

VETERANS' MEMORIAL PRESERVATION AND
RECOGNITION ACT OF 2003

MAY 19, 2003.—Ordered to be printed

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

R E P O R T

[To accompany S. 330]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (S. 330) to further the protection and recognition of veterans' memorials, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

S. 330, the “Veterans’ Memorial Preservation and Recognition Act of 2003” amends title 18 of the United States Code. S. 330 would create a new Federal offense for willfully injuring or destroying of any structure, plaque, statue, or other monument on public property commemorating the service of any person or persons in the Armed Forces of the United States or attempting to do so. S.

330 provides for a criminal fine or imprisonment of up to 10 years for those found guilty of these offenses.

Attacks against Federal cemeteries and commemorative memorials affront the memory of those who sacrificed for our country and undermine our collective commitment to honor their service. The abhorrent nature of these offenses requires a specific criminal penalty for their commission. S. 330 meets this requirement by creating a specific Federal crime for vandalism or destruction of property at these facilities.

BACKGROUND AND NEED FOR THE LEGISLATION

NATIONAL CEMETERIES IN THE UNITED STATES

The National Cemetery System was established by Congress in 1862 to provide for the purchase of grounds “to be used as a national cemetery for the soldiers who shall die in the service of the country.”¹ The Department of Veterans Affairs National Cemetery Administration (NCA) maintains 120 national cemeteries in 39 States and Puerto Rico.² The NCA currently maintains over 2.5 million grave sites which cover more than 13,500 acres.³ S. 330 would create enhanced criminal penalties for injuring or destroying property at these facilities or attempting to do so.

FEDERAL CRIMINAL JURISDICTION OVER NATIONAL CEMETERIES

During Committee consideration of similar legislation (H.R. 1442, the “Veterans’ Cemetery Protection Act”) during the 105th Congress, the Department of Justice concluded that “Federal control of the cemeteries . . . establishes an adequate Federal nexus to support Federal jurisdiction.”⁴ However, Federal authorities may defer to State and local investigation and prosecution if conditions favor a non-Federal response. State and local authorities play a critical law enforcement role at NCA facilities. Most crimes at national cemeteries are minor and prosecuted under the concurrent jurisdiction of State or local law enforcement agencies. Local investigation and prosecution may be desirable for a number of reasons: local authorities may be in a superior position to identify local offenders who may have a history of similar local offenses; local police are likely to respond in a more timely manner to criminal activity; and perpetrators may be in violation of parole for State convictions, which might provide additional charges for State or local prosecutors.⁵

VANDALISM AND DESECRATION OF NATIONAL CEMETERIES

Over the last several years, there have been several serious acts of vandalism at national cemeteries. One of the most egregious occurrences took place in 1997, when vandals scrawled racist and profane statements at seven national cemeteries in Hawaii including: the Hawaii Veterans Cemetery of Kaneohe; National Memorial Cemetery of the Pacific at Punchbowl; Valley of the Temples; Ha-

¹ Confiscation Act of July 17 1862 §18, 12 Stat. 589 (1862).

² DEPARTMENT OF VETERANS AFFAIRS, *History and Development of the National Cemetery Administration, Department of Veterans Affairs*, May 6, 2003, <http://www.va.gov/opa/fact/docs/vafacts.htm>

³ *Id.*

⁴ See H.R. REP. NO. 105-142, at 6.

⁵ *Id.* at 3.

waiian Memorial Park; Oahu Cemetery; Nuuanu Memorial Park; and Honolulu Memorial Park.⁶ During this attack, vandals desecrated chapels, grave markers, and tombs causing several thousand dollars in damage. A year after these attacks, those responsible had not been apprehended.⁷

FEDERAL LEGISLATION

In 1997, Congress passed legislation to enhance penalties for acts of vandalism at Federal cemeteries.⁸ As introduced, this legislation would have created a new Federal crime of “vandalism at national cemeteries.”⁹ The new offense, which was similar to existing prohibitions for the destruction of other types of Federal property, would have enhanced criminal penalties for injuring or destroying property located within Federal cemeteries. As enacted, however this legislation required the Sentencing Commission to amend the sentencing guidelines to provide a sentencing enhancement of two levels for any offense against the property of a Federal cemetery.¹⁰ In 1998, the Sentencing Commission issued these guidelines.¹¹

HEARINGS

There were no Committee hearings on S. 330.

