

TO AMEND TITLE 38, UNITED STATES CODE, TO PROVIDE FOR A CONSISTENT ELIGIBILITY DATE FOR PROVISION OF DEPARTMENT OF VETERANS AFFAIRS MEMORIAL HEADSTONES AND MARKERS FOR ELIGIBLE SPOUSES AND DEPENDENT CHILDREN OF VETERANS WHOSE REMAINS ARE UNAVAILABLE

NOVEMBER 6, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROE of Tennessee, from the Committee on Veterans’ Affairs, submitted the following

REPORT

[To accompany H.R. 3656]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans’ Affairs, to whom was referred the bill (H.R. 3656) to amend title 38, United States Code, to provide for a consistent eligibility date for provision of Department of Veterans Affairs memorial headstones and markers for eligible spouses and dependent children of veterans whose remains are unavailable, 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. ELIGIBILITY OF VETERANS' SPOUSES AND DEPENDENT CHILDREN WHOSE REMAINS ARE UNAVAILABLE FOR DEPARTMENT OF VETERANS AFFAIRS MEMORIAL HEADSTONES AND MARKERS.

Section 2306(b)(2) of title 38, United States Code, is amended—

(1) in subparagraph (B), by striking “The” and inserting “An individual who dies on or after November 11, 1998, who is the”; and

(2) in subparagraph (C), by striking “An” and inserting “An individual who dies on or after November 11, 1998, who is an”.

PURPOSE AND SUMMARY

H.R. 3656, as amended, would establish a consistent applicability date for provision of memorial headstones and markers for certain family members of veterans. Specifically, veterans’ spouses and dependent children whose remains are unavailable and who die on or after November 11, 1998, would be eligible for the Department of Veterans Affairs (VA) memorial headstone and markers.

BACKGROUND AND NEED FOR LEGISLATION

Under current law, if the remains of a surviving spouse of a veteran are unavailable, VA may provide a memorial headstone or marker if the spouse dies on or after November 11, 1998.¹ However, VA may only provide a memorial headstone or marker for the unavailable remains of a veteran’s dependent child who dies on or after December 22, 2006.²

This proposal would establish a consistent applicability date for providing a memorial headstone or marker for a veteran’s surviving spouse and dependent child whose remains are unavailable.

During the September 13, 2017 Subcommittee on Disability Assistance and Memorial Affairs legislative hearing, representatives from The American Legion, the Paralyzed Veterans of America, the Tragedy Assistance Program for Survivors, and the Veterans of Foreign Wars of the United States, testified in favor of H.R. 3656. Additionally, VA testified that passage of H.R. 3656 would simplify and streamline the administrative process for providing the headstone and marker benefit. However, VA recommended that a minor technical clarification to the bill text to ensure that the effective date of November 11, 1998, would apply to the death of the spouse or the dependent child of the veteran, rather than the veteran.

HEARINGS

On September 13, 2017, the Committee on Veterans’ Affairs, Subcommittee on Disability Assistance and Memorial Affairs held a legislative hearing on H.R. 3656.

The following witnesses testified:

The Honorable David Rouzer, U.S. House of Representatives;
the Honorable Steve Stivers, U.S. House of Representatives;

¹P.L. 105–368 401.

²P.L. 109–461 401.

the Honorable Joyce Beatty, U.S. House of Representatives; the Honorable Matt Cartwright, U.S. House of Representatives; the Honorable Jim Banks, U.S. House of Representatives; the Honorable Chellie Pingree, U.S. House of Representatives; Mr. Matthew T. Sullivan, Deputy Under Secretary for Finance and Planning and Chief Financial Officer, National Cemetery Administration, U.S. Department of Veterans Affairs, accompanied by Ms. Roberta Lowe, Director, Office of Internal Controls, Acting Director, Debt Management Center, Office of Management, U.S. Department of Veterans Affairs, and Ms. Cheryl Rawls, Director, Pension & Fiduciary Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs; Ms. Elizabeth H. Curda, Director, Education, Workforce, and Income Security Team, U.S. Government Accountability Office; Mr. Alex Zhang, Assistant Director, National Veterans Affairs and Rehabilitation Division, The American Legion; Mr. LeRoy Acosta, Assistant National Legislative Director, Disabled American Veterans; Mr. Blake Ortner, Deputy Government Relations Director, Paralyzed Veterans of America; Ms. Kathleen Moakler, Director, Survivor Advocacy, Tragedy Assistance Program for Survivors; and, Mr. John Towles, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States.

