Calendar No. 377

111TH CONGRESS *2d Session* | SENATE | REPORT 111–189

EXAMINATION OF EXPOSURES TO ENVIRONMENTAL HAZARDS DURING MILITARY SERVICE AND HEALTH CARE FOR CAMP LEJEUNE AND ATSUGI NAVAL AIR FACILITY VETERANS AND THEIR FAMILIES ACT OF 2010

MAY 17, 2010.—Ordered to be printed

Mr. AKAKA, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

together with

SUPPLEMENTAL VIEWS

[To accompany S. 3378]

The Committee on Veterans' Affairs (hereinafter, "the Committee") unanimously reports favorably, without amendment, an original bill to authorize health care for certain individuals exposed to environmental hazards at Camp Lejeune and the Atsugi Naval Air Facility, to establish an advisory board to examine exposures to environmental hazards during military service, and for other purposes, and recommends that the bill do pass.

INTRODUCTION

On January 28, 2010, the Committee met in open session to consider a number of measures pending before the Committee, including an original measure proposed by Chairman Daniel K. Akaka to authorize health care for certain individuals exposed to environmental hazards at Camp Lejeune, North Carolina, and the Atsugi Naval Air Facility (hereinafter, "NAF Atsugi") in Japan, to establish an advisory board to examine exposures to environmental hazards during military service, and for other purposes.

Earlier, on July 27, 2009, Committee Ranking Member Richard Burr introduced S. 1518, the proposed "Caring for Camp Lejeune Veterans Act of 2009." Later Senators Begich, Burris, Byrd, Feingold, Graham, Grassley, Hagan, Harkin, Isakson, Johanns, LeMieux, Lincoln, Nelson (FL), Stabenow, and Wicker were added

as cosponsors. S. 1518 would amend title 38, United States Code, to authorize the Department of Veterans Affairs (hereinafter, "VA") to furnish hospital care, medical services, and nursing home care to veterans who were stationed at Camp Lejeune, North Carolina, while the water was contaminated at Camp Lejeune.

On October 21, 2009, the Committee held a hearing on the above-mentioned bill and other veterans-related legislation. Testimony was offered on S. 1518 by: Gerald M. Cross, MD, FAAFP, Acting Under Secretary for Health, Veterans Health Administration, Department of Veterans Affairs; Robert Jackson, Assistant Director, National Legislative Service, Veterans of Foreign Wars of the United States; and Ian de Planque, Assistant Director for Claims Service, The American Legion.

COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearing, the Committee met in open session on January 28, 2010, to consider, among other legislation, the original bill, consisting of provisions from S. 1518, and several freestanding provisions. The Committee voted, without dissent, to report favorably the original bill.

SUMMARY OF THE ORIGINAL BILL AS REPORTED

The original bill as reported (hereinafter, "the Committee bill"), would authorize health care for certain individuals exposed to environmental hazards at Camp Lejeune and the Atsugi Naval Air Facility and establish an advisory board to examine exposures to environmental hazards during military service.

BACKGROUND AND DISCUSSION

In a few specific instances, Congress has acted to provide benefits and health care to veterans who may have been exposed to environmental hazards during their military service. Generally, these benefits and health care services have been provided after Congress determined that there was sufficient evidence to link certain disabilities to an environmental hazard or hazards. On a few other occasions, Congress has extended health care and benefits to the children of servicemembers and veterans based on a concern that they were born more susceptible to certain diseases or conditions because of a parent's exposure to an in-service environmental hazard.

What has emerged from this process is a largely piecemeal approach to addressing environmental exposures—with Congress, VA, and the National Academy of Sciences (hereinafter, "NAS") each playing a role.

Not addressed in Congress' prior actions on environmental exposures are those exposures that have occurred only on military installations and that may affect not only servicemembers and veterans, but also their dependents who reside with them on or near a particular installation.

Background. Since Congress began legislating on environmental hazards, it has taken a piecemeal approach to addressing military exposures. It became apparent at the Committee's October 8, 2009, hearing on VA and DOD's Response to Certain Military Exposures

that such an approach to allegations of exposure during military service was not the most effective or appropriate approach. One point that was clear in that hearing was that Congress has historically not been an effective forum for resolving scientific questions of environmental exposures or the consequences of such exposures.

Four exposures were specifically addressed during the hearing: exposure to smoke from an incinerator at the Naval Air Facility Atsugi in Japan; water contamination at Camp Lejeune; exposure to sodium dichromate at the Qarmat Ali Water Treatment Plant in Iraq; and burn pit exposures during the current conflicts in Iraq and Afghanistan. The exposures at NAF Atsugi and Camp Lejeune presented questions that were both significant and unprecedented because of alleged exposures to the dependents of active duty military personnel.

Camp Lejeune: Marine Corps base Camp Lejeune is an active military base located on 236 square miles of land in Onslow County, North Carolina, adjacent to the southern side of the City of Jacksonville. It was commissioned in 1942 as a training area to prepare Marines for combat. It is the major East Coast base of the U.S. Marine Corps.

As explained by the Government Accountability Office (hereinafter, "GAO"), the drinking water at Camp Lejeune is obtained from groundwater pumped from a freshwater aquifer located approximately 180 feet below the ground. Groundwater is pumped through wells located near the water-treatment plant. After the water is treated, it is stored in ground and elevated storage reservoirs. When needed, treated water is pumped from the reservoirs and tanks to facilities such as offices, schools, or houses on the base.

According to the U.S. Marine Corps, Camp Lejeune officials first became aware of volatile organic compounds (hereinafter, "VOCs") in drinking water samples in 1981 that were collected to comply with future drinking water standards. In January 1982, the Naval Assessment and Control of Installation Pollutants (hereinafter, "NACIP") Program at Camp Lejeune began to identify potentially contaminated sites on the base. In 1982 and 1983, additional testing identified two VOCs—trichloroethylene (hereinafter, "TCE"), a metal degreaser, and tetrachloroethylene (hereinafter, "PCE"), a dry cleaning solvent—in two water systems that served Camp Lejeune base housing areas: Hadnot Point and Tarawa Terrace. Base officials did not know the source of VOCs; water treatment plants and piping infrastructure were investigated as the possible sources. In 1983, the NACIP initial assessment study was published. This study led to the subsequent sampling of individual water supply wells in 1984. A direct association between VOCs in Hadnot Point and Tarawa Terrace drinking water and VOCs in the wells and groundwater was established when the water supply wells were sampled (beginning in 1984). Officials at Camp Lejeune confirmed the wells impacted by VOCs and shut them down in late 1984 and early 1985.

Measurements of mixed water samples suggest that supply wells TT-23 and TT-26 were major contributors to contamination of the Tarawa Terrace water supply. The Agency for Toxic Substances and Disease Registry (hereinafter, "ATSDR") lists 16 wells that served the Tarawa Terrace water-supply system. According to GAO, two wells, TT-23 and TT-26, were shut down on February 8,

1985, because of PCE contamination. However, well TT-23 was used briefly after that date—at least on March 11–12, 1985, and on April 22, 23, and 29, 1985. The ATSDR indicates that TT-23 was removed from service in May 1985.

