

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

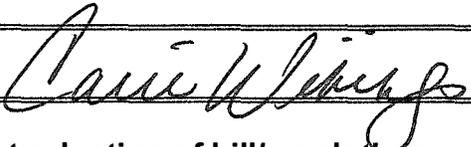
SB 2097

2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SB 2097
01/18/2013
Job Number 17394

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to eligibility for interment at the veterans' cemetery

Minutes:

Chairman Dever: Opened the hearing on SB 2097.

Senator Cook, District 34: Testified in support of the bill and as a sponsor. This is for a constituent of mine that made a request and I am going to carry it out. This constituent's, father was called off to serve his country back in WWII. The father left behind a new bride that was pregnant and the father was killed before she had her baby. That baby is my constituent. A man now that I suppose is in his 70's, never got to know his father. His mother remarried and they had other kids and now he is thinking about those decisions that we make towards the end of our life and in this case it is where he would like to be buried. He would like to be buried with his father that is buried at the veterans' cemetery. That is why I introduced the bill. If he was still a minor child, he could be buried there. I understand the concerns that are going to follow and I urge you to listen to them but I am introducing this for my constituent and I think it would be very nice if we could accomplish it. If we could deliver that it would be well worth our effort.

Chairman Dever: Is your constituent out of state?

Senator Cook: Yes, he spends his winters in Palm Springs, CA.

Chairman Dever: Is this a child who is without any siblings?

Senator Cook: That is why the language is without any siblings. I assume he has some half-brothers and sisters.

(2:59) John Jacobsen, Member of Legislative Committee of the North Dakota

Coordinating Council: See attached testimony #1 in support.

(4:40)Chairman Dever: I appreciate your testimony and that the coordinating council had the opportunity to consider this.

John Jacobsen: It was presented at one of our meetings and we looked at it and thought it was appropriate. I have heard some other words about the ramifications if it does pass. I am just the messenger carrying the message.

Chairman Dever: Is there anyone else in support? Opposition?

Al Dohrmann, Deputy Adjutant General for the National Guard: Testified in opposition to the bill. I am reluctantly am here in opposition to bill, but I need to none the less. A little history, in 1989 the legislative assembly authorized the construction of the veterans' cemetery in Mandan. At that time, through our state law, in efforts led by the Adjutant General at the time, we wanted to make sure that our veterans' cemetery was open to members of the National Guard that may not have achieved veteran's status. An example would be a guardsman that joins and does their full six year tour of duty that they are obligated to do and then leave the National Guard without ever deploying and therefore not reaching a veteran's status that would allow them to be buried in a veterans' cemetery. Because of this, we accepted no federal funding up till 2000. At that time a measure was introduced as part of the Defense Authorization Act in Section 111, it provided that the secretary of the veterans affairs shall treat the North Dakota veterans' cemetery as a veterans' cemetery owned by the state of North Dakota for purposes of making grants to states and expanding or improving veterans' cemetery. Up to that point, we were not able

to tap into the resources of the Veterans Administration for the purposes of running, maintain and improving the veterans cemetery in Mandan. With this language two things happened, the first was that it allowed us to apply for grants from the Veterans Administration for improvements. Since the passage of this law, we have received approximately 3.4 million dollars in money from the VA to do everything from expand the cemetery, facilities, the access roads, the maintenance building, expand the chapel, and the past couple of years we have received around \$300,000 from the VA to align all the headstones. If you look at our cemetery out there, there is not a more beautiful cemetery around. Part of it is because of the care and maintenance that has gone into that facility. For us to continue to operate at the level we are now, we need access to these VA loans. The other thing that this 2001 provision in federal law provided for us is the ability to get reimbursement back from the VA for each veteran and eligible dependent that is buried out there. That amounts to around \$350,000 per biennium and that is appropriated through a special funding to run the cemetery. If we run afoul of the authority we have to tap into those resources at the federal level the requirement on behalf of the state to maintain that cemetery in its current condition and to improve and expand it and grow it into the future might be compromised. It is for that reason that we oppose this particular bill. I apologize for not having any prepared testimony. We really dug into this yesterday afternoon and I wish I could have talked to you earlier about this but we really did not have our act together until late last night.

(9:53) Senator Cook: I communicated with General Sprynczynatyk on this issue since the time my constituent first came to me and I knew that there were some concerns as to whether or not we could do this. When you did your research, did you by any chance did you research if there were any conditions under which we could meet this gentleman's

request. Are there any exceptions? For example, if he wrote a check to pay for the cost. I think he is more than capable and more than willing.

Al Dohrmann: I do not know and I am concerned about anything that we would do that would create a precedent that if you had the resources there could be an exception. I can tell you back in the 90's when we first started negotiating with the Veterans Administration so that we could receive both the special funding to run the cemetery and also be eligible for grants, their first offer to us was to create a state piece in the back 40 so that you could separate these state veterans from the federal veterans. I cannot tell you what General Bjorke's response to that was because I don't want it on the record. That was unacceptable. It was only because of specific authority and as far as I know, because of this provision that was introduced by Senator Dorgan back in 2000, North Dakota has the only state veterans' cemetery that is eligible for VA support where a state veteran who has served their term of service can be buried and are treated like every other veteran that gets buried there. That would be my concern. We can certainly check into that. If we ask the question of the VA, I think I know the answer. If you do it and wait to see if something happens, I am not sure a risk we should be taking.

Senator Cook: I would like you to ask if you can. If you have an individual that has served as the Commander in Chief of the state of North Dakota does that qualify as a veteran?

Al Dohrmann: Off the top of my head, I do not know the answer to that. My initial reaction is following the federal statute in our own statute that unless they qualified based on military service that they would not be eligible. I am just guessing. I will check into that. I have read these statues before and I believe that would be problematic.

Senator Cook: Thank you.

Senator Nelson: We were talking about some land that is between Ft. Lincoln and the veterans' cemetery that has been deeded to Ft. Mandan, but may be split for expansion of the veterans' cemetery. If the person we are talking about were to be buried on that land and it was then acquired by the veterans' cemetery, would you have the authority to remove that body from its resting place.

Al Dohrmann: I would have to check into that. There are all kinds of potential legal issues as far as the transfer of the property and what the encumbrances are on the property. This is an encumbrance. I would be foolish to try to answer that here but we can look into that.

Chairman Dever: I wonder if some of your concerns might be relieved if we more narrowly defined this. If we were to say survives a veteran killed in action, or WWII.

Al Dohrmann: I cannot say that would carry the day with the Veterans Administration based on the authority that has been given to us by the federal government. If it were more narrowly defined, the likelihood of going down that slippery slope; we have concern about that. At what point does it cease to be a veterans' cemetery? We need to be careful about changing who should be buried there without giving it a lot of thought. If it was more narrowly defined, that would lessen some of the concerns but whether that puts in jeopardy our federal funding, you can make an argument based on the plain reading of the law.