SUBCOMMITTEE CONSIDERATION

H.R. 3656 was not considered before the Subcommittee on Disability Assistance and Memorial Affairs.

COMMITTEE CONSIDERATION

On October 12, 2017, the Full Committee met in an open markup session, a quorum being present, and ordered H.R. 3656, as amended, favorably reported to the House of Representatives by voice vote. During consideration of the bill, the following amendment to H.R. 3656 was considered and agreed to by voice vote:

An amendment in the nature of a substitute offered by Mr. Banks of Indiana that would clarify that the bill would expand the eligibility for memorial headstones and markers for all eligible non-veterans who die on or after November 11, 1998.

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. A motion by Ranking Member Timothy J. Walz of Minnesota to report H.R. 3656, as amended, favorably to the House of Representatives was agreed to by voice vote.

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's performance goal and objective is to establish a consistent eligibility date for provision of a VA memorial headstone or marker for veterans' spouses and dependent children whose remains are unavailable.

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. 3656, 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. 3656, 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. 3656, 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, October 23, 2017.

Hon. PHIL ROE, M.D.,
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. 3656, a bill to amend title 38, United States Code, to provide for a consistent eligibility date for provision of Department of Veterans Affairs memorial headstones and markers for eligible spouses and dependent children of veterans whose remains are unavailable.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 3656—A bill to amend title 38, United States Code, to provide for a consistent eligibility date for provision of Department of Veterans Affairs memorial headstones and markers for eligible spouses and dependent children of veterans whose remains are unavailable

The Veterans Programs Enhancement Act of 1998 (Public Law 105–368) authorized the Department of Veterans Affairs (VA) to provide, upon request, a memorial headstone (for placement in a national or state veterans’ cemetery) to commemorate the deceased spouse or un-remarried surviving spouse of a veteran in certain instances where the spousal remains are not available. Subsequent public laws extended this benefit to certain dependent children and remarried survivors, but those acts only applied the benefit to those who died after 2006 and 2008, respectively. H.R. 3656 would extend this benefit to all eligible beneficiaries who died on or after November 11, 1998.

Because burial benefits are paid from mandatory appropriations, enacting H.R. 3656 would increase direct spending; therefore, pay-as-you-go procedures apply. Based on an analysis of data from VA, CBO estimates about 2,000 additional headstones would be provided under H.R. 3656, at an average cost of about \$200 per headstone. Therefore, CBO estimates that the increased direct spending would be insignificant for each year and would total less than \$500,000 over the 2018–2027 period. Enacting H.R. 3656 would not affect revenues.

CBO estimates that enacting H.R. 3656 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3656 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Matt Schmit. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 3656, 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. 3656, as amended.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, H.R. 3656, as amended, 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 H.R. 3656, as amended, 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 clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 3656, 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, 115th Cong. (2017), the Committee estimates that H.R. 3656, as amended, contains no directed rule making that would require the Secretary to prescribe regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1. Eligibility of veterans' spouses and dependent children whose remains are unavailable for Department of Veterans Affairs memorial headstones and markers

Section 1 would amend section 2306(b)(2) of title 38, United States Code to establish that VA may provide a memorial headstone or marker for a veteran's surviving spouse or dependent child whose remains are unavailable and who die on or after November 11, 1998.