According to the National Research Council (hereinafter, "NRC"), which functions under the auspices of the NAS, there were multiple sources of potential pollutants, including an industrial area, a drum dump, a transformer storage lot, an industrial fly ash dump, an open storage pit, a former fire training area, a site of a former on-base dry cleaner, a liquids disposal area, a former burn dump, a fuel-tank sludge area, and the site of the original base dump. The NRC stated that the contamination appears to have begun in the middle 1950s and continued until the middle 1980s, when contaminated supply wells were shut down. According to the Marine Corps, nine of ten wells taken out of service have been permanently demolished (piping removed and holes filled in). One well was returned to service in 1993 following multiple clean samples. This well is in service today. Currently, drinking water is checked for VOCs quarterly to ensure water is not impacted.

Camp Lejeune was placed on the Environmental Protection Agency (hereinafter, "EPA") National Priorities List in 1989. The National Priorities List is part of the Superfund cleanup process, and lists the most hazardous environmental sites across the United States and its territories. It serves primarily for informational purposes, identifying for the States and the public those sites that appear to warrant remedial actions. Today, Camp Lejeune is still on that list, as are approximately 130 other military installations.

From 1991 to 1997, the ATSDR conducted a public health assessment at Camp Lejeune that was required by law because of the installation's listing on the National Priorities List. The ATSDR was particularly interested in routine drinking water tests, conducted in the 1980s, that found VOCs at detectable levels in some on-base drinking water supply wells. The ATSDR's 1998 health study, "Volatile Organic Compounds in Drinking Water and Adverse Pregnancy Outcomes," found a link between PCE-contaminated drinking water and lower birth weights for infants of older mothers and mothers with histories of fetal loss. PCE-contaminated drinking water was also linked with small-for-gestational-age infants for older mothers and mothers with two or more fetal losses. However, the findings from these analyses are no longer valid. After the study was completed, the ATSDR discovered that a residential area it classified as unexposed, Holcomb Boulevard, received water from the Hadnot Point system for the first 4 years of the study period, and the study results must be reanalyzed to correct for this mistake in classification. The ATSDR has indicated that it will reanalyze the results of the study using exposure estimates from its groundwater modeling of the Tarawa Terrace and Hadnot Point systems.

In response to concerns from many Marines and their families who had been present at Camp Lejeune and to supplement the few studies that had been undertaken and to help inform decisions about addressing health claims, Congress mandated in Public Law 109–364, the John Warner National Defense Authorization Act for Fiscal Year 2007, that the Secretary of the Navy enter into an agreement with the NAS to examine whether adverse health effects

are associated with past contamination of the water supply at Camp Lejeune. The NRC published its report on June 13, 2009, listing possible health consequences of exposure to the contaminated water at Camp Lejeune during the period from 1957–1985. All the health outcomes listed in its report were placed into one of two categories: limited/suggestive evidence of an association or inadequate/insufficient evidence to determine whether an association exists.

The strongest evidence was in the category of limited/suggestive evidence of an association, which means there is some evidence that people who were exposed to TCE or PCE were more likely to have a certain disease or disorder but that the studies were either few in number or had limitations. However, associations between exposures and diseases or disorders placed in the limited/suggestive evidence of an association category cannot be ruled out. The other health outcomes reviewed were placed in the category of inadequate/insufficient evidence to determine whether an association exists, which means that the studies were too few in number, limited in quality, inconsistent, or inconclusive in results to make an informed assessment. Fourteen of the 59 health outcomes reviewed by the NRC were placed in the limited/suggestive evidence of an association category, and 45 were placed in the inadequate/insufficient evidence of an association category. According to the NRC, in many cases the study subjects were exposed to multiple chemicals, making it impossible to separate the effects of individual chemicals.

In 2007, the GAO reported that former residents and employees of Camp Lejeune had filed more than 750 claims against the federal government related to the contamination. Adjudication of these claims and similar claims filed since then has been postponed until completion of an ongoing study being performed by the ATSDR. This study on specific birth defects and childhood cancers includes children born from 1968 through 1985 to mothers who, for some time during their pregnancy, were exposed to drinking water contaminated with VOCs at Camp Lejeune. It is scheduled to be completed in 2011. However, Dr. John R. Nuckols, a member of the NRC's Committee on Contaminated Drinking Water at Camp Lejeune, testified at the October 8 hearing that, because further research was unlikely to provide definitive information, his committee had concluded that there was no scientific justification for the Navy and Marine Corps to wait for the results of additional health studies before making decisions about how to follow up on the evident solvent exposures on the base and their possible health consequences.

Also at the October 8 hearing, Michael Partain, the son of a Marine Corps officer, testified that he was conceived, carried and born at Camp Lejeune in 1968. He stated that at age 39 he was diagnosed with male breast cancer and that he is one of approximately 40 men who were exposed to Camp Lejeune tap water and who have breast cancer. VA's Michael R. Peterson, Chief Consultant, Environmental Health Strategic Health care Group, Office of Public Health and Environmental Hazards, Veterans Health Administration, testified that more than one million people may have been exposed to hazardous chemicals in the Camp Lejeune well water.

Naval Air Facility Atsugi: The NAF Atsugi is located in the Kanto Plain area on the island of Honshu, Japan. The Japanese

Navy constructed the base in 1941 and it was commissioned in 1950 as U.S. Air Station Atsugi. In 1971, the name of the base was changed to NAF Atsugi and the official joint use of the base with the Japanese Maritime Self Defense Force began.

In 1985, a private waste incinerator—owned and operated by Shinkampo Incineration Complex (hereinafter, "SIC")—was built and began operations approximately 150 meters south of the NAF Atsugi fence line. This complex was approximately five acres in size and was comprised of three incinerators, a waste staging area, and an ash holding area. The discharge heights of the incinerator stacks were only slightly higher than the ground surface of the plateau on which NAF Atsugi is located. Due to the complex topography and short incinerator stack heights relative to the plateau, emissions from the incineration complex were regularly carried parallel to the stack height downwind towards the base resulting in a fumigation condition.

Complaints by the residents on NAF Atsugi about air quality due to the incinerator plume led to a series of evaluations and attempts to quantify pollution levels emitted from the incinerator. The first of these evaluations was conducted in 1988 by the U.S. Navy Aircraft Environmental Support Activity. Subsequent environmental testing was conducted in 1989, 1995, 1998, and 2002. Health risk communication activities began in 1995 based on the 1994 air quality studies and the 1995 Health Risk Assessment. A formal program of Health Risk Communication and Medical Consultation was initiated in 1998 to give individuals necessary and appropriate information and to involve them in making decisions that affect them.

Demonstration of the potential health risks related to poor air quality at Atsugi led to efforts by representatives of the United States Government to close the incinerator. After a number of years, these efforts resulted in a financial payment by the Japanese government to the incinerator operator to close the facility in May 2001.

After the SIC shut down in 2001, outreach and health consultation activities centered on the specific environmental health exposures for the NAF Atsugi base population were discontinued. The final health risk assessment performed by the Navy Environmental Health Center, forwarded for release in 2002, did not find any major changes in the types of materials that posed risk to base residents nor the potential consequences to their health as determined in the 1995 and 1998 health risk assessments.

In June 2009, the DOD-VA Deployment Health Working Group agreed the VA would receive a list of all affected active duty personnel stationed at NAF Atsugi from 1985–2001. These data come to the Navy and Marine Corps Public Health Center from the NAF Atsugi Retrospective Cohort Study of Disease, a cohort epidemiology investigation that utilized personnel records from the Defense Manpower Data Center to assemble the two cohorts for analysis. There were 5,635 active duty servicemembers identified from the Defense Manpower Data Center personnel records as being stationed at NAF Atsugi from 1985 to 2001. This collection of information will aid in any future outreach or surveillance activities for this population as indicated.