Chairman Dever: I understand that you in your position are the head of the veteran's cemetery foundation?

Al Dohrmann: By statute the AG is but for full disclosure, I am the President of the Veterans' Cemetery Foundation.

Chairman Dever: any further testimony in opposition, neutral?

Closed hearing.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SB 2097
02/21/2013
Job Number 19307

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened SB 2097 for Committee Discussion.

Senator Cook: I think we should pass this on and just buy the time to make sure we have the facts and the answer as far as the consequences that passing this might impose on the state veteran's cemetery. We should have the time to determine the exact consequences and if we find out that what we have been told so far is exactly what the consequences would be then we will have to kill it. I think this little issue is a personal issue for one individual and I think we should do everything we can for him. We don't want to have financial consequences and there is conflicting messages out there as far as to what degree we would have. I have a feeling the Adjutant General is probably going to be correct but I have someone that is saying he is not. A promise has been made to get the proof. U would also point out that this gentleman's mother is not going to be buried with his father and he will be buried on top of the father.

Senator Cook: Moved a Do Pass.

Senator Schaible: Seconded.

Chairman Dever: I have concerns because we do have information from General Dohrmann that the funding is in jeopardy.

Senator Cook: I know.

Vice Chairman Berry: This is the only cemetery in the state eligible to receive funds?

Senator Cook: It is the only military cemetery.

Vice Chairman Berry: My understanding is that it is federal VA policy that is standing in the way of this, is that correct?

Chairman Dever: I think that the veteran's cemetery is owned by the state of North Dakota but they receive federal funding.

Senator Cook: The question is whether or not the federal funding would be jeopardized in doing this.

Vice Chairman Berry: How much of the budget is federal funding?

Chairman Dever: As I recall, didn't they mention \$250,000. I would guess it is a pretty significant part of the funding.

Senator Cook: I would not want to jeopardize any funding. The only reason I support this at this time is to make sure that we do not jeopardize any funding. I know we have testimony that says we do, but I have received comments that we would not and time has been asked for to verify that. I am willing to support to buy the time.

Vice Chairman Berry: With the thought being that if it is passed through the Senate that the House could take care of it?

Senator Cook: That is the intent.

A Roll Call Vote Was Taken: 4 yeas, 3 nays, 0 absent.

Senator Cook: Carrier.

FISCAL NOTE
Requested by Legislative Council
02/22/2013

Revised
 Bill/Resolution No.: SB 2097

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(350,000)		\$(350,000)
Expenditures				\$(350,000)		\$(350,000)
Appropriations				\$(350,000)		\$(350,000)

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill would allow burial in the ND Veterans Cemetery for a child who is without any sibling and who survives the veteran.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill changes current rules for burial, which we believe at this time, would jeopardize burial revenues as well as capital improvement grants from the National Veterans Administration.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The North Dakota Veterans Cemetery is a VA-funded cemetery that must be maintained and operated in accordance with National Cemetery Administration interment eligibility standards. In a letter we received from Mr. Joshua M. De Leon, Director of the Veterans Cemetery Grants Service, he states that state cemeteries "must be maintained and operated in accordance with NCA operations standards and measures. Burial of any non-eligible individual in a VA-funded cemetery would be inconsistent with VA authority and NCA standards to maintain Veteran cemeteries as shrines honoring military service." (See attached letter) Since this bill authorizes the burial of "non-eligible individuals" it would make us ineligible for VA funding. This works out to about \$350,000 a biennium in revenue. Additionally, we would not be eligible for federal grants, which have resulted in over \$3.5 million in capital improvements over the past 10 years.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The current requirement to operate the ND Veterans Cemetery is approximately \$750,000 which includes salaries and operations. That amount does not include capital improvements or major repairs. The proposed legislation, which would likely cut revenues and resulting expenditures by \$350K, would not allow maintenance and salary support in the 2013-15 biennium.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Veterans Cemetery Maintenance Fund has a continuing appropriation as detailed in the executive budget for the Office of Adjutant General. The reduced revenue would be a direct reduction of expenditures and appropriations.

Name: Holly Gaugler

Agency: Adjutant General

Telephone: 701-333-2079

Date Prepared: 02/22/2013



DEPARTMENT OF VETERANS AFFAIRS
NATIONAL CEMETERY ADMINISTRATION
WASHINGTON DC 20420

Pamela Helbling-Schafer
North Dakota Veterans Cemetery
1825 46th Street
Mandan, ND 58554

FEB 07 2013

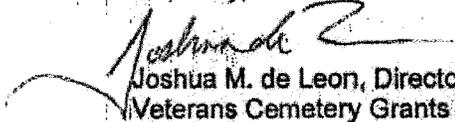
Dear Mrs. Helbling-Schafer,

I am writing in response to your February 2, 2013 request for guidance on Department of Veterans Affairs (VA), National Cemetery Administration (NCA) interment eligibility standards. Section 2042 of title 38 of the United States Code (USC) defines persons eligible for burial in VA national cemeteries. VA may inter the remains of certain deceased individuals but VA is not authorized to make eligibility determinations in advance of an immediate need for burial.

VA's statutory authority for burial eligibility serves as minimum requirements for VA-funded State and Tribal Veterans cemeteries, such as the North Dakota Veterans Cemetery. Further, VA-funded Veteran cemeteries serve as complements to VA national cemeteries, and must be maintained and operated in accordance with NCA operational standards and measures. Burial of any non-eligible individual in a VA-funded Veterans cemetery would be inconsistent with existing VA authority and NCA standards to maintain Veteran cemeteries as shrines honoring military service.

We hope this information is useful to you and look forward to our continued partnership in the service of Veterans.

Sincerely,


Joshua M. de Leon, Director
Veterans Cemetery Grants Service

Date: 2/21
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2097

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Cook Seconded By Senator Schaible

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever		✓	Senator Carolyn Nelson		✓
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais		✓
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 4 No 3

Absent _____

Floor Assignment Senator Cook

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2097: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
SB 2097 was placed on the Eleventh order on the calendar.

2013 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2097

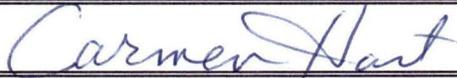
2013 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

SB 2097
March 14, 2013
19920

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to eligibility for interment at the veterans' cemetery.

Minutes:

You may make reference to "attached testimony."

Chairman Jim Kasper opened the hearing on SB 2097.

