

115TH CONGRESS  
2D SESSION

# H. R. 6582

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2018

Mr. BILIRAKIS (for himself, Mr. RUIZ, Mr. WELCH, and Mr. YOUNG of Iowa) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## 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 **NESSSES 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 exposure  
            to 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 distinguished backgrounds in biomedical,  
20 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 officer 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) The  
11          Commission may secure directly from any de-  
12          partment or agency of the United States infor-  
13          mation necessary to enable it to carry out this  
14          section. 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).

○