

[Discussion Draft]**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5094
OFFERED BY MR. MILLER OF FLORIDA**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. AUTHORITY TO RECOUP BONUSES OR AWARDS**
2 **PAID TO EMPLOYEES OF DEPARTMENT OF**
3 **VETERANS AFFAIRS.**

4 (a) IN GENERAL.—Chapter 7 of title 38, United
5 States Code, is amended by adding at the end the fol-
6 lowing new section:

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

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

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

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

3 “(b) REVIEW.—The decision of the Secretary regard-
4 ing a repayment by an employee pursuant to subsection
5 (a) is final and may not be reviewed by any other agency
6 or any court.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 at the beginning of such chapter is amended by adding
9 at the end the following new item:

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

10 (c) EFFECTIVE DATE.—Section 714 of title 38,
11 United States Code, as added by subsection (a), shall
12 apply with respect to an award or bonus paid by the Sec-
13 retary of Veterans Affairs to an employee of the Depart-
14 ment of Veterans Affairs before, on, or after the date of
15 the enactment of this Act.

16 (d) CONSTRUCTION.—Nothing in this Act or the
17 amendments made by this Act may be construed to modify
18 the certification issued by the Office of Personnel Manage-
19 ment and the Office of Management and Budget regarding
20 the performance appraisal system of the Senior Executive
21 Service of the Department of Veterans Affairs.

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

4 (a) IN GENERAL.—Section 8127 of title 38, United
5 States Code, is amended—

6 (1) by redesignating subsection (l) as subsection
7 (m); and

8 (2) by inserting after subsection (k) the fol-
9 lowing new subsection (l):

10 “(l) LIMITATIONS ON SUBCONTRACTING.—(1)(A)
11 The requirements applicable to a covered small business
12 concern under section 46 of the Small Business Act (15
13 U.S.C. 657s) shall apply with respect to a small business
14 concern owned and controlled by a veteran with a service-
15 connected disability or a small business concern owned
16 and controlled by a veteran that is awarded a contract
17 that is counted for purposes of meeting the goals under
18 subsection (a).

19 “(B) For purposes of applying the requirements of
20 section 46 of the Small Business Act (15 U.S.C. 657s)
21 pursuant to subparagraph (A), the term ‘similarly situated
22 entity’ used in such section 46 includes a subcontractor
23 for a small business concern owned and controlled by a
24 veteran with a service-connected disability or a small busi-
25 ness concern owned and controlled by a veteran described
26 in such subparagraph (A).

1 “(2) Before awarding a contract that is counted for
2 purposes of meeting the goals under subsection (a), the
3 Secretary shall obtain from an offeror a certification that
4 the offeror will comply with the requirements described in
5 paragraph (1)(A) if awarded the contract. Such certifi-
6 cation shall—

7 “(A) specify the exact performance require-
8 ments applicable under such paragraph; and

9 “(B) explicitly acknowledge that the certifi-
10 cation is subject to section 1001 of title 18.

11 “(3) If the Secretary determines that a small busi-
12 ness concern that is awarded a contract that is counted
13 for purposes of meeting the goals under subsection (a) did
14 not act in good faith with respect to the requirements de-
15 scribed in paragraph (1)(A), the small business concern
16 shall be subject to the penalties specified in—

17 “(A) section 16(g)(1) of the Small Business Act
18 (15 U.S.C. 645(g)(1)); and

19 “(B) section 1001 of title 18.

20 “(4)(A) The Director of Small and Disadvantaged
21 Business Utilization for the Department, established pur-
22 suant to section 15(k) of the Small Business Act (15
23 U.S.C. 644(k)), and the Chief Acquisition Officer of the
24 Department, established pursuant to section 1702 of title
25 41, shall jointly implement a process using the systems

1 described in section 16(g)(2) of the Small Business Act
2 (15 U.S.C. 645(g)(2)), or any other systems available, to
3 monitor compliance with this subsection. The Director and
4 the Chief Acquisition Officer shall jointly refer any viola-
5 tions of this subsection to the Inspector General of the
6 Department.