Senator Dick Dever appeared. He is not a supporter of the bill or a sponsor of the bill. I think I can express the sponsor's view of the bill. This bill would allow for a nonveteran to be buried at the veterans' cemetery. It is a special circumstance. The individual was conceived prior to the departure of his father to World War II. His father was killed in action during that war and is now buried at the veterans' cemetery. He would like to be buried with his father. There are complications of this as you may know involving the federal funding of the veterans' cemetery. In the Senate Senator Cook asked us to keep the bill alive until those issues could be resolved. He has said to me that if they were not able to resolve those issues, he would prefer to see the bill go away. I think that is where we are at. I think there will be others to testify to that.

There was no one in support of this bill.

Opposition:

Ron Otto, Nominee of the Disabled American Veterans, Department of North Dakota to the Administrative Committee on Veterans Affairs, appeared in opposition and presented **Attachment 1** testimony which he did not read. I have talked with the director of the grants program through the national cemetery system. His name is Josh De Leon. His phone number is 202-632-7369. If any of you call him, you are going to get the same answer that I did with regards to this particular issue. We dodged this bullet once and we will not dodge it twice. If we move ahead with the idea of burying, under the federal guidelines, ineligible people into the state veterans' cemetery, we will lose our matching funds. The footnote in the testimony was pointed out.

Rep. Karen Rohr Could you tell me how many sites are available out there?

Ron Otto I can't tell you the number. We have in excess of 5,000 burials there now.

Rep. Gail Mooney Is there an exception for the spouse to be buried there?

Ron Otto A spouse is eligible. Dependent children who are dependent upon their parents, even adult children, it used to be 18 and now it is 23, have the eligibility for burial.

Chairman Jim Kasper Did you give this testimony in the Senate?

Ron Otto I did not appear on this bill on the Senate side.

Chairman Jim Kasper Was it an oversight or were you not aware of the bill?

Ron Otto I was not aware of the bill being presented that particular day. It was my fault. It was my oversight.

Brigadier General Alan Dohrmann, Office of the Adjutant General, appeared in opposition. **Attachment 2.** (7:34-11:39)

Chairman Jim Kasper Did you testify against the bill in the Senate?

Alan Dohrmann I did.

Chairman Jim Kasper You gave about the same testimony that you have given here?

Alan Dohrmann I did. My argument in the Senate was twofold. We risk losing the federal money and from a policy perspective, we shouldn't start this slippery slope. We were not fully prepared on the Senate side with every document we needed at the hearing to say emphatically that we would lose our federal money and that we would run the risk of recuperating all money that has been given to us to date. Since that time we have done some digging and working with the VA, you don't always get immediate answers so it took some time. We have room for 14,895 additional plots. We are also talking with Parks and Rec on some of the land between the cemetery and Ft. Lincoln for expansion.

Senator Cook appeared in opposition. He was prime sponsor of SB 2097. You have heard the testimony. General Dohrmann is correct. When we passed this out of Senate, we were not quite at that point with the deadline coming, totally sure that federal funding was in jeopardy. We are at this point sure that it is and we would ask that you would give it a do not pass.

Joshua Simmers, Secretary of the National Guard Association of North Dakota, appeared in opposition. **Attachment 3** was handed out for reading. (15:01-15:16)

Mike Haugen, former adjutant general, appeared in opposition. I was the adjutant general and administrator for the cemetery from 2000-2006. I was the adjutant general when we tried to get the \$3 million grant. It was very difficult. It was about three years' worth of work, but we received the grant money. We also had to prove that we were following federal guidelines and we had a visit from the VA. I know General Dohrmann's testimony shows if we were required to repay, what that would cost us. Life is full of choices. We make choices every day. If you choose to serve in the military, then you can

choose to be buried in the veterans' cemetery. If you choose not to, that does not give you the right to choose to be in the veterans' cemetery. You do not qualify. The money is one issue, but the responsibility is another.

Attachment 4 from **Ryan Rastedt, Major Chairman, NGAND**, was handed out.

The hearing was closed.

Rep. Vernon Lanning made a motion for a Do not pass.

Rep. Karen Rohr seconded.

A roll call vote was taken and resulted in **DO NOT PASS, 14-0**. **Vice Chair Randy Boehning** is the carrier.

FISCAL NOTE
Requested by Legislative Council
02/22/2013

Revised
 Bill/Resolution No.: SB 2097

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Name: Holly Gaugler

Agency: Adjutant General

Telephone: 701-333-2079

Date Prepared: 02/22/2013



DEPARTMENT OF VETERANS AFFAIRS
NATIONAL CEMETERY ADMINISTRATION
WASHINGTON DC 20420

Pamela Helbling-Schafer
North Dakota Veterans Cemetery
1825 46th Street
Mandan, ND 58554

FEB 07 2013

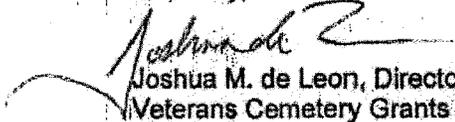
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We hope this information is useful to you and look forward to our continued partnership in the service of Veterans.

Sincerely,


Joshua M. de Leon, Director
Veterans Cemetery Grants Service

Date: 3-14-13
 Roll Call Vote #: _____

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2097**

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Laning Seconded By Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman	X	
Vice Chairman Randy Boehning	X		Rep. Gail Mooney	X	
Rep. Jason Dockter	X		Rep. Marie Strinden	X	
Rep. Karen Karls	X		Rep. Steven Zaiser	X	
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Gary Paur	X				
Rep. Karen Rohr	X				
Rep. Vicky Steiner	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Boehning

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2097: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
SB 2097 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2097

NORTH DAKOTA VETERANS COORDINATING COUNCIL

My name is John Jacobsen. I am a member of the Legislative Committee of the North Dakota Coordinating Council. I am also a member of the American Legion and the Veterans of Foreign Wars.

I served in the North Dakota National Guard and the US Army Reserve for a total of 30 years. I retired in 1995 as a Colonel. I served on active duty in 1991 during Operation Desert Shield/Desert storm in the Persian Gulf, stationed in the United Arab Emirates.

The Coordinating Council is made up of 15 members, 3 from each of the five veterans organizations in North Dakota.

American Legion
AMVETS
Disabled American Veterans
Veterans of Foreign Wars
Vietnam Veterans of America

It is the policy of the Coordinating Council to support legislation that will benefit the welfare of the members of the Armed Forces. The committee **MUST** concur totally, that is all 15 members must agree on the legislation to be supported or else it does not get the support.

In this case, I have been instructed to recommend to this legislative committee that a "DO PASS" on SB 2097 is supported by the Veterans Coordinating Council.

Attachment 1

March 13, 2013

Senate Bill 2097

My name is Ronald D. Otto. I am the nominee of the Disabled American Veterans, Department of North Dakota to the Administrative Committee on Veterans Affairs and duly appointed by the Governor of the Great State of North Dakota.

