the Secretary may prescribe, of the ashes of persons eligible for interment in Arlington National Cemetery whose remains were cremated. Such area shall be an area not suitable for the burial of casketed remains.

(b) The Secretary of each military department shall make available appropriate forms on which those members of the Armed Forces who so desire may indicate their desire to be buried within the area to be designated under subsection (a).

(c)(1) The Secretary of the Army shall ensure that under such regulations as the Secretary may prescribe, the cremated remains of any person described in paragraph (2) are eligible for inurnment in Arlington National Cemetery with military burial honors in accordance with section 1491 of title 10.

(2) A person described in this paragraph is a person whose service has been determined to be active duty service pursuant to section 401 of the GI Bill Improvement Act of 1977 (Public Law 95-202; 38 U.S.C. 106 note) as of the date of the enactment of this Act.

* * * * *

