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(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R. _____

To amend title 38, United States Code, to establish presumptions of service connection for illnesses associated with open burn pits, to direct the Comptroller of the United States to establish the Open Burn Pit Advisory Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. BILIRAKIS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 38, United States Code, to establish presumptions of service connection for illnesses associated with open burn pits, to direct the Comptroller of the United States to establish the Open Burn Pit Advisory Commission, 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 “Protection for Vet-
5 erans’ Burn Pit Exposure Act of 2018”.

1 **SEC. 2. PRESUMPTIONS OF SERVICE CONNECTION FOR ILL-**
2 **NESSES ASSOCIATED WITH OPEN BURN PITS.**

3 (a) IN GENERAL.—Subchapter II of chapter 11 of
4 title 38, United States Code, is amended by adding after
5 section 1118 the following new section:

6 **“§ 1119. Presumptions of service connection for ill-**
7 **nesses associated with exposure to open**
8 **burn pits.**

9 “(a) ESTABLISHMENT.—(1) For purposes of section
10 1110 of this title, and subject to section 1113 of this title,
11 each illness described in paragraph (2) becoming manifest
12 in a covered veteran shall be considered to have been in-
13 curred in or aggravated by covered service, notwith-
14 standing that there is no record of evidence of such illness
15 in the covered veteran during the period of covered service.

16 “(2) An illness described in this paragraph is any di-
17 agnosed or undiagnosed illness that—

18 “(A) the Secretary determines in regulations
19 prescribed under this section to warrant a presump-
20 tion of service connection by reason of having a posi-
21 tive association with exposure to toxic airborne
22 chemicals and fumes caused by open burn pits; and

23 “(B) becomes manifest within the period, if
24 any, prescribed in such regulations in a covered vet-
25 eran.

1 “(3) For purposes of this subsection, a covered vet-
2 eran who has an illness described in paragraph (2) shall
3 be presumed to have been exposed to toxic airborne chemi-
4 cals and fumes caused by open burn pits unless there is
5 conclusive evidence to establish that the covered veteran
6 was not exposed to toxic airborne chemicals and fumes
7 caused by open burn pits in the course of covered service.

8 “(b) DETERMINATIONS.—(1) The Secretary shall de-
9 termine whether a positive association exists between—

10 “(A) the exposure of humans or animals to a
11 burn pit; and

12 “(B) the occurrence of a diagnosed or
13 undiagnosed illness in humans or animals.

14 “(2) In making determinations under this subsection,
15 the Secretary shall take into account any report from the
16 Open Burn Pit Advisory Commission.

17 “(3) In evaluating a report for the purpose of making
18 a determination under this subsection, the Secretary shall
19 take into consideration whether the results—

20 “(A) are statistically significant;

21 “(B) are capable of replication; and

22 “(C) withstand peer review.

23 “(4) An association between the occurrence of an ill-
24 ness in humans or animals and exposure to toxic airborne
25 chemicals and fumes caused by open burn pits shall be

1 considered to be positive for purposes of this subsection
2 if the credible evidence for the association is equal to or
3 outweighs the credible evidence against the association.

4 “(5) Not later than 60 days after receiving a report
5 from the Open Burn Pit Advisory Commission regarding
6 an illness, the Secretary shall make a determination under
7 this subsection regarding that illness.

8 “(c) REGULATIONS.—(1) If the Secretary determines
9 under subsection (b) that a presumption of service connec-
10 tion is warranted for an illness, the Secretary shall issue
11 proposed regulations setting forth the determination not
12 later than 60 days after making the determination.

13 “(2)(A) If the Secretary determines under subsection
14 (b) that a presumption of service connection is not war-
15 ranted for an illness described in subsection (a)(2), the
16 Secretary shall publish in the Federal Register a notice
17 of that determination not later than 60 days after making
18 the determination. The notice shall include an explanation
19 of the evidence and scientific basis for that determination.

20 “(B) If an illness already presumed to be service con-
21 nected under this section is subject to a determination
22 under subparagraph (A), the Secretary shall issue pro-
23 posed regulations removing the presumption for the illness
24 not later than 60 days after publication of the notice of
25 a determination that the presumption is not warranted.

1 The notice shall include an explanation of the evidence and
2 scientific basis for that determination.

3 “(3) Not later than 90 days after the date on which
4 the Secretary issues any proposed regulations under this
5 subsection, the Secretary shall issue final regulations.
6 Such regulations shall be effective on the date of issuance.

7 “(4) Whenever the presumption of service connection
8 for an illness under this section is removed under this sub-
9 section—

10 “(A) a veteran who was awarded compensation
11 for the illness on the basis of the presumption before
12 the effective date of the removal of the presumption
13 shall continue to be entitled to receive compensation
14 on that basis; and

15 “(B) a survivor of a veteran who was awarded
16 dependency and indemnity compensation for the
17 death of a veteran resulting from the illness on the
18 basis of the presumption before that date shall con-
19 tinue to be entitled to receive dependency and in-
20 demnity compensation on that basis.