I am here today at the behest of the DAV to oppose Senate Bill 2097. Our opposition is multifaceted and falls along these lines.

1. It may affect the ability of the Cemetery to procure federal funds.
2. It goes a direction for eligibility which will have future repercussion not in the best interest of our state veterans' cemetery.
3. Sets precedence for other legislation to be presented and passed for "other unique eligibilities".

This is our State of North Dakota Veterans' Cemetery. We as veterans and veterans' organizations walk its hallowed ground and know the veterans buried here have stood that magical line. We believe in fairness and tolerance. This bill crosses a line we cannot support or condone. We understand this issue and we know that many children lost their fathers and mothers in war. Eligibility for burial in our cemetery is well defined and should include adult children who are dependent as currently defined, but should not be expanded as this bill would do.

Thank you for you attention.

Ronald D. Otto

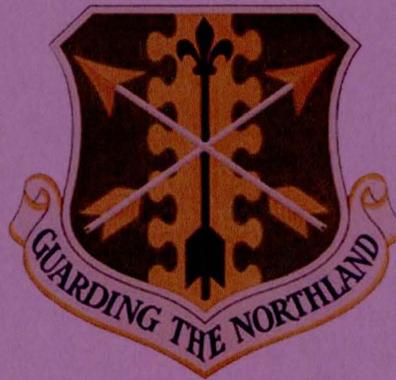
Note - \$4.25 Million dollars. (Monies received from the National Cemetery Program to date. \$400,000+ (Monies received from the National Cemetery Program biannually).

Attachment 2



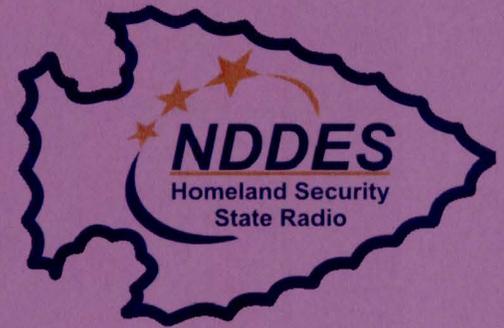
Army National Guard

"The Straight Arrows"



Air National Guard

"The Happy Hooligans"



*Department of
Emergency Services
Homeland Security &
State Radio*

*The
Office of the
Adjutant General*

*Testimony of
Brigadier General Alan Dohrmann
Deputy Adjutant General*

before the

*House Government and Veterans
Affairs Committee
March 14, 2013*

SENATE BILL 2097

**TESTIMONY OF
BRIGADIER GENERAL ALAN DOHRMANN
THE DEPUTY ADJUTANT GENERAL
BEFORE THE
GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
MARCH 14, 2013
SENATE BILL 2097**

Mr. Chairman and Members of the Committee:

I am Brigadier General Alan Dohrmann, Deputy Adjutant General for the North Dakota National Guard. I am testifying in opposition to Senate Bill 2097.

The North Dakota Veteran's Cemetery was established by the Legislative Assembly in 1989. It was open to the public in 1992, and is operated by the Adjutant General of North Dakota. Though this is a State Veteran's Cemetery and is established under North Dakota law, the North Dakota Veteran's Cemetery is part of the federal Veteran Administration Grants program. Because of this affiliation, our cemetery receives approximately \$350,000 in federal funding each biennium, which has been part of the agencies special appropriation for the last several bienniums for operations and maintenance. Additionally, the Cemetery has received over \$3.5 million in direct federal grants for maintenance and capitol improvement; to include the 2005 Cemetery Expansion and Renovation project which expanded our chapel and built our 8,805 square foot maintenance building, along with road, sidewalk and irrigation improvements; and our 2011 headstone alignment project. We have included pictures of the improvements and projects that have been executed with federal dollars in our written testimony. These federal dollars have been critical to the success of our state veterans' cemetery - arguably the most beautiful state veterans' cemetery in the country.

The "so what" of sharing this information with you is that we would no longer be able to participant in the VA grants program if this Bill is passed into law since it would authorize the burial of a non-eligible persons. While we opposed this Bill on the Senate side, it none-the-less passed based on a belief that the VA would allow us to continue to participant in the grant program even if we do not follow it's criteria. This *is not* the case.

Joshua M. de Leon, the Director of the Veterans Cemetery Grants Services, in a letter attached to our testimony, provides that "VA-funded Veteran cemeteries serve as complements to VA national cemeteries, and *must be maintained and operated in accordance with NCA operational standards and measures*. VA's statutory authority for burial eligibility serves as minimum requirements . . . *Burial of any non-eligible individual in a VA funded Veterans cemetery would be inconsistent with existing VA authority and NCA standards* to maintain Veteran cemeteries as shrines honoring military service." [Emphasis added]

The federal eligibility criteria include veterans, their spouses, minor children and *unmarried adult children who were physically or mentally disabled and incapable of self-support*. [Emphasis added]. Additionally, the Congress, in the 2001 Department of Veterans Affairs Appropriations Act, authorized the burial of "National Guard Veterans" at the NDVC. Any

expansion beyond these two federal authorities would result in the loss of \$350,000 in special funding each biennium and eligibility for federal grants (see Fiscal note). Additionally, if this Bill would be passed into law, the \$3.5 million in grants we have received could be recouped by the United States Government. [75 FR 34006 §39.10-1, 2010; attached at Attachment 6] This is consistent with the grant application process [Attachment 7], which requires the grantee to certify that the cemetery will be operated in accordance with the “operational standards and measures of the National Cemetery Administration.”

We should always ask two questions when addressing policy issues: Can we? Should we? As I have stated, we can do this with an increase in general funding and a commitment from the state to maintain the cemetery (\$5.25 Million over past 10 years). Should we? Many veterans, represented by the Office of the Adjutant General, the National Guard Association of North Dakota, the North Dakota Veterans Cemetery Foundation, the Veterans Coordinating Council, veterans groups and many individual veterans who have contacted our agency, say no.

As pointed out in the VA letter, our State Veterans Cemetery is a shrine honoring military service. Many have worked very hard making this a hallowed place, a tribute to military service members, their spouses and dependent children. This bill would be the beginning of the erosion of this sacred place. If we provide authority for individual constituents to become eligible, what stops others from requesting eligibility as well? Adult twins? Children who have not married? Married children without children of their own? This Cemetery is for veterans, if we deviate from its intended purpose at some point our "veterans' cemetery" becomes a state subsidized "cemetery".

I ask that you vote a “do not pass” on SB 2097, leave the state eligibility requirements as they are so we may ensure our continued eligibility for federal funds and also protect the cemetery as a shrine honoring military service.