However, that number is drastically different than another estimate provided in a report by the Battelle Memorial Institute enti-

tled, "Review of NAF Atsugi Health Risk Assessments and Related Environmental Data to Determine if Additional Population-Based Medical Screening is Indicated," dated June 3, 2008, illustrating the need for an accurate measurement. According to this report:

> No estimates of the exposed population during the years of the incinerator operation (1985–2001) are available in any of the documentation. In order to arrive at an order-of-magnitude estimate, extrapolations were made from the description of the on-base population during 1998. At that time, NAF Atsugi had a population of about 3,500 active duty personnel and 1,700 dependents, of which about 1,100 were children. Assuming a typical residence time of three years, annual turnover in the base population would be estimated to be about 1,700 of which 400 would be children. If this was characteristic of the population dynamic for the entire exposure period, then about 18,000 adults and 8,000 children would have possibly been exposed to the contaminated environmental conditions during on-station assignments of one to three years. In the case of dependents, a typical duration of exposure would have been three years.

There is currently no registry for individuals who were present at NAF Atsugi during the years of the incinerator's operation. Voluntary enrollment into such a database was offered to residents stationed at NAF Atsugi but according to the U.S. Navy, there was so little interest that the effort was discontinued. The Navy also claims there has been no need for such a database because the long-term health risks were determined to be very small.

Committee Bill. The Committee bill would establish a new mechanism for responding to issues related to exposures that occur at military installations. Rather than have Congress provide health care, benefits, and other services to servicemembers, veterans, and their dependents in a piecemeal fashion, the Committee bill would create an Advisory Board that would be tasked with reviewing and making recommendations on how to respond to concerns about possible exposure to hazards on military installations. It is the Committee's intent that the process will streamline the overall consideration of environmental hazard exposures. It is the Committee's expectation that, by ensuring that scientific experts analyze potential exposure issues on a global level, later outcomes on claims for benefits and assistance will be both fairer and justifiable to potentially exposed individuals.

Because issues relating to the exposures at Camp Lejeune and NAF Atsugi have already been heard by the Committee, the Committee bill would provide access to immediate health care relief to those servicemembers, veterans, and dependents who were potentially exposed to contaminated water at Camp Lejeune and polluted air at NAF Atsugi.

Section 2 of the Committee bill would define "military exposure" for the purposes of the new Advisory Board as an exposure to an environmental hazard on a military installation. "Military exposure claim" would be defined as a formal claim of a military exposure submitted by or on behalf of an individual. This section would exclude individuals whose exposure occurred at a military installation during a period in which imminent danger pay is authorized

because circumstances surrounding military exposures in war or conflict zones are often fluid and difficult to review appropriately while events are ongoing.

It is the Committee's intent that the new Advisory Board will consider the exposure of a specific cohort of people at a military installation, not adjudicate individual claims of exposure. The goal would be for the Board to investigate the various elements related to a claimed exposure at a given location so as to help frame any subsequent action on individual claims. It is the Committee's expectation that the process for reviewing overall claims of exposures not supplant VA's current process of adjudicating an individual's claim for service-connected disability.

Section 3 of the Committee bill would establish the Advisory Board on Military Exposures, which would provide advice to the Department of Defense (hereinafter, "DOD") and VA regarding matters relating to exposures of current and former members of the Armed Forces and their dependents to environmental hazards on military installations.

It is the Committee's intent that the Advisory Board, through a non-political, scientific analysis, will make recommendations to DOD and VA on matters relating to claimed exposures on military installations. The Committee's expectation is that this process will give an appropriate body of scientific experts and veterans an opportunity to review matters relating to claimed exposures thoroughly and that this approach will result in a more consistent approach to military exposures than Congress or the Committee has taken in the past.

The seven-member Board would be appointed by the President, and would consist of two members from military service organizations or veterans service organizations; two members from federal agencies (other than DOD and VA) with backgrounds in environmental exposure or environmental exposure assessments, health monitoring, or other relevant fields; and three members with backgrounds in environmental exposure or environmental exposure assessments, health monitoring, or other relevant fields, none of whom may be federal officials or employees. This section would also outline terms of office, compensation, and staffing for the Board.

Section 4 of the Committee bill would set forth the purpose of the new Advisory Board on Military Exposures. The Board would consider and study the matters relating to claims of exposure of current and former members of the Armed Forces and their dependents to potential environmental hazards at military installations. It is the Committee's expectation that, while DOD and VA would collaborate in this endeavor, DOD would take the lead role in this initiative because DOD is better positioned to provide information on particular hazards on military installations.

This section would also specify the parties who may submit material relating to claimed exposures to the Advisory Board: members of the Armed Forces, veterans, dependents of members of the Armed Forces and veterans; veterans advocacy groups; and DOD and VA officials. It also includes a 180-day deadline for the Board to consider the initial claim and what recommended actions may include. Again, it is the Committee's expectation that the Board

consider an exposure of a specific cohort of people at a military installation rather than any individual's claim of exposure.

Section 4 would also authorize the Board to convene a science advisory panel to assist with exposure claims and it outlines the membership of the science advisory panel. It would require a 180-day deadline for the science advisory panel to review the overall exposure claim and take action, and would outline what those recommended actions may include. The Committee intends this to be a settled, scientifically-sound, non-political process that will be duplicated for all military exposure claims. This section includes subpoena authority for both the Advisory Board and the science advisory panels in order to ensure attendance and testimony of witnesses to consider military exposure matters. It is the Committee's expectation that relevant federal agencies, including the EPA, will work cooperatively with the Advisory Board and science advisory panels.

Finally, this section would specify that the Advisory Board's first cases shall be exposure matters related to Camp Lejeune and NAF Atsugi.

Section 5 of the Committee bill would authorize DOD to provide servicemembers, veterans, and dependents who were exposed to environmental hazards at military installations the health care benefits recommended by the Advisory Board. Under current law, there is no authority for DOD to provide health care for these individuals.

Section 6 of the Committee bill would require DOD, in coordination with VA and after consultation with the ATSDR, to assemble a list of individuals, which may include those who were fetuses in utero, exposed to environmental hazards at Camp Lejeune during the period which DOD and VA determine that water was contaminated with volatile organic compounds. The Committee believes that DOD should take the lead role in compiling this list because DOD is in a better position to identify which servicemembers and dependents were at a particular military installation during a particular time. Individuals on this list would be immediately eligible for health care in the following manner: servicemembers and veterans would be eligible for health care from or through VA or DOD; dependents would be eligible for care from or through DOD for conditions that are associated with exposure to contaminated water at Camp Lejeune. This approach reflects the Committee's view that dependents' health care should be provided by DOD. In a letter dated January 26, 2010, VA Secretary Eric K. Shinseki stated, ". . . VA suggests that dependents' health care would be better placed under TRICARE, a health system much better suited to treatment of dependents," thereby endorsing the Committee's approach to dependent care.

This section would also require that the Secretary of Defense, in consultation with the Secretary of Veterans Affairs, report to Congress within 30 days of assembling the list of individuals who were exposed on the evidence and criteria used to compile the list in order to make the process as transparent as possible. After five years, no additional names would be able to be added to the list. It is the Committee's expectation that the Advisory Board will have made recommendations regarding the exposure at Camp Lejeune within that five-year window.

