

Union Calendar No. 504

113TH CONGRESS
2^D SESSION

H. R. 5094

[Report No. 113-672, Part I]

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to recoup certain bonuses or awards paid to employees of the Department of Veterans Affairs.

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2014

Mr. MILLER of Florida introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 12, 2014

Additional sponsors: Mrs. BLACKBURN and Mr. ROE of Tennessee

DECEMBER 12, 2014

Reported from the Committee on Veterans' Affairs with amendments

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 12, 2014

The Committee on Oversight and Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on July 14, 2014]

A BILL

To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to recoup certain bonuses or awards paid to employees of the Department of Veterans Affairs.

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. AUTHORITY TO RECOUP BONUSES OR AWARDS**

4 **PAID TO EMPLOYEES OF DEPARTMENT OF**
5 **VETERANS AFFAIRS.**

6 *(a) IN GENERAL.—Chapter 7 of title 38, United States*
7 *Code, is amended by adding at the end the following new*
8 *section:*

9 **“§ 714. Recoupment of bonuses or awards paid to em-**
10 **ployees of Department**

11 *“(a) RECOUPMENT.—Notwithstanding any other pro-*
12 *vision of law, the Secretary may issue an order directing*
13 *an employee of the Department to repay the amount, or*
14 *a portion of the amount, of any award or bonus paid to*
15 *the employee under title 5, including under chapters 45 or*
16 *53 of such title, or this title if—*

17 *“(1) the Secretary determines such repayment*
18 *appropriate pursuant to regulations prescribed by the*
19 *Secretary to carry out this section; and*

20 *“(2) the employee is afforded notice and an op-*
21 *portunity for a hearing conducted by the Secretary.*

22 *“(b) REVIEW.—The decision of the Secretary regarding*
23 *a repayment by an employee pursuant to subsection (a) is*
24 *final and may not be reviewed by any other agency or any*
25 *court.”.*

1 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
 2 *the beginning of such chapter is amended by adding at the*
 3 *end the following new item:*

“714. Recoupment of bonuses or awards paid to employees of Department.”.

4 (c) *EFFECTIVE DATE.*—*Section 714 of title 38, United*
 5 *States Code, as added by subsection (a), shall apply with*
 6 *respect to an award or bonus paid by the Secretary of Vet-*
 7 *erans Affairs to an employee of the Department of Veterans*
 8 *Affairs before, on, or after the date of the enactment of this*
 9 *Act.*

10 (d) *CONSTRUCTION.*—*Nothing in this Act or the*
 11 *amendments made by this Act may be construed to modify*
 12 *the certification issued by the Office of Personnel Manage-*
 13 *ment and the Office of Management and Budget regarding*
 14 *the performance appraisal system of the Senior Executive*
 15 *Service of the Department of Veterans Affairs.*

16 **SEC. 2. LIMITATIONS ON SUBCONTRACTS UNDER CON-**
 17 **TRACTS WITH SMALL BUSINESS CONCERNS**
 18 **OWNED AND CONTROLLED BY VETERANS.**

19 (a) *IN GENERAL.*—*Section 8127 of title 38, United*
 20 *States Code, is amended—*

21 (1) *by redesignating subsection (l) as subsection*
 22 *(m); and*

23 (2) *by inserting after subsection (k) the following*
 24 *new subsection (l):*

1 “(l) *LIMITATIONS ON SUBCONTRACTING.—(1)(A) The*
2 *requirements applicable to a covered small business concern*
3 *under section 46 of the Small Business Act (15 U.S.C. 657s)*
4 *shall apply with respect to a small business concern owned*
5 *and controlled by a veteran with a service-connected dis-*
6 *ability or a small business concern owned and controlled*
7 *by a veteran that is awarded a contract that is counted*
8 *for purposes of meeting the goals under subsection (a).*

9 “(B) *For purposes of applying the requirements of sec-*
10 *tion 46 of the Small Business Act (15 U.S.C. 657s) pursu-*
11 *ant to subparagraph (A), the term ‘similarly situated enti-*
12 *ty’ used in such section 46 includes a subcontractor for a*
13 *small business concern owned and controlled by a veteran*
14 *with a service-connected disability or a small business con-*
15 *cern owned and controlled by a veteran described in such*
16 *subparagraph (A).*

17 “(2) *Before awarding a contract that is counted for*
18 *purposes of meeting the goals under subsection (a), the Sec-*
19 *retary shall obtain from an offeror a certification that the*
20 *offeror will comply with the requirements described in para-*
21 *graph (1)(A) if awarded the contract. Such certification*
22 *shall—*

23 “(A) *specify the exact performance requirements*
24 *applicable under such paragraph; and*

1 “(B) explicitly acknowledge that the certification
2 is subject to section 1001 of title 18.

3 “(3) If the Secretary determines that a small business
4 concern that is awarded a contract that is counted for pur-
5 poses of meeting the goals under subsection (a) did not act
6 in good faith with respect to the requirements described in
7 paragraph (1)(A), the small business concern shall be sub-
8 ject to the penalties specified in—

9 “(A) section 16(g)(1) of the Small Business Act
10 (15 U.S.C. 645(g)(1)); and

11 “(B) section 1001 of title 18.