I am happy to take any questions that the committee may have.

Attachments:

1. Letter from Mr. Joshua M. De Leon, Director, Veterans Cemetery Grants Program
2. Before and after photos of Administration building and Chapel
3. Picture of Chapel interior and VA supported maintenance building
4. Headstones after VA alignment and beatification project
5. Summary of 2005 VA supported project
6. §39.10, 75 FR 34006
7. Certification of Cemetery Maintained in Accordance with National Cemetery Administration Standards



DEPARTMENT OF VETERANS AFFAIRS
NATIONAL CEMETERY ADMINISTRATION
WASHINGTON DC 20420

Pamela Helbling-Schafer
North Dakota Veterans Cemetery
1825 46th Street
Mandan, ND 58554

FEB 07 2013

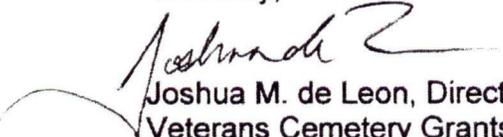
Dear Mrs. Helbling-Schafer,

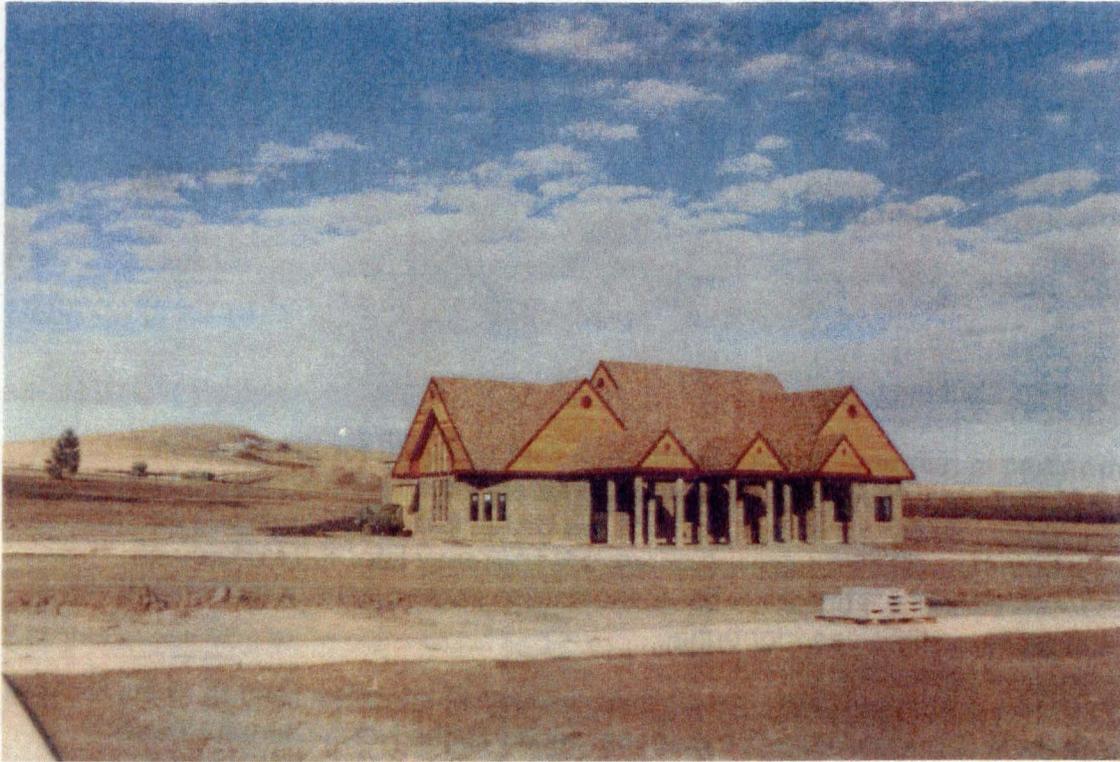
I am writing in response to your February 2, 2013 request for guidance on Department of Veterans Affairs (VA), National Cemetery Administration (NCA) interment eligibility standards. Section 2042 of title 38 of the United States Code (USC) defines persons eligible for burial in VA national cemeteries. VA may inter the remains of certain deceased individuals but VA is not authorized to make eligibility determinations in advance of an immediate need for burial.

VA's statutory authority for burial eligibility serves as minimum requirements for VA-funded State and Tribal Veterans cemeteries, such as the North Dakota Veterans Cemetery. Further, VA-funded Veteran cemeteries serve as complements to VA national cemeteries, and must be maintained and operated in accordance with NCA operational standards and measures. Burial of any non-eligible individual in a VA-funded Veterans cemetery would be inconsistent with existing VA authority and NCA standards to maintain Veteran cemeteries as shrines honoring military service.

We hope this information is useful to you and look forward to our continued partnership in the service of Veterans.

Sincerely,


Joshua M. de Leon, Director
Veterans Cemetery Grants Service



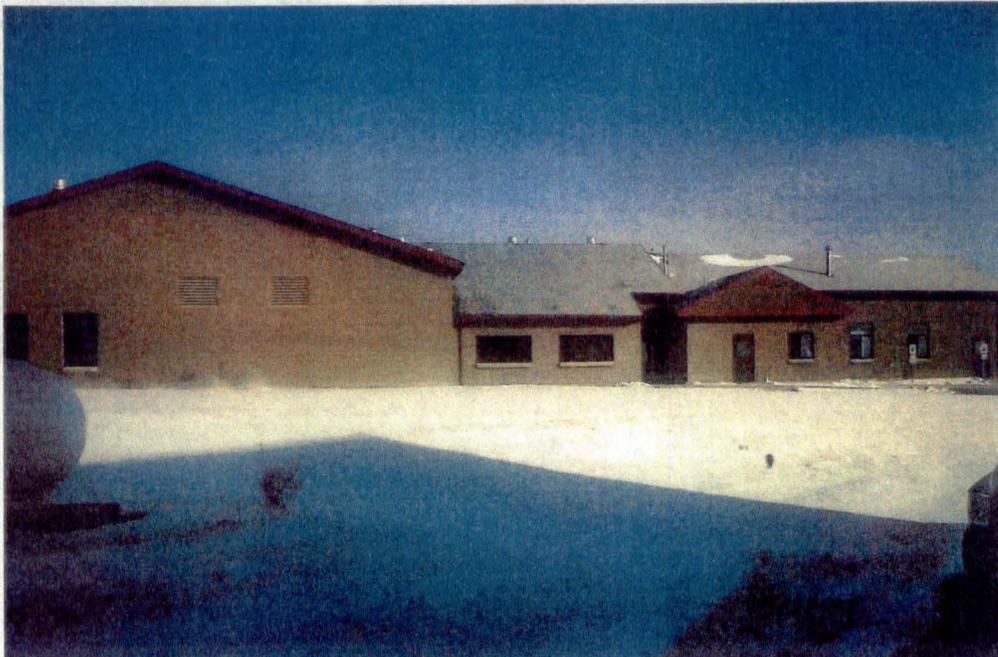
Original Administrative building and Chapel



