

RESEARCH BRIEF:
Burial Benefits for Veterans

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for the
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Introduction

This paper summarizes and provides background on current provisions governing burial benefits for veterans. The paper summarizes county, state, and federal burial benefits. Several appendixes provide additional detail and information.

County burial benefits

Current provisions: Under Title 10, chapter 2, part 5 of the Montana Code Annotated (MCA) , each county must:

- ? appoint a veterans' interment supervisor, preferably a veteran, who shall "*cause to be decently interred the body or cremated remains of any veteran who was a resident of the state of Montana at the time of death*";
- ? pay up to \$250 to "*defer interment expenses*", if the county was the veterans' county of residence when the veteran died or, if the veteran died while in a state institution, when the veteran entered the institution;
- ? pay up to \$250 defer the interment expense of a veteran who was a resident of a state veterans' home;
- ? pay up to \$250 to reimburse the cost of the veterans' interment if the veteran died in a state, federal, or private facility and the veteran is buried by that institution;
- ? assist the deceased veteran's "*personal representative*" in applying to the "*proper authority*" (i.e., the VA) "*for a suitable headstone*"; and
- ? pay a reimbursement the actual cost, up to \$70, for the "*shipping and raising of the headstone*" for a veteran who was a county resident at the time of death. (The federal VA pays for the actual headstone and for shipping. Thus, the county payment applies in practical terms only to the cost of placing the headstone or marker on the grave. NOTE: When this amount was raised from \$30 to \$70 in 1995, the state essentially paid for the additional \$40 by allowing the county to withhold that amount from monthly transmittals to the state treasurer. This provision was amended in 1999 to clarify that the county was

responsible for the first \$30. However, the "big bill" to simplify and revise and clarify state and county funding, deleted the state share so that the county must now pay the entire \$70.¹

Short history on county costs

For burial expenses, counties paid up to:

- ? \$50 in 1903;
- ? \$100 in 1909;
- ? \$150 in 1921;

Special note: in 1931, army nurse corp veterans added, but the burial expense was not to exceed \$100. This difference was removed in 1945 so that it was \$150 for all, but then reduced to \$100 again 1967 for female residents of the state veterans' home who died. The difference was again eliminated in 1969.

- ? \$250 from 1969 to present.

For raising a headstone, counties paid up to:

- ? \$10 in 1903;
- ? \$20 in 1963;
- ? \$30 in 1979 to present.

A copy of the current statutes on veteran burial benefits is provided at **Appendix A**. Staff has made handwritten notes that offer somewhat of a checklist of issues that could be addressed by amendments.

Section 10-2-501, MCA, governing county benefits has been amended numerous times since its enactment in 1903. A legislative history of the section is provided at **Appendix B**.

State burial benefits

State veterans' cemeteries:

Statute provides for two state veterans' cemeteries, one at Fort Harrison and one in Miles City. Title 10, chapter 2, part 6, MCA, governs the state veterans' cemetery program. These provisions were originally enacted in 1985. Under current law, the Department of Military Affairs (DMA):

- ? must establish a state veterans' cemetery program;
- ? must adopt rules to administer the program;
- ? must administer the special revenue account consisting of plot allowances and donations;

- ? must use the money only for construction, maintenance, operation, and administration of the cemeteries; and
- ? may solicit special veteran license plate sales and donations to help fund the cemeteries.

Eligibility, costs, and other details of the program are prescribed by administrative rule. Some of the key provisions include:

- ? a "veteran" is defined as anyone who has received an other than dishonorable discharge from the armed forces of the United States, including the National Guard and Reserve (Note: this definition deviates from the definition provided by law in section 10-2-101, MCA, which governs the provision under which the rule is adopted.);
- ? the spouse of an eligible veteran may be buried in the cemetery if buried in the same plot (ARM 34.5.102);
- ? plot space is provided on a first come first served basis (ARM 34.5.109) ; and
- ? there is no charge for the plot space itself (ARM 34.5.109);
- ? a fee for opening and closing the grave must be paid if the veteran is ineligible to receive a VA plot allowance under the eligibility criteria established by the VA (ARM 34.5.101).

Funding the state veterans' cemeteries:

Special revenue funds are deposited to DMA's special revenue account to fund the cemetery program. The special revenue funding sources are:

- ? a special license plate fee of \$10 paid by certain veterans who buy the special plates;
- ? fees for opening and closing graves paid by certain veteran and by all non-veteran spouses and charged by the Board of Veterans' Affairs (Note: by DMA rule, the Board is to set fees annually, but another DMA rule establishes that the fee must be equal to the VA "plot allowance".); and
- ? if a veteran is eligible for the VA "plot allowance", the Board Administrator applies directly to the VA and the allowance is paid to the state instead of to the veteran's family or representative.

Special license plate fees:

Under provisions in section 15-1-122(3)(d), MCA, enacted last session (2001) as part of "the big bill" to revise and simplify funding transfers between the state and counties, \$10 for each special veteran license plate issued pursuant to section 61-3-332, MCA, subsections (10)(a)(i), (10)(f), and (10)(h) is transferred from the state general fund to DMA's special revenue account for the veterans' cemeteries. The special license plates for which the \$10 fee is paid, with some exceptions, are as follows:

- ? the National Guard veteran license plates;
- ? the special veteran plates that display "VETERAN" and the veteran's military branch emblem;
- ? the purple heart plates; and
- ? the legion of valor plates.

Exceptions for certain veterans:

The following group of veterans do not have to pay the \$10 special license plate fee:

- ? 100% service-connected disabled veterans.

