

One Hundred Eleventh Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the sixth day of January, two thousand and nine

An Act

To authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the '**National Defense Authorization Act for Fiscal Year 2010**'.

----- Excerpt follows -----

TITLE V--MILITARY PERSONNEL POLICY

Subtitle E--Missing or Deceased Persons

SEC. 541. ADDITIONAL REQUIREMENTS FOR ACCOUNTING FOR MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES LISTED AS MISSING IN CONFLICTS OCCURRING BEFORE ENACTMENT OF NEW SYSTEM FOR ACCOUNTING FOR MISSING PERSONS.

(a) Imposition of Additional Requirements- Section 1509 of title 10, United States Code, is amended to read as follows:

-`Sec. 1509. Program to resolve preenactment missing person cases

`(a) Program Required; Covered Conflicts- The Secretary of Defense shall implement a comprehensive, coordinated, integrated, and fully resourced program to account for persons described in subparagraph (A) or (B) of section 1513(1) of this title who are unaccounted for from the following conflicts:

`(1) World War II during the period beginning on December 7, 1941, and ending on December 31, 1946, including members of the armed forces who were lost during flight operations in the Pacific theater of operations covered by section 576 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 10 U.S.C. 1501 note).

`(2) The Cold War during the period beginning on September 2, 1945, and ending on August 21, 1991.

(3) The Korean War during the period beginning on June 27, 1950, and ending on January 31, 1955.

(4) The Indochina War era during the period beginning on July 8, 1959, and ending on May 15, 1975.

(5) The Persian Gulf War during the period beginning on August 2, 1990, and ending on February 28, 1991.

(6) Such other conflicts in which members of the armed forces served as the Secretary of Defense may designate.

(b) Implementation Process- (1) The Secretary of Defense shall implement the program within the Department of Defense POW/MIA accounting community.

(2) For purposes of paragraph (1), the term 'POW/MIA accounting community' means:

(A) The Defense Prisoner of War/Missing Personnel Office (DPMO).

(B) The Joint POW/MIA Accounting Command (JPAC).

(C) The Armed Forces DNA Identification Laboratory (AFDIL).

(D) The Life Sciences Equipment Laboratory of the Air Force (LSEL).

(E) The casualty and mortuary affairs offices of the military departments.

(F) Any other element of the Department of Defense whose mission (as designated by the Secretary of Defense) involves the accounting for and recovery of members of the armed forces who are missing in action, prisoners of war, or unaccounted for.

(c) Treatment as Missing Persons- Each unaccounted for person covered by subsection (a) shall be considered to be a missing person for purposes of the applicability of other provisions of this chapter to the person.

(d) Establishment of Personnel Files- (1) The Secretary of Defense shall ensure that a personnel file is established and maintained for each person covered by subsection (a) if the Secretary--

(A) possesses any information relevant to the status of the person; or

(B) receives any new information regarding the missing person as provided in subsection (e).

(2) The Secretary of Defense shall ensure that each file established under this subsection contains all relevant information pertaining to a person covered by subsection (a) and is readily accessible to all elements of the department, the combatant commands, and the armed forces involved in the effort to account for the person.

(3) Each file established under this subsection shall be handled in accordance with, and subject to the provisions of, section 1506 of this title in the same manner as applies to the file of a missing person otherwise subject to such section.

(e) Review of Status Requirements- (1) If new information (as described in paragraph (3)) is found or received that may be related to one or more unaccounted for persons covered by subsection (a), whether or not such information specifically relates (or may specifically relate) to any particular such unaccounted for person, that information shall be provided to the Secretary of Defense.

(2) Upon receipt of new information under paragraph (1), the Secretary shall ensure that--

(A) the information is treated under paragraph (2) of subsection (c) of section 1505 of this title, relating to addition of the information to the personnel file of a person and notification requirements, in the same manner as information received under paragraph (1) under such subsection; and

(B) the information is treated under paragraph (3) of subsection (c) and subsection (d) of such section, relating to a board review under such section, in the same manner as information received under paragraph (1) of such subsection (c).

(3) For purposes of this subsection, new information is information that is credible and that--

(A) is found or received after November 18, 1997, by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title; or

(B) is identified after November 18, 1997, in records of the United States as information that could be relevant to the case of one or more unaccounted for persons covered by subsection (a).

(f) Coordination Requirements- (1) In establishing and carrying out the program, the Secretary of Defense shall coordinate with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.

(2) In carrying out the program, the Secretary of Defense shall establish close coordination with the Department of State, the Central Intelligence Agency, and the National Security Council to enhance the ability of the Department of Defense POW/MIA accounting community to account for persons covered by subsection (a).'

(b) Clerical Amendment- The table of sections at the beginning of chapter 76 of such title is amended by striking the item relating to section 1509 and inserting the following new item:

1509. Program to resolve preenactment missing person cases.'

(c) Conforming Amendment- Section 1513(1) of such title is amended in the matter after subparagraph (B) by striking 'section 1509(b) of this title who is required by section

1509(a)(1) of this title' and inserting `subsection (a) of section 1509 of this title who is required by subsection (b) of such section'.

(d) Implementation-

(1) PRIORITY- A priority of the program required by section 1509 of title 10, United States Code, as amended by subsection (a), to resolve missing person cases arising before the enactment of chapter 76 of such title by section 569 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106; 110 Stat. 336) shall be the return of missing persons to United States control alive.

(2) ACCOUNTING FOR GOAL- In implementing the program, the Secretary of Defense, in coordination with the officials specified in subsection (f)(1) of section 1509 of title 10, United States Code, shall provide such funds, personnel, and resources as the Secretary considers appropriate to increase significantly the capability and capacity of the Department of Defense, the Armed Forces, and commanders of the combatant commands to account for missing persons so that, beginning with fiscal year 2015, the POW/MIA accounting community has sufficient resources to ensure that at least 200 missing persons are accounted for under the program annually.