After 2005 VA Grant Project



Interior of Chapel



2005 VA Grant Maintenance Building





2005 CEMETERY EXPANSION & RENOVATION

**FUNDING PROVIDED THROUGH
THE VETERANS' ADMINISTRATION
STATE CEMETERY GRANTS PROGRAM**

**TOTAL COST: \$3.267 M
V.A. SUPPORTED: \$3.111M
STATE SUPPORTED: \$156,000**

11/20/04
S + VETERANS

BUILDING ALTERATIONS & ADDITIONS

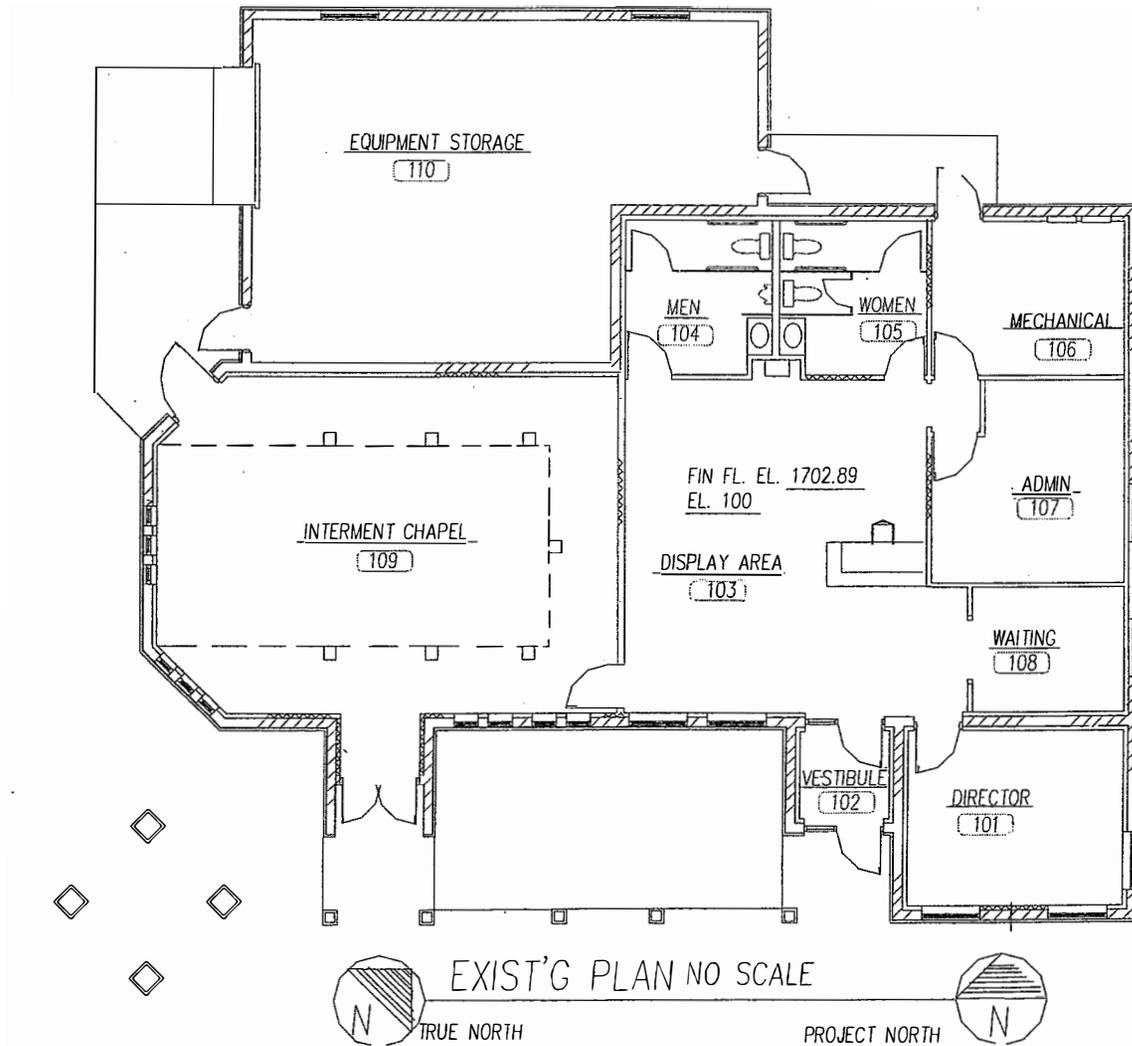
- **VISITOR CENTER**

- ADMIN AREA ADDITION: 486 SF
- CHAPEL EXPANSION: 277 SF
- CASKET HANDLING AREA ADDITION: 309 SF
- ACCESSIBLE PUBLIC TOILETS: 178 SF