Section 7 of the Committee bill is comparable to section 6 except that it relates to exposures at NAF Atsugi. This section would require DOD, in coordination with VA, to assemble a list of individuals, which may include those who were fetuses in utero, exposed to environmental hazards at NAF Atsugi during the period which they determine that the air was contaminated due to the operation of an incinerator. Consistent with the Committee's approach of assembling a list for those potentially exposed to contaminated water at Camp Lejeune, it is the Committee's intent that DOD take the lead role in compiling this list because DOD is in a better position identify which servicemembers and dependents were at a particular military installation during a particular time. After five years, no additional names would be able to be added to the list. It is the Committee's expectation that the Advisory Board will have made recommendations regarding the exposure at NAF Atsugi within that five-year window.

Just as is proposed for those exposed at Camp Lejeune, individuals on this list shall be immediately eligible for health care. As is the case with dependents of servicemembers who were stationed at Camp Lejeune, the Committee believes that DOD is the more appropriate agency to provide health care to dependents of servicemembers. This section would also require that the Secretary of Defense, in consultation with the Secretary of Veterans Affairs, report to Congress within 30 days of assembling the list of individuals who were exposed on the evidence and criteria used in compiling the list.

Section 8 of the Committee bill would require DOD, in consultation with VA, to submit annual reports to the Committees on Armed Services and Veterans' Affairs in the House of Representatives and the Senate. The section also outlines required content for these reports, including a description of the classes of individuals who have received health care and other benefits as a result of this bill, a description of the health care benefits that have been provided to individuals, and recommendations for any necessary additional legislation.

Section 9 of the Committee bill would require DOD and VA to prescribe joint regulations to carry out the provisions of this Act.

Section 10 of the Committee bill would authorize the necessary appropriations to carry out the Act.

Concerns with Cost Estimate

The Congressional Budget Office (CBO) estimates that the Committee bill would increase direct spending by about $2.7 billion over the 2012–2020 period and increase spending subject to appropriation, discretionary spending, by about $4 billion over the same period. While the Committee is not satisfied with the accuracy of the discretionary cost estimate, it understands that it is appropriate to allocate such costs to this legislation. Indeed, Congress should be prepared to appropriate the necessary funds to cover the discretionary costs of this bill so that the health care needs of those exposed to environmental hazards while at a military installations can be satisfied.

However, it is the Committee's view that the portion of the CBO estimate relating to mandatory costs is wholly without merit or basis. It is the Committee's view that the narrative accompanying

the estimate betrays a fundamental misunderstanding of the intention of the bill and makes many assumptions that are simply not supported by the plain language of the legislation.

In its estimate, CBO clearly misconstrues the role and purpose of the Advisory Board. The Advisory Board has no power to provide benefits—health care or monetary—to any individual. Its function is simply to review information—including data on the number of individuals who might have been at a particular military installation at a given time, and on any environmental hazards that might have been present on that installation—and then make recommendations. With the possible assistance of a scientific review panel, the Advisory Board also would be expected to review the available science on both potential exposures to environmental hazards and the possible consequences of those exposures. After reviewing and discussing such information, the Advisory Board would be expected to submit recommendations to DOD and VA, not take any action with respect to individual claims.

To take such an information gathering process and project a specific increase in the number of veterans receiving compensation from VA, as CBO does in its estimate, is to pile speculation—what the Advisory Board might find with reference to a specific installation—on speculation—what the Advisory Board might recommend based on such findings—on speculation—what VA would do in response to such recommendations.

Based on the cost estimate, it appears that CBO believes that there are populations of servicemembers, veterans, and their dependents who were exposed to environmental hazards to such a degree that there are present health consequences. The Committee does not start with that assumption and certainly does not expect that the Advisory Board will do so.

The Committee is aware of no other instance in which possible actions by Executive Branch agencies or departments, in response to an advisory body's work product, was assigned a mandatory score by CBO. A mandatory score would more appropriately be assigned when Congress directs an agency to provide some specific benefit to a specified beneficiary or group of beneficiaries. In this instance, this is neither the intention nor the expectation. If the Advisory Board determines that servicemembers, veterans, and their dependents were exposed to a sufficient level of environmental hazards to warrant health care or a monetary benefit, the Advisory Board must submit recommendations to DOD and VA on health care or compensation that such individuals should receive. The discretion to provide those benefits remains with DOD and VA. CBO fails to distinguish this difference throughout its cost estimate.

CBO also sets up a false comparison between the Advisory Board in the Committee bill and two existing programs under which certain individuals receive compensation from the federal government. As discussed above, the Advisory Board that would be established by the Committee bill is mandated to simply study and evaluate information and make recommendations. Under the two programs referenced by CBO in its estimate—the Radiation Exposure Compensation Program (RECA) and the Energy Employees Occupational Illness Compensation Program (EEOICP)—both of which represent final Congressional resolution on specific, difficult issues

relating to claims for exposures, specified populations are made entitled to specified compensation for defined and described exposures. Under RECA, an apology and monetary compensation are provided to individuals who contracted certain cancers and other diseases following exposure to radiation released during atmospheric nuclear weapons tests or occupational exposure while employed in the uranium industry during the Cold War. Under EEOICP, lump-sum compensation and health benefits are provided to eligible Department of Energy nuclear weapons workers, contractors, or subcontractors, and atomic weapons employees with radiation-induced cancer. Lump-sum compensation is also provided to certain survivors if the worker is deceased. There is simply no basis for the suggested comparison between those two programs and the work of the Advisory Board in the Committee bill.

As explained earlier in this report, the Advisory Board would be comprised of two members of military service organizations or veterans service organizations; two members who are officials of government agencies (other than DOD and VA) with backgrounds in environmental exposure or environmental exposure assessments, health monitoring, or other relevant fields; and three members with backgrounds in environmental exposure or environmental exposure assessments, health monitoring, or other relevant fields who are not federal employees. CBO's cost estimate refers to this group as "the government"—an incorrect characterization. The Advisory Board is purely an advisory body that makes recommendations to DOD and VA—who, in turn must make an affirmative decision to provide health care and benefits to the affected populations.

CBO appears to rest its basis for the mandatory cost estimate on "determinations by the government" that the affected population has suffered health effects from exposure to environmental contamination that will, in turn, increase the likelihood that veterans submitting disability compensation claims would be deemed service-connected by VA. This understanding is also flawed. The claims submitted to VA would still require the same rigorous adjudication that all others undergo. The individual must be a veteran impacted by an in-service event that caused or aggravated a named condition.

Also troublesome is CBO's estimate that half of all military installations could be studied in the first ten years of enactment of this bill. The order of magnitude for the number of affected installations is unknown. However, as discussed earlier in the report, approximately 130 installations are on the EPA's National Priorities List. Given that number of sites alone, it would be ambitious for half of all military installations to be reviewed in a ten-year period.

COMMITTEE BILL COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by CBO, estimates that enactment of the Committee bill would, relative to current law, not increase direct spending in 2011, and would increase direct spending by about 2.7 billion over the 2012–2020 period. In addition, CBO estimates that implementing the bill would increase spending subject to appropriation by $40 million in 2011; $558 million over the 2011–2015 period; and about $4 billion over the 2011–2020 period. According to CBO, the Committee bill would impose an intergovernmental mandate as defined by the Un-

funded Mandate Reform Act (hereinafter, "UMRA") by authorizing subpoena authority. However, CBO estimates that the cost of complying with the authority would be small and well below the thresholds established in UMRA.

The cost estimate provided by CBO, setting forth a detailed breakdown of costs, follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 4, 2010.