21 “(d) DEFINITIONS.—In this section:

22 “(1) The term ‘covered veteran’ means a vet-
23 eran who, on or after September 11, 2001—

1 “(A) was deployed in support of a contin-
2 gency operation while serving in the Armed
3 Forces; and

4 “(B) during such deployment, was based
5 or stationed at a location where an open burn
6 pit was used.

7 “(2) The term ‘open burn pit’ means an area
8 of land that—

9 “(A) is designated by the Secretary of De-
10 fense to be used for disposing of solid waste by
11 burning in the outdoor air; and

12 “(B) does not contain a commercially man-
13 ufactured incinerator or other equipment spe-
14 cifically designed and manufactured for the
15 burning of solid waste.”.

16 (b) **CLERICAL AMENDMENT.**—The table of sections
17 at the beginning of such chapter is amended by inserting
18 after the item relating to item 1118 the following new
19 item:

 “1119. Presumptions of service connection for illnesses associated with open
 burn pits.”.

20 **SEC. 3. OPEN BURN PIT ADVISORY COMMISSION.**

21 (a) **ESTABLISHMENT.**—Not later than 90 days after
22 the date of the enactment of this Act, the Comptroller
23 General of the United States shall establish a commission

1 to be known as the “Open Burn Pit Advisory Commis-
2 sion” (in this section referred to as the “Commission”).

3 (b) DUTIES OF COMMISSION.—The Commission shall
4 make recommendations to the Secretary of Veterans Af-
5 fairs regarding what illnesses have positive associations
6 with exposure to toxic airborne chemicals and fumes
7 caused by open burn pits. In making such recommenda-
8 tions, the Commission shall consider the following:

9 (1) Whether each illness specified in section
10 1112 of title 38, United States Code, has a positive
11 association with exposure to toxic airborne chemicals
12 and fumes caused by open burn pits.

13 (2) The letter issued by the Director of the
14 Compensation and Pension Service of the Depart-
15 ment of Veterans Affairs, dated April 26, 2010, ti-
16 tled “Training Letter 10-03 Environmental Hazards
17 in Iraq, Afghanistan, and Other Military Installa-
18 tions”.

19 (3) The report issued by the National Acad-
20 emies of Sciences, Engineering, and Medicine on Oc-
21 tober 31, 2011, titled “Long-Term Health Con-
22 sequences of Exposure to Burn Pits in Iraq and Af-
23 ghanistan”.

24 (4) The report issued by the National Acad-
25 emies of Sciences, Engineering, and Medicine on

1 February 28, 2017, titled “Assessment of the De-
2 partment of Veterans Affairs Airborne Hazards and
3 Open Burn Pit Registry”.

4 (5) Information submitted by a veterans service
5 organization.

6 (6) Sound medical and scientific information,
7 reports, or analyses available to the Commission
8 that—

9 (A) are statistically significant;

10 (B) are capable of replication; and

11 (C) withstand peer review.

12 (c) MEMBERSHIP.—

13 (1) NUMBER AND APPOINTMENT.—The Com-
14 mission shall be composed of 15 members appointed
15 by the Comptroller of the United States.

16 (2) QUALIFICATIONS.—

17 (A) RESEARCH.—The Comptroller shall se-
18 lect members from the medical community who
19 have with distinguished backgrounds in bio-
20 medical, scientific, or epidemiological research.

21 (B) EXPERIENCE WITH VETERANS OR
22 MEMBERS OF THE ARMED FORCES.—A majority
23 of the members shall be veterans, members of
24 the Armed Forces, or have experience providing

1 health care to veterans or members of the
2 Armed Forces.

3 (C) PROHIBITION ON ELIGIBILITY FOR
4 BENEFITS RELATED TO EXPOSURE TO OPEN
5 BURN PITS.—No member may be eligible for
6 any benefit under section 1110 of title 38,
7 United States Code, pursuant to regulations
8 prescribed by the Secretary of Veterans Affairs
9 under section 1119 of such title.

10 (3) TERMS.—

11 (A) IN GENERAL.—Each member shall be
12 appointed for renewable three-year terms.

13 (B) VACANCIES.—A vacancy in the Com-
14 mission shall be filled in the manner in which
15 the original appointment was made. Any mem-
16 ber appointed to fill a vacancy occurring before
17 the expiration of the term for which the mem-
18 ber's predecessor was appointed shall be ap-
19 pointed only for the remainder of that term. A
20 member may serve after the expiration of that
21 member's term until a successor has taken of-
22 fice.

23 (4) BASIC PAY.—

24 (A) RATES OF PAY.—Members shall be
25 paid at a rate equal to level IV of the Executive

1 Schedule under section 5315 of title 5, United
2 States Code.

3 (B) PROHIBITION OF COMPENSATION OF
4 FEDERAL EMPLOYEES.—No member of the
5 Commission who is a full-time officers or em-
6 ployee of the United States may receive addi-
7 tional pay, allowances, or benefits by reason of
8 service on the Commission.

9 (5) TRAVEL EXPENSES.—Each member shall
10 receive travel expenses, including per diem in lieu of
11 subsistence, in accordance with applicable provisions
12 under subchapter 1 of chapter 57 of title 5, United
13 States Code.