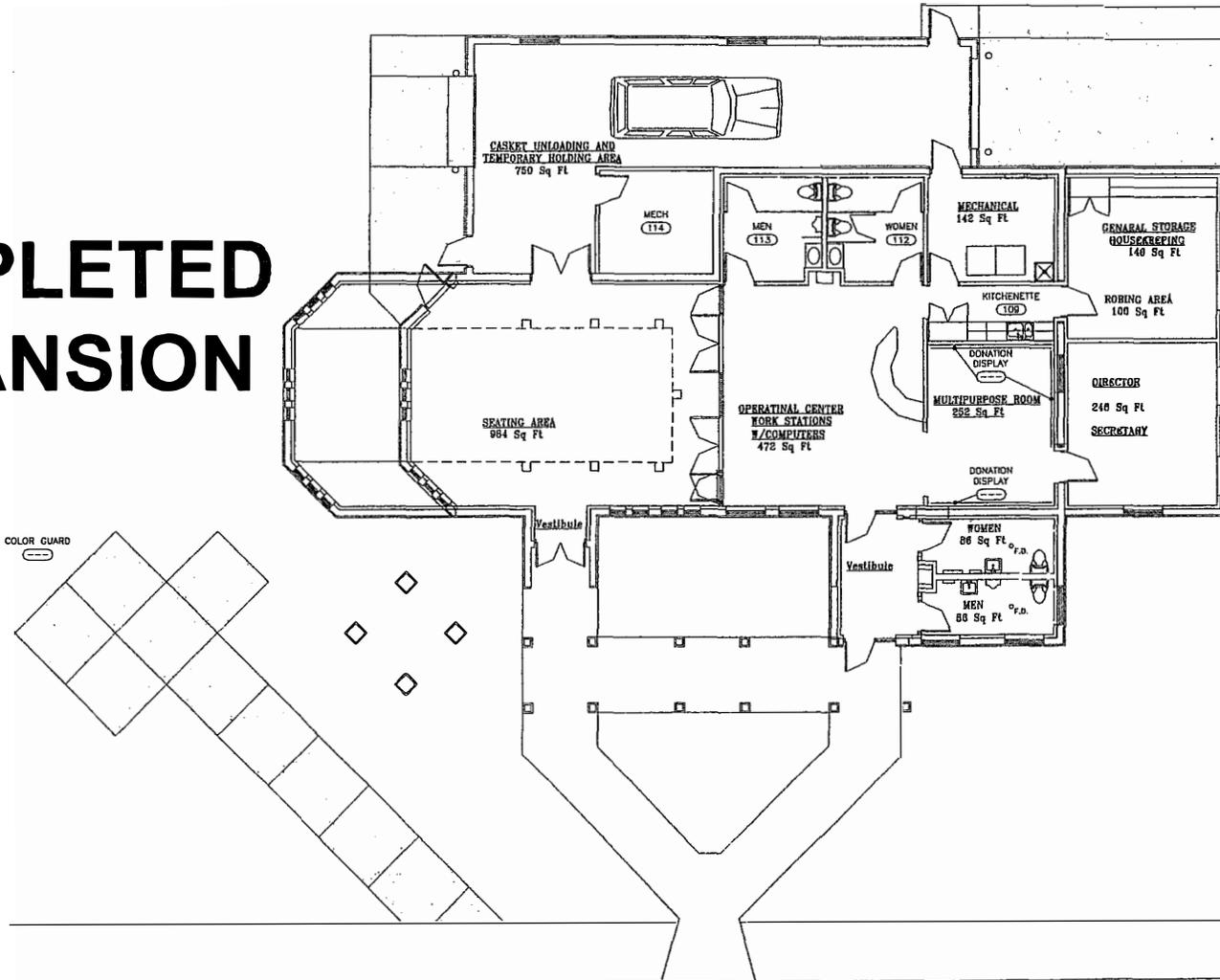
- **MAINTENANCE BUILDING 8,804 SF**

INCLUDES 5 MAINTENANCE BAYS, EQUIPMENT STORAGE AREA, TOILETS, SHOWERS LOCKERS, BREAK ROOM AND OFFICE AREA.

EXISTING FLOOR PLAN



COMPLETED EXPANSION



PROPOSED FLOOR PLAN NO SCALE: OPTION 2

TRUE NORTH



PROJECT NORTH

SITE IMPROVEMENTS

ROADS/CURB & GUTTER

CONCRETE ROADS: 938 SY

ASPHALT ROADS: 7,250 SY

CURB AND GUTTER: 5,807 LF

SITE AMMENITIES

SIDEWALK: 14,478 SF

PERIMETER FENCE: 525 LF + 144

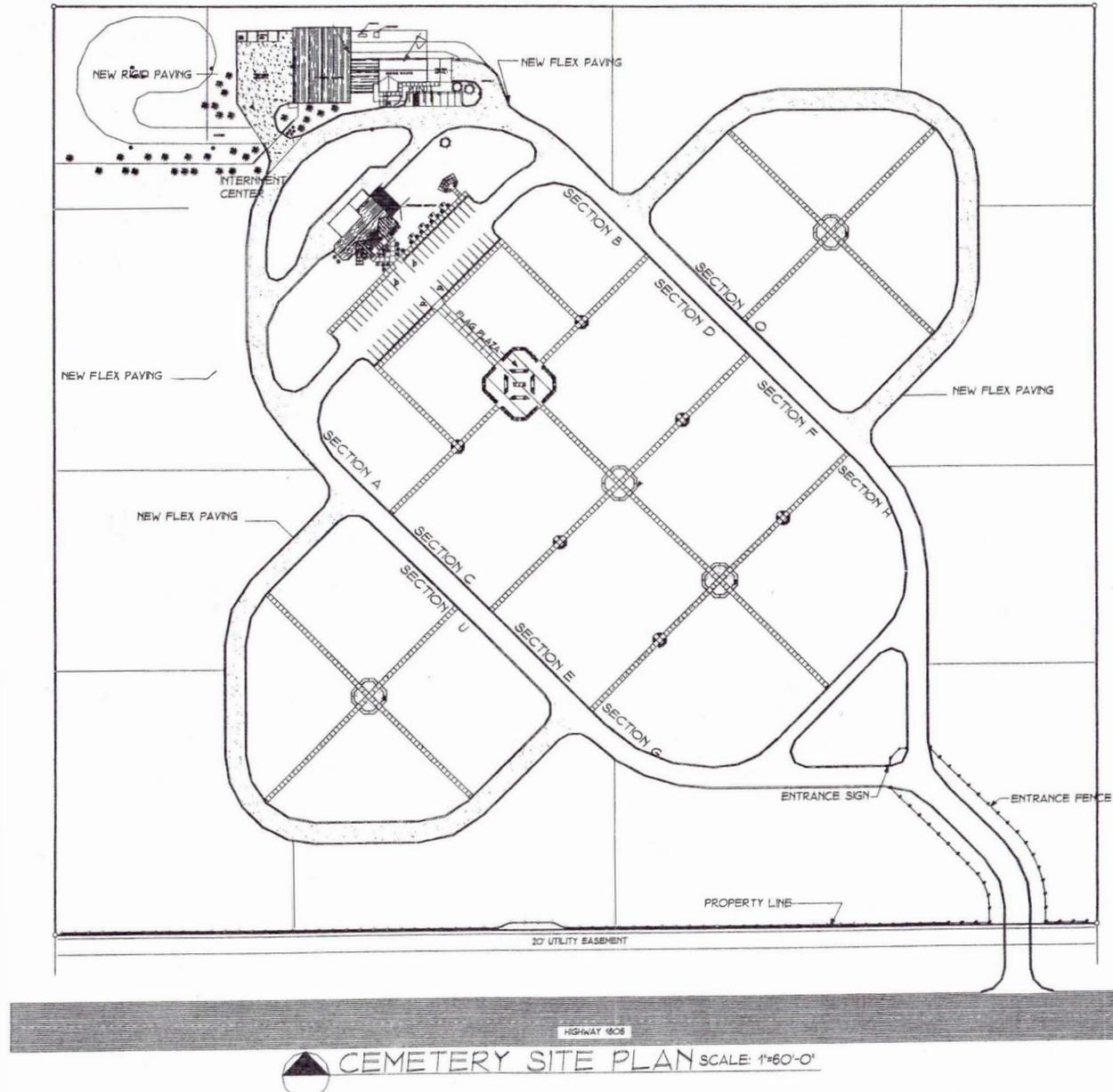
COLUMNS

IRRIGATION SYSTEM

SPRINKLER SYSTEM

INTAKE STRUCTURE

SITE IMPROVEMENTS



§39.10 Cemetery requirements and prohibitions and recapture provisions.