Hon. DANIEL K. AKAKA,
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Examination of Exposures to Environmental Hazards During Military Service and Health Care for Camp Lejeune and Atsugi Naval Air Facility Veterans and their Families Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Schmit and Dwayne Wright.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

Examination of Exposures to Environmental Hazards During Military Service and Health Care for Camp Lejeune and Atsugi Naval Air Facility Veterans and their Families Act of 2010

Summary: This bill would authorize a new federal health benefit for former military members and their dependents whose health was affected by exposure to environmental contaminants at Camp Lejeune, North Carolina, or at the Atsugi Naval Air Facility in Japan. The bill also would establish a new advisory board to study environmental contamination at other military facilities and would authorize health benefits for former military personnel and their dependents who were present at sites identified by the board as having environmental hazards.

CBO expects that the determination that individuals were exposed to environmental contaminants on military installations would increase the likelihood that certain disability compensation claims submitted to the Department of Veterans Affairs (VA) would be deemed "service-connected." Those additional claims would increase VA compensation payments and CBO estimates that direct spending would increase by about $2.7 billion over the 2012–2020 period.[1] In addition, CBO estimates that implementing the bill would increase spending subject to appropriation by about $4 billion over the 2011–2020 period, mainly to cover the cost of the new health benefits and the administration of claims.

[1] Different time periods are relevant for enforcing the current pay-as-you-go rules in the Senate and the House of Representatives. CBO estimates that enacting the bill would increase direct spending by $80 million over the 2010–2014 period and $1,655 million over the 2010–2019 period.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending. Pursuant to section 311 of the Concurrent Resolution on the Budget for Fiscal Year 2009 (S. Con. Res. 70), CBO estimates this bill would increase projected deficits by more than $5 billion in at least one of the four consecutive 10-year periods starting in 2020.

The bill includes new subpoena authority that would impose an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates the cost of complying with the mandate would be small and well below the thresholds established in UMRA ($70 million for intergovernmental mandates and $141 million for private-sector mandates in 2010, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of this bill is shown in the following table. The costs of this legislation fall within budget functions 050 (national defense) and 700 (veterans benefits and services). This estimate assumes that the bill will be enacted near the beginning of fiscal year 2011.

Table 1.

	By fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011–2015	2011–2020
CHANGES IN DIRECT SPENDING												
Veterans Compensation												
Estimated Budget Authority	0	5	25	50	75	100	225	450	725	1,075	155	2,730
Estimated Outlays	0	5	25	50	75	100	225	450	725	1,075	155	2,730
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Health Care Benefits												
Estimated Authorization Level	0	5	25	50	75	125	275	525	875	1,325	155	3,280
Estimated Outlays	0	4	21	44	68	113	241	466	788	1,210	137	2,955
Administrative Costs												
Estimated Authorization Level	50	100	100	100	100	100	100	125	125	150	450	1,050
Estimated Outlays	40	88	97	98	99	99	99	119	123	143	421	1,004
Total Changes in Spending Subject to Appropriation												
Estimated Authorization Level	50	105	125	150	175	225	375	650	1,000	1,475	605	4,330
Estimated Outlays	40	92	117	142	167	212	340	585	911	1,353	558	3,958

Basis of estimate: This bill would authorize a new federal health benefit for former military members and their dependents whose health was affected by environmental contamination at Camp Lejeune, North Carolina, or at the Atsugi Naval Air Facility in Japan. It is alleged that the drinking water at Camp Lejeune was contaminated from 1957 through 1987 and that the air around the Atsugi Naval Air Facility was contaminated by a nearby trash incinerator from 1985 through 2001, causing higher incidence rates of cancer, birth defects, and other physical ailments associated with exposure to toxic substances. The bill also would establish a new advisory board to study environmental contamination at other military facilities and would authorize health benefits for former military personnel and their dependents who would be determined to have been exposed at those facilities.

Veterans can currently receive compensation from VA for disabilities incurred as a result of their time in the service. However, be-

cause studies of contamination at Camp Lejeune, Atsugi Naval Air Facility, and other military bases are not yet complete, VA compensation for ailments allegedly caused by environmental contamination at those facilities is generally approved only after overwhelming evidence is submitted. CBO expects that the determination by the government that the affected population has suffered health effects from exposure to environmental contamination on military bases would increase the likelihood that disability compensation claims submitted to the VA by such veterans would be deemed "service-connected," causing an increase in VA compensation payments relative to the expected payments under current law. CBO estimates those additional payments would increase direct spending by about $2.7 billion over the 2012–2020 period.

In addition, CBO estimates that implementing this bill would increase spending subject to appropriation by about $4 billion over the 2011–2020 period, mainly to cover the cost of the new health benefits and the costs to administer claims. This bill also would create a new federal advisory board to study and make recommendations on benefits to individuals affected by environmental contamination at military facilities and would require the Secretary of Defense to compile lists of all individuals exposed to contamination at Camp Lejeune and Atsugi.

Estimating the Number of Potential Claims

To estimate the number of people who would eventually be approved for government benefits under this bill, CBO divided the potential population into two groups: the first group consists of those potentially affected by contamination at Camp Lejeune and Atsugi; and the second population consists of potential claims from other military facilities that would be identified by the new advisory board. CBO then used observed take-up rates from other government programs for occupational illnesses to estimate the number of individuals who would eventually receive benefits.

Camp Lejeune and Atsugi Naval Air Facility. Based on information from the Department of Defense (DOD), CBO estimates about 675,000 military personnel and dependents lived or worked at Camp Lejeune and the Atsugi Naval Air Facility during the periods of alleged contamination. In the first 10 years after enactment of this bill, CBO estimates that about 20,000 of those former members and dependents would be approved for benefits. That estimate is based on take-up rates for two other government programs that provide compensation for occupational illnesses: the Radiation Exposure Compensation Program (RECA) and the Energy Employees Occupational Illness Compensation Program (EEOICP). The number of people approved for benefits would be significantly smaller than the population potentially exposed because many of those potential claimants would have long since died, would not have adequate proof of a compensable ailment, or would not be able to be located.

Of those approved for benefits in the first 10 years, CBO estimates just under 75 percent would be former military members, while the rest would be spouses and children of former servicemembers. CBO derived this breakdown by looking at marriage rates as well as prevalence rates for some of the ailments connected with environmental contamination. Disease prevalence rates

are typically higher for older males (most of the veterans affected by this legislation would be over the age of 65). CBO assumes that no cases would be approved for benefits prior to fiscal year 2012, because it would take time to establish regulations and train adjudication officials.

Other Military Facilities. The bill also would create a new advisory board that would examine environmental contamination at other military facilities and make recommendations as to whether personnel exposed to contamination at those facilities should receive health benefits or other compensation. DOD would be authorized to provide any health benefits recommended by the advisory board.

A review of information from the Environmental Protection Agency and other sources reveals that environmental contamination at current and former military facilities is a widespread problem. Combined with the fact that military personnel frequently work with hazardous chemicals and other dangerous substances, such as jet fuel and cleaning agents, it is possible that anyone who has ever lived or worked on a military facility was exposed to a variety of contaminants. Depending on how the new advisory board chooses to conduct its work, the number of additional claims that would be approved for benefits could be quite large.

Based on information from VA on the number of living veterans and adjusting that number to account for spouses and children, CBO estimates that as many as 50 million former members and dependents have lived or worked on military installations and are still living. (This figure does not include any civilian employees who may have worked at military installations. Benefits for those individuals are not addressed by this bill.) Because of time and resource constraints, it would take many years for the new advisory board to review all reported instances of environmental contamination. For this estimate, CBO assumes that about half of all military installations could be studied in the first 10 years after enactment of this bill.