(3) DEFINITIONS- In this subsection:

(A) The term `accounted for' has the meaning given such term in section 1513(3)(B) of title 10, United States Code.

(B) The term `POW/MIA accounting community' has the meaning given such term in section 1509(b)(2) of such title.

SEC. 542. POLICY AND PROCEDURES ON MEDIA ACCESS AND ATTENDANCE BY FAMILY MEMBERS AT CEREMONIES FOR THE DIGNIFIED TRANSFER OF REMAINS OF MEMBERS OF THE ARMED FORCES WHO DIE OVERSEAS.

(a) Department of Defense Policy and Procedures on Media Access at Ceremonies for Dignified Transfer of Remains of Members of the Armed Forces Who Die Overseas-

(1) POLICY REQUIRED- Not later than April 1, 2010, the Secretary of Defense shall prescribe a policy guaranteeing media access at ceremonies for the dignified transfer of remains of members of the Armed Forces who die while located or serving overseas (in this section referred to as `military decedents') when approved by the primary next of kin of such military decedents.

(2) PROCEDURES- The policy developed under paragraph (1) shall include procedures to be followed by the military departments in conducting appropriate ceremonies for the dignified transfer of remains of military decedents. The procedures shall be uniform across the military departments except to the extent necessary to reflect the traditional practices or customs of a particular military department.

(3) ELEMENTS- The policy developed under paragraph (1) shall include, but not be limited to, the following:

(A) Provision for access by media representatives to transfers described in paragraph (1) if approved in advance by the primary next of kin of the military decedent or their designee.

(B) Procedures for designating with certainty who is authorized to make the decision to approve media access at transfer ceremonies described in that paragraph under reasonable, foreseeable circumstances.

(C) Conditions for coverage that media representatives must comply with during such transfer ceremonies, and procedures for ensuring agreement in advance by media representatives with the conditions for coverage prescribed by military authorities.

(D) Procedures for the waiver by the primary next of kin or other designees of Departmental policies relating to delays in release of casualty information to the media and general public, when such waiver is required.

(b) Transportation to Transfer Ceremonies-

(1) PROVISION OF TRANSPORTATION REQUIRED- Section 411f of title 37, United States Code, is amended--

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection (e):

(e) Transportation to Transfer Ceremonies of Members of the Armed Forces Who Die Overseas- (1) The Secretary of the military department concerned may provide round trip transportation to ceremonies for the transfer of a member of the armed forces who dies while located or serving overseas to the following:

(A) The primary next of kin of the member.

(B) Two family members (other than primary next of kin) of the member.

(C) One or more additional family members of the member, at the discretion of the Secretary.

(2)(A) For purposes of this subsection, the primary next of kin of a member of the armed forces shall be the eligible relatives of the member specified in subparagraphs (A) through (D) of subsection (c)(1).

(B) The Secretaries of the military departments shall prescribe in regulations the family members of a member of the armed forces who shall constitute family members for purposes of subparagraphs (B) and (C) of paragraph (1). The Secretary of Defense shall ensure that such regulations are uniform across the military departments.

(3) Transportation shall be provided under this subsection by means of Invitational Travel Authorizations.

(4) The Secretary of a military department may, upon the request of the primary next of kin covered by paragraph (1)(A) and at the discretion of the Secretary, provide for the accompaniment of such next of kin in travel under this subsection by a casualty assistance officer or family liaison officer of the military department who shall act as an escort in such accompaniment.'

(2) CONFORMING AND CLERICAL AMENDMENTS-

(A) HEADING AMENDMENT- The heading of such section is amended to read as follows:

'Sec. 411f. Travel and transportation allowances: transportation for survivors of deceased member to attend member's burial ceremonies; transportation for survivors of member dying overseas to attend transfer ceremonies.'

(B) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 7 of such title is amended by striking the item relating to section 411f and inserting the following new item:

'411f. Travel and transportation allowances: transportation for survivors of deceased member to attend member's burial ceremonies; transportation for survivors of member dying overseas to attend transfer ceremonies.'

(c) Effective Date- This section and the amendments made by this section shall take effect on the date that is one year after the date of the enactment of this Act.

SEC. 543. REPORT ON EXPANSION OF AUTHORITY OF A MEMBER TO DESIGNATE PERSONS TO DIRECT DISPOSITION OF THE REMAINS OF A DECEASED MEMBER.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report evaluating the potential effects of expanding the list of persons under section 1482(c) of title 10, United States Code, who may be designated by a member of the Armed Forces as the person authorized to direct disposition of the remains of the member if the member is deceased to include persons who are not family members of members of the Armed Forces.

SEC. 544. SENSE OF CONGRESS ON THE RECOVERY OF THE REMAINS OF MEMBERS OF THE ARMED FORCES WHO WERE KILLED DURING WORLD WAR II IN THE BATTLE OF TARAWA ATOLL.

Congress--

(1) reaffirms its support for the recovery and return to the United States of the remains of members of the Armed Forces killed in battle, and for the efforts by the Joint POW-MIA Accounting Command to recover the remains of members of the Armed Forces from all wars;

(2) recognizes the courage and sacrifice of the members of the Armed Forces who fought on Tarawa Atoll;

(3) acknowledges the dedicated research and efforts by persons to identify, locate, and advocate for the recovery of remains from Tarawa; and

(4) encourages the Department of Defense to review this research and, as appropriate, pursue new efforts to conduct field studies, new research, and undertake all feasible efforts to recover, identify, and return remains of members of the Armed Forces from Tarawa.