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 (existing law proposed to be omitted is enclosed in black brackets, 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 23—BURIAL BENEFITS

* * * * *

§ 2306. Headstones, markers, and burial receptacles

(a) The Secretary shall furnish, when requested, appropriate Government headstones or markers at the expense of the United States for the unmarked graves of the following:

(1) Any individual buried in a national cemetery or in a post cemetery.

(2) Any individual eligible for burial in a national cemetery (but not buried there), except for those persons or classes of persons enumerated in section 2402(a)(4), (5), and (6) of this title.

(3) Soldiers of the Union and Confederate Armies of the Civil War.

(4) Any individual described in section 2402(a)(5) of this title who is buried in a veterans' cemetery owned by a State.

(5) Any individual who at the time of death was entitled to retired pay under chapter 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.

(b)(1) The Secretary shall furnish, when requested, an appropriate memorial headstone or marker for the purpose of commemorating an eligible individual whose remains are unavailable. Such a headstone or marker shall be furnished for placement in a national cemetery area reserved for that purpose under section 2403 of this title, a veterans' cemetery owned by a State, or, in the case of a veteran, in a State, local, or private cemetery.

(2) For purposes of paragraph (1), an eligible individual is any of the following:

(A) A veteran.

(B) **[The]** *An individual who dies on or after November 11, 1998, who is the spouse or surviving spouse of a veteran.*

(C) **[An]** *An individual who dies on or after November 11, 1998, who is an eligible dependent child of a veteran.*

(3) For purposes of paragraph (1), the remains of an individual shall be considered to be unavailable if the individual's remains—

(A) have not been recovered or identified;

(B) were buried at sea, whether by the individual's own choice or otherwise;

(C) were donated to science; or

(D) were cremated and the ashes scattered without interment of any portion of the ashes.

(4) For purposes of this subsection:

(A) The term "veteran" includes an individual who dies in the active military, naval, or air service.

(B) The term "surviving spouse" includes a surviving spouse who had a subsequent remarriage.

(5) For purposes of this section, the term "eligible dependent child" means a child—

(A) who is under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution; or

(B) who is unmarried and became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a course of instruction at an approved educational institution.

(c) A headstone or marker furnished under subsection (a), (b), or (d) of this section may be of any material, including but not limited to marble, granite, bronze, or slate, requested by the person entitled to request such headstone or marker if the material requested is determined by the Secretary (1) to be cost effective, and (2) in a case in which the headstone or marker is to be placed in a national cemetery, to be aesthetically compatible with the area of the cemetery in which it is to be placed.

(d)(1) The Secretary shall furnish, when requested, an appropriate Government headstone or marker at the expense of the United States for the grave of an individual described in paragraph (2) or (5) of subsection (a) who is buried in a private cemetery, notwithstanding that the grave is marked by a headstone or marker furnished at private expense. Such a headstone or marker may be furnished only if the individual making the request for the Government headstone or marker certifies to the Secretary that the headstone or marker will be placed on the grave for which the headstone or marker is requested, or, if placement on the grave is impossible or impracticable, as close as possible to the grave within the grounds of the cemetery in which the grave is located.

(2) Any headstone or marker furnished under this subsection shall be delivered by the Secretary directly to the cemetery where the grave is located or to a receiving agent for delivery to the cemetery.

(3) The headstone or marker furnished under this subsection shall be the headstone or marker selected by the individual making the request from among all the headstones and markers made available by the Government for selection.

(4)(A) In lieu of furnishing a headstone or marker under this subsection to a deceased individual described in subparagraph (B), the Secretary may furnish, upon request, a medallion or other device of a design determined by the Secretary to signify the deceased individual's status as a veteran, to be attached to a headstone or marker furnished at private expense.

(B) A deceased individual described in this subsection is an individual who—

(i) served in the Armed Forces on or after April 6, 1917; and

(ii) is eligible for a headstone or marker furnished under paragraph (1) (or would be so eligible but for the date of the death of the individual).