To estimate the number of people who would eventually be approved for benefits, CBO applied take-up rates derived from the RECA and EEOICP programs, with adjustments to take into account the higher probability of exposures in those programs.[2] Using this methodology, CBO estimates that an additional 100,000 claims would be approved for federal benefits by 2020. However, CBO assumes no claims, with the exception of those for Camp Lejeune and Atsugi Naval Air Facility, would be approved prior to 2016, because of the time needed to establish the new advisory board and the time needed by the board to conduct studies and establish benefit procedures for the additional sites identified as having contamination.

In total, CBO estimates the number of people that would be approved for benefits because of environmental exposures under this

[2] RECA and EEOICP provide compensation and health benefits to people who worked in the production and testing of nuclear weapons. The exposures that occurred in the nuclear program were widespread, affecting entire factories (in the case of weapons production) or large geographic areas (in the case of testing). While CBO considers it appropriate to apply benefit take-up rates from those programs to the allegedly large-scale exposures at Camp Lejeune and Atsugi, many of the incidents of contamination examined by the new advisory board would be limited to certain sections of military bases, limiting the probability of exposure for the general base populations. Therefore, CBO reduced the estimated take-up rates for the additional sites that would be identified by the board.

legislation would total about 700 in 2012 and expand to almost 120,000 by 2020. Of those approved for benefits, just under 75 percent would be veterans and the rest would be dependents of former military personnel.

Direct Spending

VA pays compensation to veterans for disabilities that result from their military service. While VA compensates veterans for various forms of cancer because of exposure to contaminants—Agent Orange, for example—disability compensation related to exposure at Camp Lejeune has only been granted under very limited circumstances. Implementing this bill would result in additional individuals being certified as needing health care because of exposure to contaminants on military facilities. CBO expects that such certification would increase the likelihood that VA would determine that such veterans had compensable, service-connected disabilities. The resulting increase in disability compensation payments would represent an increase in direct spending.

In total, CBO estimates that enacting this bill would increase direct spending by $2.7 billion over the 2012–2020 period, including costs for new accessions (newly approved beneficiaries), veterans currently on the rolls, and surviving spouses.

New Accessions. Based on the population information described above, CBO estimates that about 75 percent of the newly eligible pool of veterans are not currently receiving veterans disability compensation. Therefore, in 2012—the first year CBO expects veterans to begin receiving disability compensation under this bill—we estimate that about 350 newly eligible veterans would apply for and be granted benefits, increasing to about 60,000 by 2020 as other facilities are identified by the advisory board. VA rates veterans with service-connected disabilities from zero to 100 percent, according to their degree of disability. CBO assumes that the newly eligible veterans would enter the disability compensation rolls at the average disability rating of 40 percent.

In 2009, the average annual benefit payment for a disability rated at 40 percent was $7,262 (or $605 monthly). Adjusting for cost-of-living increases, the annual payment for a veteran rated at 40 percent in 2012 would be $7,356 (or $613 monthly). After accounting for mortality and cost-of-living adjustments, CBO estimates that, under the bill, direct spending for new accessions would increase by about $1.3 billion over the 2012–2020 period.

Veterans Currently on the Rolls. The bill also would make some veterans who are currently receiving disability compensation for other disabilities eligible to have their compensation increased because of ailments associated with service-connected, environmental contamination. Many veterans who are receiving a disability compensation payment are rated for more than one disability. The average rating for veterans on the disability compensation rolls in 2009 was 40 percent and the average increased rating—the rate for which a veteran was compensated after receiving an additional compensation rating—was 70 percent.

About 15 percent of the current veterans population (23 million) receives disability compensation from VA. However, CBO assumes that the eligible population under this bill would be more likely to have applied for disability compensation due to the information

about environmental contamination available and would thus be more likely to have received a disability rating for some other disability. Therefore, CBO assumes that of the eligible population discussed above, 25 percent would already be receiving disability compensation and would receive an increased rating. In 2012, CBO estimates about 120 veterans would become eligible for and receive an increased rating increasing to about 20,000 by 2020.

In 2009, the average annual disability payment for a veteran rated at 40 percent was $7,262 and the average payment for a veteran rated at 70 percent was $23,760—a difference of $16,498. After adjusting for cost-of-living, CBO estimates that enacting the bill would increase direct spending for existing recipients by about $1 billion over the 2012–2020 period.

Surviving Spouses. VA provides dependency and indemnity compensation (DIC) payments to the surviving spouses of certain deceased veterans. CBO expects that some of the spouses of veterans who died because of ailments related to exposure to environmental contamination would become eligible for DIC payments under this bill. Based on the population figures derived above, CBO estimates that about 50 spouses would become eligible for and receive DIC payments in 2012 increasing to about 8,500 by 2020. The average annual DIC benefit payment in 2009 was $14,683. After adjusting for cost-of-living increases, CBO estimates that enacting the bill would increase direct spending for DIC by about $440 million over the 2012–2020 period.

Other Direct Spending. In addition to the direct spending for VA compensation, this bill could increase mandatory outlays from the Medicare-Eligible Retiree Health Care Fund (MERHCF). Some of the people approved for health benefits (see below) would be military retirees or retiree dependents. While they are already eligible for health care from DOD, it is possible that they could become eligible for treatments not currently available through the regular DOD health programs. In some instances, DOD might seek reimbursement of those expenses from the MERHCF, although CBO estimates those additional expenses would not be significant.

Spending Subject to Appropriation

In addition to the direct spending discussed above, the bill would increase spending subject to appropriation. Those costs would be primarily for the health benefits authorized by the bill as well as for various administrative costs incurred by DOD and, to a lesser extent, VA.

This bill would authorize DOD and VA to provide health care to individuals exposed to environmental contamination at Camp Lejeune, Atsugi, and other military facilities identified by the new advisory board. Based on the cost of health benefits provided by EEOICP and the Federal Black Lung Program, CBO estimates that the annual cost of the new health benefit would be about $7,700 (in 2010 dollars) for each approved claim. Costs would be lower than the average annual medical costs for persons in those age groups because not everyone would use the new health benefit and the bill specifies that only diseases and conditions directly related to the exposures in question would be covered. CBO estimates that per capita costs would increase by about 6 percent each year, based on national per capita health expenditure projections published by

the Centers for Medicare and Medicaid Services. In total, CBO estimates the new health benefit would cost about $3 billion over the 2012–2020 period, subject to appropriation of the necessary amounts.

This bill also has several requirements that would increase administrative costs for DOD and VA. In addition to the cost of adjudicating and administering claims, appropriations would be needed to fund the activities of the new advisory board. CBO estimates the cost of administering claims and the activities of the advisory board would average about $65 million per year, or about $650 million over the 2010–2020 period, subject to appropriation of the necessary amounts. That estimate is based on the administrative costs for the Federal Black Lung Program and the EEOICP, government compensation programs that require complex determinations for health benefits. Administrative costs would increase as the advisory board identifies additional sites and more people seek benefits.

In addition, DOD would be required to compile lists of individuals exposed to contamination. Because older base housing reports are often incomplete or nonexistent, compiling lists of individuals who served at various military installations would be a very labor-intensive process requiring the review of millions of individual service records. Based on information from DOD, CBO estimates that DOD would spend about $35 million a year for this purpose, subject to appropriation of the necessary amounts.