14 (6) QUORUM.—A majority of members of the
15 Commission shall constitute a quorum but a lesser
16 number may hold hearings.

17 (7) CHAIRPERSON.—The Comptroller shall des-
18 ignate a member of the Commission as the Chair-
19 person of the Commission at the time of appoint-
20 ment, for the initial term of that member.

21 (8) MEETINGS.—The Commission shall meet at
22 the call of the Chairperson.

23 (d) POWERS OF COMMISSION.—

24 (1) IN GENERAL.—Subject to such review as
25 the Comptroller General deems necessary to assure

1 the efficient administration of the Commission, the
2 Commission may—

3 (A) employ and fix the compensation of an
4 Executive Director (subject to the approval of
5 the Comptroller General) and such other per-
6 sonnel as may be necessary to carry out its du-
7 ties;

8 (B) seek such assistance and support as
9 may be required in the performance of its du-
10 ties from appropriate Federal departments and
11 agencies;

12 (C) enter into contracts or make other ar-
13 rangements, as may be necessary for the con-
14 duct of the work of the Commission;

15 (D) make advance, progress, and other
16 payments that relate to the work of the Com-
17 mission;

18 (E) provide transportation and subsistence
19 to persons serving the Commission without
20 compensation; and

21 (F) prescribe such rules and regulations as
22 it determines necessary with respect to the in-
23 ternal organization and operation of the Com-
24 mission.

1 (2) HEARINGS AND SESSIONS.—The Commis-
2 sion may administer oaths or affirmations to wit-
3 nesses appearing before it. Any such hearing shall be
4 open to the public.

5 (3) POWERS OF MEMBERS AND AGENTS.—

6 (A) IN GENERAL.—Any member or agent
7 of the Commission may, if authorized by the
8 Commission, take any action which the Com-
9 mission is authorized to take by this section.

10 (B) OBTAINING OFFICIAL DATA.—(i) Com-
11 mission may secure directly from any depart-
12 ment or agency of the United States informa-
13 tion necessary to enable it to carry out this sec-
14 tion. Upon request of the Chairperson of the
15 Commission, the head of that department or
16 agency shall furnish that information to the
17 Commission.

18 (ii) In order to carry out its functions, the
19 Commission shall—

20 (I) utilize existing information, both
21 published and unpublished, when possible,
22 collected and assessed either by its own
23 staff or under other arrangements;

24 (II) carry out, or award grants or
25 contracts for, original research and experi-

1 mentation, when existing information is in-
2 adequate; and

3 (III) adopt procedures allowing any
4 interested party to submit information for
5 the Commission's use in making reports
6 and recommendations.

7 (C) DIRECTION TO THE NATIONAL ACAD-
8 EMY OF MEDICINE.—The Commission may di-
9 rect the President of the National Academy of
10 Medicine to conduct studies of illnesses de-
11 scribed in subsection (b).

12 (D) EXPENDITURES.—The Commission
13 may make such expenditures for services and
14 materials for the purpose of carrying out this
15 section as the Commission considers advisable
16 from funds appropriated for that purpose.

17 (e) OVERSIGHT.—

18 (1) ACCESS TO RECORDS.—The Comptroller
19 General shall have unrestricted access to all delib-
20 erations, records, and data of the Commission, im-
21 mediately upon request.

22 (2) AUDIT.—The Commission shall be subject
23 to periodic audit by the Comptroller General.

24 (f) REPORTS.—

1 (1) REPORTS ON RECOMMENDATIONS.—The
2 Commission shall submit to the Secretary of Vet-
3 erans Affairs and to Congress a report regarding
4 each recommendation under subsection (b) not later
5 than 90 days after making such recommendation. In
6 any such report that includes a recommendation
7 that the Secretary determine that an illness does not
8 have positive association with exposure to toxic air-
9 borne chemicals and fumes caused by open burn
10 pits, the Commission shall include an explanation of
11 the evidence and scientific basis for such rec-
12 ommendation.

13 (2) ANNUAL REPORT.—The Commission shall
14 submit to the Secretary of Veterans Affairs and to
15 Congress a report not later than one year after the
16 date of the enactment of this Act and annually
17 thereafter. Each annual report shall include the fol-
18 lowing with regards to the preceding year:

19 (A) Recommendations made by the Com-
20 mission under subsection (b).

21 (B) A review of information described in
22 paragraphs (1) through (6) of subsection (b)
23 that the Commission has reviewed relating to
24 illnesses for which the Commission has not yet
25 made a recommendation under that subsection.

1 (3) QUINQUENNIAL REPORT.—The Commission
2 shall submit to the Secretary of Veterans Affairs
3 and to Congress a report during the fifth year after
4 the date of the enactment of this Act and every five
5 years thereafter. Each such report shall include the
6 following:

7 (A) A summary of the information speci-
8 fied in subparagraphs (A) and (B) of paragraph
9 (2) with regards to the preceding five years.

10 (B) An estimate of when the Commission
11 will make a recommendation regarding each ill-
12 ness described in subparagraph (B) of para-
13 graph (2).