(5)(A) In carrying out this subsection with respect to a deceased individual described in subparagraph (C), the Secretary shall furnish, upon request, a headstone or marker under paragraph (1) or a medallion under paragraph (4) that signifies the deceased's status as a medal of honor recipient.

(B) If the Secretary furnished a headstone, marker, or medallion under paragraph (1) or (4) for a deceased individual described in subparagraph (C) that does not signify the deceased's status as a

medal of honor recipient, the Secretary shall, upon request, replace such headstone, marker, or medallion with a headstone, marker, or medallion, as the case may be, that so signifies the deceased's status as a medal of honor recipient.

(C) A deceased individual described in this subparagraph is a deceased individual who—

- (i) served in the Armed Forces on or after April 6, 1917;
- (ii) is eligible for a headstone or marker furnished under paragraph (1) or a medallion furnished under paragraph (4) (or would be so eligible for such headstone, marker, or medallion but for the date of the death of the individual); and
- (iii) was awarded the medal of honor under section 3741, 6241, or 8741 of title 10 or section 491 of title 14 (including posthumously).

(D) In this paragraph, the term “medal of honor recipient” means an individual who is awarded the medal of honor under section 3741, 6241, or 8741 of title 10 or section 491 of title 14.

(e)(1) The Secretary of Veterans Affairs shall provide an outer burial receptacle for each new grave in an open cemetery under the control of the National Cemetery Administration in which remains are interred in a casket. The Secretary of the Army may provide an outer burial receptacle for such a grave in the Arlington National Cemetery.

(2) The use of outer burial receptacles in a cemetery under the control of the National Cemetery Administration or in the Arlington National Cemetery shall be in accordance with regulations or procedures approved by the Secretary of Veterans Affairs or Secretary of the Army, respectively.

(3) Regulations or procedures under paragraph (2) may specify that—

(A) an outer burial receptacle other than a grave liner be provided in lieu of a grave liner at the election of the survivors of the interred veteran; and

(B) if an outer burial receptacle other than a grave liner is provided in lieu of a grave liner upon an election of such survivors, such survivors be required—

(i) to pay the amount by which the cost of the outer burial receptacle exceeds the cost of the grave liner that would otherwise have been provided in the absence of the election; and

(ii) to pay the amount of the administrative costs incurred by the Secretary (or, with respect to Arlington National Cemetery, the Secretary of the Army) in providing the outer burial receptacle in lieu of such grave liner.

(4) Regulations or procedures under paragraph (2) may provide for the use of a voucher system, or other system of reimbursement approved by the Secretary (or, with respect to Arlington National Cemetery, the Secretary of the Army), for payment for outer burial receptacles other than grave liners provided under such regulations or procedures.

(f) The Secretary may furnish a casket or urn, of such quality as the Secretary considers appropriate for a dignified burial, for burial of a deceased veteran in a national cemetery or in a veterans cemetery of a State or tribal organization for which the Department has

provided a grant under section 2408 of this title in any case in which the Secretary—

(1) is unable to identify the veteran's next of kin, if any; and

(2) determines that sufficient resources for the furnishing of a casket or urn for such burial are not otherwise available.

(g)(1) When the Secretary has furnished a headstone or marker under subsection (a) for the unmarked grave of an individual, the Secretary shall, if feasible, add a memorial inscription to that headstone or marker rather than furnishing a separate headstone or marker under that subsection for the surviving spouse or eligible dependent child of such individual.

(2) When the Secretary has furnished a memorial headstone or marker under subsection (b) for purposes of commemorating a veteran or an individual who died in the active military, naval, or air service, the Secretary shall, if feasible, add a memorial inscription to that headstone or marker rather than furnishing a separate memorial headstone or marker under that subsection for the surviving spouse or eligible dependent child of such individual.

(h)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

(3) A headstone or marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.

(4) A casket or urn may not be furnished under subsection (f) for burial of a person described in section 2411(b) of this title.

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