In total, CBO estimates the administrative costs of this bill would total about $1 billion over the 2011–2020 period. When combined with the cost of providing the new health benefits, CBO estimates that this bill would have a discretionary cost of about $4 billion over the 2011–2020 period.

Pay-As-You-Go Considerations

The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

Table 2.—CBO Estimate of Pay-As-You-Go Effects for the Examination of Exposures to Environmental Hazards During Military Service and Health Care for Camp Lejeune and Atsugi Naval Air Facility Veterans and their Families Act of 2010, as ordered reported by the Senate Committee on Veterans' Affairs on January 28, 2010

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	0	5	25	50	75	100	225	450	725	1,075	155	2,730

Impact on long-term deficits: Pursuant to section 311 of the Concurrent Resolution on the Budget for Fiscal Year 2009 (S. Con. Res. 70), CBO estimates this bill would increase projected deficits by more than $5 billion in at least one of the four consecutive 10-year periods starting in 2020.

Intergovernmental and private-sector impact: The bill would impose both intergovernmental and private-sector mandates as de-

fined in the Unfunded Mandates Reform Act because it would establish an advisory board with the authority to subpoena information. State, local, and tribal governments, as well as private-sector entities, if subpoenaed by the board, would be required to provide testimony, documents, or other evidence. CBO expects that the advisory board would likely exercise this authority sparingly, and the costs to comply with subpoenas would not be significant. Thus, we estimate that the costs to comply with the mandates would be small and well below the annual thresholds established in UMRA ($70 million for intergovernmental mandates and $141 million for private-sector mandates in 2010, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Veterans' Compensation—Dwayne Wright; Health Benefits and Administration—Matthew Schmit and Sunita D'Monte.

Impact on state, local, and tribal governments: Lisa Ramirez-Branum.

Impact on the private sector: Elizabeth Bass.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact that would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any regulation of individuals or businesses and that the paperwork resulting from enactment would be minimal. Finally, the Committee finds that the only impact on personal privacy would be in the context of providing access to health care services and compiling lists of names of individuals who were present during the time exposures occurred at Camp Lejeune, North Carolina, or at the Naval Air Facility in Atsugi, Japan. It is the Committee's expectation that any individual would be able to have his/her name removed from any such list if the individual did not wish to receive health care services specified in the legislation.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its January 28, 2010, meeting. The Committee, by voice vote, ordered the original bill reported favorably to the Senate, subject to amendment.

AGENCY REPORT

On October 21, 2009, Gerald M. Cross, MD, FAAFP, Acting Under Secretary for Health, Veterans Health Administration, Department of Veterans Affairs, appeared before the Committee and submitted testimony of the Department's views of the bills. Excerpts from this statement are reprinted below:

STATEMENT OF GERALD M. CROSS, MD, FAAFP, ACTING UNDER SECRETARY FOR HEALTH, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Good Morning Mr. Chairman and Members of the Committee: Thank you for inviting me here today to present views on several bills that would affect Department of Veterans Affairs (VA) benefits and services. Joining me today are Mr. Brad Mayes, Director of the Compensation and Pension Service, Mr. Richard Hipolit, Assistant General Counsel, and Mr. Walter Hall, Assistant General Counsel. Unfortunately, we do not have views and estimates on several bills including S. 1109, S. 1467, S. 1556, S. 1753, and a draft bill regarding exposure to chemical hazards referred to in the list of bills provided in the Committee's witness letter of October 8. We will forward those as soon as they are available. We appreciate the opportunity to address these bills that would affect the Department's health care and benefits programs.

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S. 1518—"CARING FOR CAMP LEJEUNE VETERANS ACT OF 2009"

S. 1518 would amend title 38 to extend eligibility for hospital care, medical services and nursing home care for certain Veterans stationed at Camp Lejeune during a period in which well water was contaminated notwithstanding that there is insufficient medical evidence to conclude that a particular illness is attributable to such contamination. It would also make family members of those Veterans who resided at Camp Lejeune eligible for the same services, but only for those conditions or disabilities associated with exposure to the contaminants in the water at Camp Lejeune, as determined by the Secretary.

VA takes the Camp Lejeune matter very seriously but has concerns with the legislation as written. S. 1518 would provide a very broad enrollment and treatment authority for servicemembers and their families. As the legislation is written, any condition that cannot be specifically eliminated as related to the contaminated water at Camp Lejeune would require VA to provide treatment. We note this authority is broader than that conferred on radiation-exposed Veterans. Moreover, the legislation would also require VA to provide medical services and nursing home care to those family members who either consumed contaminated water or were in utero at the time of consumption if the condition or disability can be associated with exposure to contaminated water at Camp Lejeune.

From the 1950s through the mid-1980s, persons residing or working at the U.S. Marine Corps Base Camp Lejeune were potentially exposed to drinking water contaminated with volatile organic compounds. Two of the eight water treatment facilities supplying water to the base were contaminated with either tricholoroethylene (TCE) or tetrachloroethylene (perchloroethylene, or PCE). The De-

partment of Health and Human Services' Agency for Toxic Substances and Disease Registry (ASTDR) estimated that the level of PCE in drinking water exceeded current standards from 1957 to 1987 (when the contaminated wells were shut down) and represented a potential public health hazard.

An ATSDR study begun in 2005 is evaluating whether children of mothers who were exposed while pregnant to contaminated drinking water at Camp Lejeune are at an increased risk of spina bifida, anecephaly, cleft lip or cleft palate, and childhood leukemia or non-Hodgkin's lymphoma. The results of this report have not yet been released. In the same year, a panel of independent scientists convened by the ATSDR recommended the agency identify cohorts of individuals with potential exposure, including adults who lived or worked on the base and children who lived on the base (including those that may have been exposed while in utero), and conduct a feasibility assessment to address the issues involved in planning future studies at the base.

In October 2008, the Department of the Navy issued a letter to Veterans who were stationed at Camp Lejeune while in military service between 1957 and 1987. This letter informed Veterans that the Navy had established a health registry and encouraged them to participate. VA currently provides Veterans with information about this issue and referrals to the Navy registry. Veterans who are a part of this cohort may also apply for enrollment if they are otherwise eligible, and are encouraged to discuss any specific concerns they have about this issue with their health care provider. Veterans are also encouraged to file a claim for VA disability compensation for any injury or illness they believe is related to their military service. VA environmental health clinicians can provide these Veterans with information regarding the potential health effects of exposure to volatile organic compounds and VA's War-Related Illness and Injury Study Centers are also available as a resource to providers.

It is unclear exactly how many people were potentially affected, but some estimates place the number at one million Veterans and family members. Though the Department of the Navy has attempted to contact all servicemembers who were stationed at Camp Lejeune during the three decades of potential exposure, it is possible not everyone was reached or identified. Records over a half-century old may not be available, and the legislation leaves open-ended what "resided" or "stationed" means because there is no limitation such as a minimum time requirement on the base. Consequently, a broad definition of these terms may mean VA's estimates of 500,000 Veterans and 500,000 family members are too conservative.

Because of these concerns, VA recommends that if any enhanced Veteran care is authorized, it should be modeled upon the authority providing for benefits and services for radiation-exposed Veterans and limited to conditions that can be associated with consumption of contaminated water. VA also would recommend that any care for potentially eligible family members be provided by DOD as the exposure is directly related to service at Camp Lejeune.

VA estimates the legislation, as written, would cost $299.7 million in FY 2010, $319.5 million in FY 2011, $1.71 billion over 5 years and $4.16 billion over 10 years.