7 “(B) Not later than November 30 of each year, the
8 Inspector General shall submit to the Committees on Vet-
9 erans’ Affairs of the Senate and House of Representatives
10 a report for the fiscal year preceding the fiscal year during
11 which the report is submitted that includes, for the fiscal
12 year covered by the report—

13 “(i) the number of referred violations received
14 under subparagraph (A); and

15 “(ii) the disposition of such referred violations,
16 including the number of small business concerns sus-
17 pended or debarred from Federal contracting or re-
18 ferred to the Attorney General for prosecution.”.

19 (b) EFFECTIVE DATE.—Subsection (l) of section
20 8127 of title 38, United States Code, as added by sub-
21 section (a) shall apply with respect to a contract entered
22 into after the date of the enactment of this Act.

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

24 (a) REVIEW OF LISTS OF PRISONERS OF WAR.—The
25 Secretary of Veterans Affairs shall review the VA POW

1 list and the DOD POW list to identify any discrepancies
2 in such lists.

3 (b) INSPECTOR GENERAL REVIEW OF PROCESS.—
4 The Inspector General of the Department of Veterans Af-
5 fairs shall review the process by which the Secretary deter-
6 mines that a veteran is a former prisoner of war, including
7 whether the Secretary is following guidelines established
8 by the Secretary to determine that a veteran is a former
9 prisoner of war.

10 (c) REPORT.—Not later than 180 days after the date
11 of the enactment of this Act, the Secretary of Veterans
12 Affairs shall submit to Congress a report on the VA POW
13 list, including the following:

14 (1) Any discrepancies, by period of conflict, in
15 the number of prisoners of war included on the VA
16 POW list and the DOD POW list.

17 (2) With respect to veterans included on the VA
18 POW list who are not included on the DOD POW
19 list, information regarding how such determinations
20 were made, including what types of evidence were
21 used, in a manner that does not personally identify
22 such veterans.

23 (3) The results of the review of the Inspector
24 General under subsection (b), without change.

25 (d) DEFINITIONS.—In this section:

1 (1) The term “DOD POW list” means the list
2 maintained by the Secretary of Defense, acting
3 through the Defense Prisoner of War/Missing Per-
4 sonnel Office, of members of the Armed Forces who
5 were prisoners of war.

6 (2) The term “VA POW list” means the list
7 maintained by the Secretary of Veterans Affairs of
8 veterans whom the Secretary determines are former
9 prisoners of war.

10 **SEC. 4. LIMITATION ON EXPANSION OF DIALYSIS PILOT**
11 **PROGRAM.**

12 (a) LIMITATION.—The Secretary of Veterans Affairs
13 shall not expand the dialysis pilot program or create any
14 new dialysis capability provided by the Department of Vet-
15 erans Affairs in any facility that is not an initial facility
16 until after the date that—

17 (1) the Secretary has implemented the dialysis
18 pilot program at each initial facility for a period of
19 not less than two years;

20 (2) an independent analysis of the dialysis pilot
21 program has been conducted at each initial facility;
22 and

23 (3) the report required by subsection (b) has
24 been submitted.

1 (b) REPORT.—Not later than 60 days after the date
2 of the completion of the independent analysis required by
3 subsection (a)(2), the Secretary shall submit to Congress
4 a report that—

5 (1) includes the results of that independent
6 analysis, including a comparison of not only cost but
7 non-cost factors such as access to care, quality of
8 care, and Veteran satisfaction; and

9 (2) addresses any recommendations with re-
10 spect to the dialysis pilot program provided in a re-
11 port prepared by the Government Accountability Of-
12 fice.

13 (c) USE OF EXISTING DIALYSIS RESOURCES.—In
14 order to increase the access of veterans to dialysis care
15 and decrease the amount of time such veterans are re-
16 quired to travel to receive such care, the Secretary shall
17 fully use the dialysis resources of the Department that
18 exist as of the date of the enactment of this Act, including
19 any community dialysis provider with which the Secretary
20 has entered into a contract or agreement for the provision
21 of such care.

22 (d) DEFINITIONS.—In this section:

23 (1) The term “dialysis pilot program” means
24 the pilot demonstration program established by the
25 Secretary in 2009 to provide dialysis care to patients

1 at certain outpatient facilities operated by the De-
2 partment of Veterans Affairs.

3 (2) The term “initial facility” means one of the
4 four outpatient facilities identified by the Secretary
5 to participate in the dialysis pilot program prior to
6 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.”.