COMMITTEE CONSIDERATION

On May 7, 2003, the Committee met in open session and ordered favorably reported the bill S. 330, without amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that during full Committee consideration of S. 330 the Committee took no rollcall votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports 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.

PERFORMANCE GOALS AND OBJECTIVES

S. 330 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable.

⁶Linda Aragon, *Defacement Cleaned Up in Kaneohe, Punchbowl Will Take Longer*, HON. STAR BULLETIN, April 22, 1997, at 1.

⁷Rod Ohira, *No Leads Turn Up in Cemetery Case*, HON. STAR BULLETIN, April 14, 1998, at 1.

⁸Veterans' Cemetery Protection Act of 1997, Public Law No. 105-101 (1997).

⁹Veterans' Cemetery Protection Act of 1997, S. 813, 105th Cong. §2 (1997); Veterans' Cemetery Protection Act of 1997, H.R. 1532, 105th Cong. §2 (1997).

¹⁰*Supra*, note 8, §2.

¹¹63 Fed. Reg. 28, 202-03 (May 21, 1998).

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII 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 S. 330, 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 8, 2003.

Hon. F. JAMES SENSENBRENNER, 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 S. 330, the "Veterans' Memorial Preservation and Recognition Act of 2003."

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 330—Veterans' Memorial Preservation and Recognition Act of 2003

S. 330 would establish criminal and civil penalties for desecration of veterans' memorials located on public property, if committing such acts involve interstate or foreign travel or use of the mail, or if the memorial is located on property owned by, or under the jurisdiction of, the Federal Government. CBO estimates that enacting this legislation would increase direct spending and revenues, but by an insignificant amount in each year.

Because those prosecuted and convicted under the act could be subject to criminal fines, the Government might collect additional fines if this legislation is enacted. Collections of such fines are recorded in the budget as governmental receipts (i.e., revenues), which are deposited in the Crime Victims Fund and later spent. Any additional collections and spending from enacting S. 330 would not be significant because of the small number of cases likely to be affected.

S. 330 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

On March 25, 2003, CBO transmitted a cost estimate for S. 330, the "Veterans' Memorial Preservation and Recognition Act of 2003," as ordered reported by the Senate Committee on the Judiciary on March 20, 2003. The two versions of the legislation 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.

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 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title

Section 1 titles the bill the “Veterans’ Memorial Preservation and Recognition Act of 2003.”

Section 2. Criminal Penalties for Destruction of Veterans’ Memorials

Section 2 amends chapter 65 of title 18 to create a new section 1369 titled “Destruction of veterans’ memorials.” This section provides that anyone who willfully injures or destroys, or attempts to injure or destroy, any structure, plaque, statue, or other monument on public property commemorating the service of any person or persons in the armed forces of the United States shall be fined under this title, imprisoned not more than 10 years, or both. Section 2 further specifies that these criminal penalties shall attach when a defendant travels or causes another to travel in interstate or foreign commerce to commit this crime, uses an instrumentality of interstate commerce to commit the crime, or when the structure, plaque or statue commemorating military service to the United States is located on, owned by, or under the jurisdiction of the United States. Section 2 also makes technical corrections to title 18 to reflect this change.

Section 3. Highway Signs Relating to Veterans’ Cemeteries

This section states that Federal veterans’ cemeteries shall be treated as a site for which a supplemental guide sign may be placed on any Federal-aid highway. This provision shall apply to agreements entered into before, on, or after the date of enactment.