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This concludes my prepared statement. I would be pleased to answer any questions you or any of the Members of the Committee may have.

THE SECRETARY OF VETERANS AFFAIRS,
Washington, DC, January 26, 2010.

Hon. DANIEL K. AKAKA,
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Department of Veterans Affairs (VA) understands that the Committee will be considering S. 1518 during the mark-up scheduled for January 28, 2009. VA recognizes that servicemembers sometimes face exposure to toxicants or materials in the course of their military service that can have deleterious health effects. We take this issue very seriously; however, VA would like to reiterate several concerns with the bill that were previously discussed in our October 21, 2009, testimony. In particular, we would like to emphasize the following:

- Should it be enacted, S. 1518 would provide new and unprecedented eligibility for VA health care to certain dependents who resided at Camp Lejeune over a more than thirty-year period.
- VA estimated that the legislation could apply to 500,000 dependents, although this number could be conservative. VA recommends that if any enhanced Veteran care is authorized, it should be modeled upon the authority providing benefits and services to radiation-exposed Veterans and limited to conditions that can be associated with consumption of contaminated water.
- If enacted, VA suggests that dependents' health care would be better placed under TRICARE, a health system much better suited to treatment of dependents.
- VA estimated that the legislation, as written, would cost $299.7 million in FY 2010, $319.5 million in FY 2011, $1.71 billion over 5 years, and $4.16 billion over 10 years.

VA very much appreciates your leadership and support of programs to assist our Nation's Veterans. Should your staff need additional information, please have them contact David Ballenger in the Office of Congressional and Legislative Affairs.

Sincerely,

ERIC K. SHINSEKI.

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SUPPLEMENTAL VIEWS OF MR. RICHARD M. BURR

Although I appreciate the Committee's effort to provide a mechanism through which veterans, servicemembers, and dependents exposed to water contaminants at Camp Lejeune can receive necessary medical treatment based on their exposure, I believe the approach taken in the Committee bill is flawed. Furthermore, I believe this report does not fully account for the contentious debate within the scientific community regarding the extent of water contamination at Camp Lejeune, the revelations about additional contaminants (most prominently, benzene) that have recently come to light, and the erosion of confidence that many affected individuals have in the Department of Defense because of its slow and, often, adversarial role in bringing facts of the contamination into full public view.

As mentioned in the report above, in June 2009, the NRC issued a report entitled "Contaminated Water Supplies at Camp Lejeune—Assessing Potential Health Effects." Not mentioned, however, is the fact that this congressionally-mandated report has been criticized by certain members of the scientific community, including one of the peer reviewers who provided the NRC with input on the report, primarily because it failed to conduct a hazard assessment of the two known carcinogens present in the base water system, benzene and vinyl chloride. The most significant of these is benzene, an ingredient in gasoline that is known to cause childhood and adult leukemia. The absence of a comprehensive analysis of the presence and harmful effects of benzene in the NRC report has become a significant issue, particularly since it was disclosed in March 2010 that the ATSDR, the Federal agency statutorily tasked with studying the contamination at Camp Lejeune, discovered documents from Navy contractors working at Camp Lejeune indicating the fuel losses from underground storage tanks at the base may have reached 800,000 to 1,000,000 gallons and spanned the period 1957 to 1987. It is the regularity of new information surfacing regarding the water contamination that is disturbing, and it calls into question whether DOD is fully committed to resolving this matter in a way that fulfills its stated concern for the health and welfare of the affected Marines, sailors, civilian employees, and their families who lived and worked at Camp Lejeune.

For this primary reason, the Committee bill fails to recognize the distinct distrust of the Navy, Marine Corps, and DOD that is felt by Camp Lejeune Marines, sailors, and their families. Those personally affected by the contamination on the base find it objectionable that the organizations they hold responsible for their medical conditions would become responsible for their health care, especially when those same organizations have yet to accept responsibility for the contamination that occurred.

Furthermore, I take issue with this report's reference to Secretary Shinseki's letter which states that "dependents' health care would be better placed under TRICARE, a health system much better suited to treatment of dependents." That letter, and this report, makes no mention of exactly why that would be the case. First, all of the affected "dependents" from the Camp Lejeune water contamination are now adults. So, if it is a question of lacking pediatric providers that the Secretary was referring to, that is not an issue here. Secondly, VA has an entire health care program (CHAMPVA) devoted to the treatment needs of certain dependents of veterans; it has a specific program of health care for children of Vietnam veterans born with certain birth defects; and it provides health care to veterans who have conditions related to myriad exposures, including radiation exposure, Agent Orange exposure, exposure to contaminants present during Project Shipboard Hazard and Defense tests, and others. The assertion that somehow TRICARE is "better suited" to provide care to affected individuals is contradicted by these facts.

In addition, from a functional perspective, the DOD TRICARE program is comprised of hundreds of independent providers of medical care loosely organized in three regional networks, whereas VA is an integrated health care delivery system. TRICARE is not structured to identify and effectively treat individuals who are eligible for care only associated with exposure-related illnesses or conditions. In contrast, VA has a history of delivering health care to those specific populations, to include affected family members. I am highly skeptical that the TRICARE network would be able to care for such a unique group without significant complications and inefficiencies. At the very least, the Committee should have explored this question before acting. That is why the bill I introduced (S. 1518), and the amendment I offered at the Committee's markup, follows existing precedent and recognizes VA as the sole government agency with resident expertise in such specific treatment and care.

I would like to make one additional point about my bill before I continue. At the Committee's October 21, 2009, legislative hearing the Administration offered its views on S. 1518, the Caring for Camp Lejeune Veterans Act of 2009. The Administration testified that an estimate of 500,000 dependents would be eligible for VA health care under my bill, a number it later called as potentially "too conservative." The Administration then recommended an approach ultimately adopted in the Committee bill, i.e., that DOD be the provider of health care for affected Lejeune family members. To the extent the majority relied on VA's estimates to inform its policy on this matter, I would like to point out that the Congressional Budget Office provided preliminary views on S. 1518 in which it estimated fewer than 10,000 affected Lejeune family members would receive VA health care between 2011 and 2015. Thus, there is reason to believe that VA's estimates are significantly off the mark. It is regrettable if those estimates, or a misreading of them, led to the policy contained in the Committee bill.

I am also concerned with the aspect of the Committee bill that would establish a Science Advisory Panel to support an Advisory Board tasked with making benefit recommendations to both VA

and DOD. The members of the Science Advisory Panel would have the responsibility to review exposure claims at military installations and recommend action, but the Committee bill does not address whether this panel would duplicate or influence the current Title 42, United States Code, responsibilities vested in the ATSDR to conduct scientific inquiries of military installations where environmental contamination and human exposure has occurred and has been verified by the Environmental Protection Agency.

Further, the Committee bill would task DOD with the lead role in providing information to the Advisory Board, but there is no requirement in the Committee bill that DOD do so, or that DOD collaborate in good faith with the VA or the Advisory Panel. As I discussed above, there is a tremendous suspicion of the military's involvement in these matters. The Committee bill would only serve to amplify that distrust.

And finally, a glaring procedural problem with the Committee bill is that it was advanced without the support of the Armed Services Committee, the Senate Committee which has sole jurisdiction over the TRICARE program. Veterans and family members have waited too long for action by the Congress on their exposure claims. By reporting a bill that arguably is within another Committee's jurisdiction, I fear the only thing the Committee has advanced on their behalf is more delay and frustration.

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CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the original bill as ordered reported.

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