Note: There is an emerging issue regarding the "service-connected disability" language used in state statute because the VA also provides for an individual unemployability rating. Thus, if a veteran has a 100% unemployability rating (but something less than a 100% "service-connected disability" rating), the VA still compensates that veteran as if he or she were 100% service-connected disabled. This is more a concern with regard to the waiver of property taxes under section 15-6-211, MCA. The Subcommittee wish to address this issue with regard to the property tax issue, but should bear in mind the use of this terminology in the special license plate language as well. This issue is further discussed in a staff memorandum responding to a legislative information request (Request No. 934).

Fees to "open and close" a grave site at the veterans' cemetery:

As previously mentioned, under a DMA rule, if a veteran is not eligible to receive the VA "plot allowance" benefit, then the veterans' family or representative must pay a fee for opening and closing the grave. The fee must be equivalent to the VA plot allowance (i.e., \$150 for 2001, but just recently raised to \$300 beginning Dec. 1, 2001). This fee is also charged to any non-veteran spouse.¹ If, on the other hand, the veteran is eligible for the VA "plot allowance" benefit, then a fee to open and close the grave is not charged by the state, but the state applies for and may receive the plot allowance from the VA.²

Federal Benefits

Burial benefits available from the U.S. Department of Veterans' Affairs National Cemetery Administration (VA NCA) to eligible veterans and their dependents encompass the following:

- ? burial in national cemeteries for certain eligible veterans;
- ? headstones and markers, which are made and shipped by the VA;

¹ The Board of Veterans' Affairs set the fee to open and close at \$150. Although one rule states that rate would automatically go up to the \$300 VA plot allowance amount, another rule states that the Board of Veterans' Affairs sets fees annually. (See ARM 34.5.101 and ARM 34.5.122.)

- ? memorial headstones and markers (when no remains are available);
- ? presidential memorial certificates;
- ? military funeral honors;
- ? burial flags; and
- ? reimbursement of certain burial expenses in certain circumstances.

Eligibility for these benefits vary and are summarized at **Appendix C**.

The VA NCA also administers a grant program to states for the construction, expansion, or improvement of state veteran cemeteries and may pay up to 100% of the development cost the operating equipment for new cemeteries. A detailed summary of this program is included with **Appendix C**.

Western Montana Veterans' Cemetery

The Subcommittee has heard testimony from various parties interested who would like a new state veterans' cemetery located in western Montana. Some interested parties would like to see this cemetery at Fort Missoula, which already has a small federal military cemetery. However, a checkerboard of various public landowners (city, county, school district, and university system landowners) has made acquiring that property problematic. Consequently, a committee of other interested parties, under the auspices of the Western Montana Military Officers Association are looking for another site.

Interment of unclaimed veteran remains

Although no specific issues have been raised directly to the Subcommittee regarding the implementation of SB 52 from last session, some issues are emerging and may surface in the future. SB 52 was carried by Sen. Roush by request of the SAIC last session and provided that state mortuaries and veteran service organizations could be exempt from liability for simple negligence in the handling of a veterans remains if certain conditions were met. The bill outlined the procedures by which a mortuary could designate veterans' remains as "unclaimed" and specified that these remains could be released to a Congressionally Chartered veteran service organization for proper burial. This law is now codified as Section 10-2-501, MCA, and is included in **Appendix A**. The law does not require a mortuary to follow the guidelines in the bill and does not cover organizations that are not Congressionally Chartered veteran service organizations. Nor does the law establish a program for a statewide coalition to run "a program" or provide that DMA or the Board of Veterans' Affairs has a role in the application of this law.

List of issue items the Subcommittee may wish to address

1. County costs and responsibilities: Should the Subcommittee make recommendations to clarify the statutes governing county responsibilities related to the proper interment of veterans?

Notes: The Subcommittee may wish to take a comprehensive look at the clarity and functionality of section 10-2-501, MCA and related statutes governing the county benefits and take action to amend the section to clarify legislative intent and how this provision should be applied by counties in practice. The statute is redundant in some areas, some provisions overlap, and there seems to be an assumption that the county itself is to be in charge of the and that if the veteran or the heirs waive the county benefits, the county payments are not available. This may or may not have been the original intent of the legislature. Furthermore, the recently enacted section on the interment of unclaimed veterans remains, codified as section 10-2-111, begs the question of what county veteran burial supervisors should or could be doing to ensure the decent interment of veteran remains left "unclaimed" in mortuaries within the county. Do the county veteran burial supervisors have a role, or not? Should they, or should they not? This issue, too, may need clarification. See staff notes at **Appendix A**.

2. Administration of state veterans' cemetery program: Should the statutes giving DMA the responsibility to administer and adopt rules governing the cemetery program be changed or the Board of Veterans' Affairs' role somehow be acknowledged and clarified?

Notes: See handwritten staff notes at **Appendix A**.

3. Western Montana Cemetery: Should the Subcommittee support a new veterans' cemetery in Western Montana? If so, how?

Notes: The question before the Subcommittee is whether the Subcommittee should support a new cemetery in western Montana, and if so, how. Although the efforts of these interested persons could continue without legislative action, the establishment of a cemetery cannot be done without that action. The action could include specification of a particular site (as was done with the cemetery at Fort Harrison) or through a specified site selection process or request for proposal bidding process. The bill providing for a detailed site selection process was enacted in 1997. This law, Ch. 109, L. 1997, Sections 1 through 6, is provided at **Appendix D** and could serve as a model for selecting a site in western Montana. An alternative would be for the legislature to designate the site (such as property at Fort Missoula) and somehow acquire the designated land for the state. However, the federal VA grant program precludes federal grant money being used to secure the site.

ENDNOTES

1. Ch. 574, L. 2001.
2. For the DMA rule, see ARM 34.5.101. For the summary of the VA "plot allowance", see Department of Veterans' Affairs, Federal Benefits for Veterans' and Dependents, 2001 Edition, pg. 40.