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):

CHAPTER 65 OF TITLE 18, UNITED STATES CODE

CHAPTER 65—MALICIOUS MISCHIEF

Sec.

1361. Government property or contracts.

* * * *

1369. Destruction of veterans' memorials.

* * * *

§ 1369. Destruction of veterans' memorials

(a) Whoever, in a circumstance described in subsection (b), willfully injures or destroys, or attempts to injure or destroy, any structure, plaque, statue, or other monument on public property commemorating the service of any person or persons in the armed forces of the United States shall be fined under this title, imprisoned not more than 10 years, or both.

(b) A circumstance described in this subsection is that—

(1) in committing the offense described in subsection (a), the defendant travels or causes another to travel in interstate or foreign commerce, or uses the mail or an instrumentality of interstate or foreign commerce; or

(2) the structure, plaque, statue, or other monument described in subsection (a) is located on property owned by, or under the jurisdiction of, the Federal Government.

COMMITTEE JURISDICTIONAL LETTERS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, May 19, 2003.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, House of Representatives,
Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: I am writing with regard to S. 330, the Veteran's Memorial Preservation and Recognition Act of 2003. As you know, the Committee on Transportation and Infrastructure was named as an additional Committee on jurisdiction.

I recognize your desire to bring this important bill before the House in an expeditious manner. Accordingly, I will not exercise my Committee's right to mark up the legislation. By agreeing to waive its consideration of the bill, however, the Committee on Transportation and Infrastructure does not waive its jurisdiction over S. 330. In addition, the Transportation and Infrastructure Committee reserves its right to seek conferees on provisions of the bill are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask for your commitment to support any request by the Transportation and Infrastructure Committee for conferees on S. 330.

I request that you include a copy of our exchange of letters in your Committee's Report on S. 330 and in the Congressional Record during consideration on the House Floor. Thank you.

Sincerely,

DON YOUNG,
Chairman.

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON THE JUDICIARY,
Washington, DC, May 19, 2003.

Hon. DON YOUNG,
*Chairman, Committee on Transportation and Infrastructure, Wash-
 ington, DC.*

DEAR CHAIRMAN YOUNG: This letter responds to your letter dated May 19, 2003 concerning S. 330, the "Veterans' Memorial Preservation and Recognition Act of 2003."

I agree that the bill contains matters within the Transportation and Infrastructure Committee's jurisdiction and appreciate your willingness to be discharged from further consideration of S. 330 so we may proceed to the floor. I acknowledge that by being discharged, your committee in no way waives its jurisdiction over these matters.

Pursuant to your request, a copy of your letter and this letter will be included in the Committee on the Judiciary's report on S. 330 and in the Congressional Record during House floor consideration of the bill. I appreciate your attention to this matter.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

MARKUP TRANSCRIPT

BUSINESS MEETING
WEDNESDAY, MAY 7, 2003

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda, pursuant to notice, I now call up the bill S. 330, the "Veterans' Memorial Preservation Recognition Act of 2003," for purposes of markup and move its favorable recommendation to the full House.

Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, S. 330, follows:]

108TH CONGRESS
1ST SESSION

S. 330

AN ACT

To further the protection and recognition of veterans' memorials, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans’ Memorial
5 Preservation and Recognition Act of 2003”.

1 SEC. 2. CRIMINAL PENALTIES FOR DESTRUCTION OF VET-
2 ERANS' MEMORIALS.

3 (a) IN GENERAL.—Chapter 65 of title 18, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 1369. Destruction of veterans’ memorials**

7 “(a) Whoever, in a circumstance described in sub-
8 section (b), willfully injures or destroys, or attempts to in-
9 jure or destroy, any structure, plaque, statue, or other
10 monument on public property commemorating the service
11 of any person or persons in the armed forces of the United
12 States shall be fined under this title, imprisoned not more
13 than 10 years, or both.