12 “(4)(A) The Director of Small and Disadvantaged
13 Business Utilization for the Department, established pursu-
14 ant to section 15(k) of the Small Business Act (15 U.S.C.
15 644(k)), and the Chief Acquisition Officer of the Depart-
16 ment, established pursuant to section 1702 of title 41, shall
17 jointly implement a process using the systems described in
18 section 16(g)(2) of the Small Business Act (15 U.S.C.
19 645(g)(2)), or any other systems available, to monitor com-
20 pliance with this subsection. The Director and the Chief Ac-
21 quisition Officer shall jointly refer any violations of this
22 subsection to the Inspector General of the Department.

23 “(B) Not later than November 30 of each year, the In-
24 spector General shall submit to the Committees on Veterans’
25 Affairs of the Senate and House of Representatives a report

1 *for the fiscal year preceding the fiscal year during which*
2 *the report is submitted that includes, for the fiscal year cov-*
3 *ered by the report—*

4 “(i) *the number of referred violations received*
5 *under subparagraph (A); and*

6 “(ii) *the disposition of such referred violations,*
7 *including the number of small business concerns sus-*
8 *pending or debarred from Federal contracting or re-*
9 *ferred to the Attorney General for prosecution.”.*

10 (b) *EFFECTIVE DATE.—Subsection (l) of section 8127*
11 *of title 38, United States Code, as added by subsection (a)*
12 *shall apply with respect to a contract entered into after the*
13 *date of the enactment of this Act.*

14 **SEC. 3. REVIEW OF LISTS OF FORMER PRISONERS OF WAR.**

15 (a) *REVIEW OF LISTS OF PRISONERS OF WAR.—The*
16 *Secretary of Veterans Affairs shall review the VA POW list*
17 *and the DOD POW list to identify any discrepancies in*
18 *such lists.*

19 (b) *INSPECTOR GENERAL REVIEW OF PROCESS.—The*
20 *Inspector General of the Department of Veterans Affairs*
21 *shall review the process by which the Secretary determines*
22 *that a veteran is a former prisoner of war, including wheth-*
23 *er the Secretary is following guidelines established by the*
24 *Secretary to determine that a veteran is a former prisoner*
25 *of war.*

1 (c) *REPORT.*—Not later than 180 days after the date
2 of the enactment of this Act, the Secretary of Veterans Af-
3 fairs shall submit to Congress a report on the VA POW list,
4 including the following:

5 (1) *Any discrepancies, by period of conflict, in*
6 *the number of prisoners of war included on the VA*
7 *POW list and the DOD POW list.*

8 (2) *With respect to veterans included on the VA*
9 *POW list who are not included on the DOD POW*
10 *list, information regarding how such determinations*
11 *were made, including what types of evidence were*
12 *used, in a manner that does not personally identify*
13 *such veterans.*

14 (3) *The results of the review of the Inspector*
15 *General under subsection (b), without change.*

16 (d) *DEFINITIONS.*—*In this section:*

17 (1) *The term “DOD POW list” means the list*
18 *maintained by the Secretary of Defense, acting*
19 *through the Defense Prisoner of War/Missing Per-*
20 *sonnel Office, of members of the Armed Forces who*
21 *were prisoners of war.*

22 (2) *The term “VA POW list” means the list*
23 *maintained by the Secretary of Veterans Affairs of*
24 *veterans whom the Secretary determines are former*
25 *prisoners of war.*

1 **SEC. 4. LIMITATION ON EXPANSION OF DIALYSIS PILOT**
2 **PROGRAM.**

3 (a) *LIMITATION.*—*The Secretary of Veterans Affairs*
4 *shall not expand the dialysis pilot program or create any*
5 *new dialysis capability provided by the Department of Vet-*
6 *erans Affairs in any facility that is not an initial facility*
7 *until after the date that—*

8 (1) *the Secretary has implemented the dialysis*
9 *pilot program at each initial facility for a period of*
10 *not less than two years;*

11 (2) *an independent analysis of the dialysis pilot*
12 *program has been conducted at each initial facility;*
13 *and*

14 (3) *the report required by subsection (b) has been*
15 *submitted.*

16 (b) *REPORT.*—*Not later than 60 days after the date*
17 *of the completion of the independent analysis required by*
18 *subsection (a)(2), the Secretary shall submit to Congress a*
19 *report that—*

20 (1) *includes the results of that independent anal-*
21 *ysis, including a comparison of not only cost but non-*
22 *cost factors such as access to care, quality of care, and*
23 *Veteran satisfaction; and*

24 (2) *addresses any recommendations with respect*
25 *to the dialysis pilot program provided in a report*
26 *prepared by the Government Accountability Office.*

1 (c) *USE OF EXISTING DIALYSIS RESOURCES.*—In
2 order to increase the access of veterans to dialysis care and
3 decrease the amount of time such veterans are required to
4 travel to receive such care, the Secretary shall fully use the
5 dialysis resources of the Department that exist as of the date
6 of the enactment of this Act, including any community di-
7 alysis provider with which the Secretary has entered into
8 a contract or agreement for the provision of such care.

9 (d) *DEFINITIONS.*—In this section:

10 (1) The term “dialysis pilot program” means the
11 pilot demonstration program established by the Sec-
12 retary in 2009 to provide dialysis care to patients at
13 certain outpatient facilities operated by the Depart-
14 ment of Veterans Affairs.

15 (2) The term “initial facility” means one of the
16 four outpatient facilities identified by the Secretary
17 to participate in the dialysis pilot program prior to
18 the date of the enactment of this Act.

Amend the title so as to read: “A bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to recoup certain bonuses or awards paid to employees of the Department of Veterans Affairs, and for other purposes.”.

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