(a) In order to qualify for a grant, a State or Tribal veterans cemetery must be operated solely for the interment of veterans, their spouses, surviving spouses, minor children, unmarried adult children who were physically or mentally disabled and incapable of self-support, and eligible parents of certain deceased service members.

(b) Any grant under this part made on or after November 21, 1997, is made on the condition that, after the date of receipt of the grant, the State or Tribal Organization receiving the grant, subject to requirements for receipt of notice in 38 U.S.C. 2408 and 2411, will prohibit in the cemetery for which the grant is awarded the interment of the remains or the memorialization of any person:

(1) Who has been convicted of a Federal capital crime, as defined in 38 CFR 38.600(b), and whose conviction is final, other than a person whose sentence was commuted by the President;

(2) Who has been convicted of a State capital crime, as defined in 38 CFR 38.600(b), and whose conviction is final, other than a person whose sentence was commuted by the Governor of a State.

(3) Who has been found by an appropriate State official, as defined in 38 CFR 38.600(b), under procedures to be established by the State, to have committed a Federal or State capital crime, as defined in 38 CFR 38.600(b), but to have not been convicted of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(c) If a State or Tribal Organization which has received a grant under this part ceases to own the cemetery for which the grant was made, ceases to operate such cemetery as a veterans cemetery in accordance with paragraph (a) of this section, violates the prohibition in paragraph (b) of this section, or uses any part of the funds provided through such grant for a purpose other than that for which the grant was made, the United States shall be entitled to recover from the State or Tribal Organization the total of all grants made to the State or Tribal Organization under this part in connection with such cemetery.

(d) If, within 3 years after VA has certified to the Department of the Treasury an approved grant application, not all funds from the grant have been used by the State or Tribal Organization for the purpose for which the grant was made, the United States shall be entitled to recover any unused grant funds from the State or Tribal Organization.

[75 FR 34006, June 16, 2010, as amended at 77 FR 4473, Jan. 30, 2012]

Supplement *Highlights* Reference: 104(1).



Department of Veterans Affairs

CERTIFICATION OF CEMETERY MAINTAINED IN ACCORDANCE WITH NATIONAL CEMETERY ADMINISTRATION STANDARDS

(As required by 38 CFR 39.31 and 39.81)

CERTIFICATION STATEMENT: I certify that the below named state or tribal government cemetery, assisted by a Department of Veterans Affairs grant, will be operated and maintained in accordance with the operational standards and measures of the National Cemetery Administration.

NAME AND ADDRESS OF STATE OR TRIBAL GOVERNMENT CEMETERY

NORTH DAKOTA VETERANS CEMETERY
1825 46TH STREET
MANDAN, ND 58554

PROJECT FAI (*Federal Application Identifier*)
NO.

NAME OF AUTHORIZED STATE OR TRIBAL GOVERNMENT OFFICIAL

BRIGADIER GENERAL ALAN S. DOHRMANN

TITLE OF AUTHORIZED STATE OR TRIBAL GOVERNMENT OFFICIAL

DEPUTY ADJUTANT GENERAL

SIGNATURE OF AUTHORIZED STATE OR TRIBAL GOVERNMENT OFFICIAL

DATE SIGNED (*mm/dd/yyyy*)

04/19/2011

VA FORM
JUL 2009

40-0895-15

Adobe LiveCycle Designer 8.1

Attachment 7

March 14, 2013

Mr. Chairman, Members of the House Government and Veteran's Affairs Committee,

Good morning, my name is Joshua Simmers, secretary of the National Guard Association of North Dakota. I am here on personal leave to testify before you on behalf of the National Guard Association, which has over 500 members representing the Guardsmen, women, and veterans of our state.

The National Guard Association has taken a stance opposing Senate Bill 2097, for the following reasons:

1. SB2097 jeopardizes federal funding.
2. The Veterans' Cemetery is hallowed ground, for those who have offered their lives for our freedom.
 - a. Although spouses and dependents with special cases are authorized for burial, the North Dakota Veterans' Cemetery is created to honor the Veteran. Extending this privilege initiates a trend counter to this exclusive honor.

The National Guard Association of North Dakota is very grateful to our families, who enable us to serve. We hold high the debt we owe to Veterans. We advocate for a responsible use of tax-payer money and maintain a high regard for the respect owed to Veterans, and the hallowed ground in which Veterans are laid to rest. As such, the National Guard Association of North Dakota opposes Senate Bill 2097.

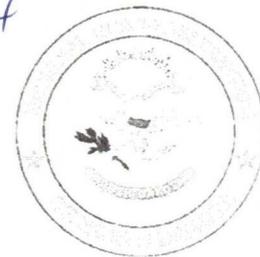
On behalf of the National Guard Association of North Dakota,



Joshua Simmers

Secretary

Attachment 4



March 4, 2013

Dear Legislators,

The men and women of the National Guard Association of North Dakota respectfully submit our disapproval to Senate Bill 2097 and urge a do not pass and/or no vote on the proposed new addition to the Century Code, governing the North Dakota Veterans Cemetery internment eligibility. The National Guard Association of North Dakota (NGAND) is a professional organization representing over 500 Army and Air Force National Guard Officers. This position by the NGAND was formally adopted by resolution at the annual General Membership session held in Bismarck, ND and on February 23, 2013.

Current criteria for burial at the North Dakota Veterans Cemetery internment was first established in 1989 and we do not agree that the current criteria should change in any manner, especially to the extent now proposed. Present language summarizing the North Dakota Veterans Cemetery sufficiently states the intent then and should remain true now and tomorrow:

“The state of North Dakota, in tribute to the devotion shown by our veterans in defense of the ideals and values we hold so precious, honors them by providing a location where they may find eternal peace in a setting rich with military history and quiet dignity.”

To expand the eligibility for burial beyond that now authorized will not pay tribute to veterans in the intent of original language of the Century Code, an endeavor of no small manner and required hard work by many dedicated to honoring the veterans of our nation. Additionally, we treasure the hard work of those dedicated as volunteers, donors and supporters of this treasured soil deviation from the standards now entrenched in Century Code and tradition is a great concern to the all men and women of the National Guard Association of North Dakota.

A handwritten signature in cursive script, reading "Ryan Rastedt".

Ryan Rastedt, Major
Chairman, NGAND