14 “(b) A circumstance described in this subsection is
15 that—

16 “(1) in committing the offense described in sub-
17 section (a), the defendant travels or causes another
18 to travel in interstate or foreign commerce, or uses
19 the mail or an instrumentality of interstate or for-
20 eign commerce; or

21 “(2) the structure, plaque, statue, or other
22 monument described in subsection (a) is located on
23 property owned by, or under the jurisdiction of, the
24 Federal Government.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 at the beginning of chapter 65 of title 18, United States
 3 Code, is amended by adding at the end the following:

“1369. Destruction of veterans’ memorials.”.

4 **SEC. 3. HIGHWAY SIGNS RELATING TO VETERANS CEME-**
 5 **TERIES.**

6 (a) IN GENERAL.—Notwithstanding the terms of any
 7 agreement entered into by the Secretary of Transportation
 8 and a State under section 109(d) or 402(a) of title 23,
 9 United States Code, a veterans cemetery shall be treated
 10 as a site for which a supplemental guide sign may be
 11 placed on any Federal-aid highway.

12 (b) APPLICABILITY.—Subsection (a) shall apply to an
 13 agreement entered into before, on, or after the date of the
 14 enactment of this Act.

Passed the Senate March 27, 2003.

Attest:

Secretary.

Chairman SENSENBRENNER. And the Chair recognizes himself for 5 minutes to explain the bill.

The bill will establish specific criminal penalties for the willful destruction of Federal property commemorating services of America's Armed Forces. Unlike other acts of theft and vandalism, the attacks against Federal cemeteries and veterans memorials uniquely affront the memory of those who sacrificed for our freedom and undermine our collective commitment to honor their service.

The egregious nature of these crimes necessitates a swift and decisive Federal response. The bill provides that anyone who willfully injures or destroys or attempts to destroy a property that commemorates service in our Armed Forces shall be imprisoned for up to 10 years and fined an amount equal to the cost of repairing damages stemming from these acts.

In 1997 Congress passed legislation that directed the Sentencing Commission to enhance penalties for the destruction of property on Federal cemeteries. However, unlike this earlier legislation, this bill specifically recognized the abhorrent nature of these offenses by establishing a new Federal crime for injuring or destroying veterans memorials.

The bill was reported by the full Senate Judiciary Committee, without amendment, and passed the full Senate under unanimous consent.

I can think of few times in recent memory when this legislation would be more timely and appropriate, and I urge your support. Yield back the balance of my time.

The gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, I think you indicated it is up to 10 years. What is the Sentencing Commission doing with this type of crime now, if the Chairman knows?

Chairman SENSENBRENNER. If the gentleman will yield, it is an enhancement of two levels upward. What this bill does is it creates a specific Federal crime for this type of activity.

Mr. SCOTT. And the Sentencing Commission would have guidelines for the violation of this specific sentencing action?

Chairman SENSENBRENNER. The answer is no, this is a specific Federal predicate.

Mr. SCOTT. If someone violated this, where would we go to find out what the penalty would be?

Chairman SENSENBRENNER. If the gentleman will yield, the Sentencing Commission ultimately will issue guidelines.

Mr. SCOTT. Thank you, Mr. Chairman, and I yield back.

Chairman SENSENBRENNER. Without objection, all Members may include opening statements in the record at this point.

Are there amendments? Are there amendments? There being no amendments, a reporting quorum is still not present. Without objection, the previous question is ordered on reporting the bill favorably.

[Intervening business.]

The unfinished business is the bill S. 330, the "Veterans' Memorial Preservation and Recognition Act." The Chair notes the presence of a reporting quorum. The question is on reporting the bill favorably.

Those in favor will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is agreed to.

Without objection, the Chair is authorized to move to go to conference pursuant to House rules. Without objection, the staff is authorized to make technical and conforming changes, and all Members will be given 2 days, pursuant to House rules, in which to submit additional supplemental, minority or dissenting views.

