

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 800
OFFERED BY MS. TITUS OF NEVADA**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Express Appeals Act”.

3 **SEC. 2. PILOT PROGRAM ON FULLY DEVELOPED APPEALS.**

4 (a) IN GENERAL.—The Secretary of Veterans Affairs
5 shall carry out a pilot program to provide the option of
6 an alternative appeals process that shall more quickly de-
7 termine such appeals in accordance with this section.

8 (b) ELECTION.—

9 (1) FILING.—In accordance with paragraph
10 (2), a claimant may elect to file a fully developed ap-
11 peal under the pilot program under subsection (a) by
12 filing with the Secretary the following:

13 (A) The notice of disagreement under
14 chapter 71 of title 38, United States Code,
15 along with the written election of the claimant
16 to have the appeal determined under the pilot
17 program.

1 (B) All evidence that the claimant believes
2 is needed for the appeal as of the date of the
3 filing.

4 (C) A statement of the argument in sup-
5 port of the claim, if any.

6 (2) TIMING.—A claimant shall make an election
7 under paragraph (1) as part of the notice of dis-
8 agreement filed by the claimant in accordance with
9 paragraph (1)(A).

10 (3) REVERSION.—

11 (A) At any time, a claimant who makes an
12 election under paragraph (1) may elect to revert
13 to the standard appeals process. Such a rever-
14 sion shall be final.

15 (B) A claimant described in subparagraph
16 (A), or a claimant who makes an election under
17 paragraph (1) but is later determined to be in-
18 eligible for the pilot program under subsection
19 (a), shall revert to the standard appeals process
20 without any penalty to the claimant other than
21 the loss of the docket number associated with
22 the fully developed appeal.

23 (4) OUTREACH.—In providing claimants with
24 notices of the determination of a claim during the
25 period in which the pilot program under subsection

1 (a) is carried out, the Secretary shall conduct out-
2 reach as follows:

3 (A) The Secretary shall provide to the
4 claimant (and to the representative of record of
5 the claimant, if any) information regarding—

6 (i) the pilot program, including the
7 advantages and disadvantages of the pro-
8 gram;

9 (ii) how to make an election under
10 paragraph (1);

11 (iii) the limitation on the use of new
12 evidence described in paragraph (3) of sub-
13 section (c) and the development of infor-
14 mation under paragraph (4) of such sub-
15 section; and

16 (iv) the ability of the claimant to seek
17 advice and education regarding such proc-
18 ess from veterans service organizations, at-
19 torneys, and claims agents recognized
20 under chapter 59 of title 38, United States
21 Code.

22 (B) The Secretary shall collaborate, part-
23 ner with, and give weight to the advice of the
24 three veterans service organizations with the
25 most members to publish on the Internet

1 website of the Department of Veterans Affairs
2 an online tutorial explaining the advantages and
3 disadvantages of the pilot program.

4 (c) TREATMENT BY DEPARTMENT AND BOARD.—

5 (1) PROCESS.—Upon the election of a claimant
6 to file a fully developed appeal pursuant to sub-
7 section (b)(1), the Secretary shall—

8 (A) not provide the claimant with a state-
9 ment of the case nor require the claimant to file
10 a substantive appeal; and

11 (B) transfer jurisdiction over the fully de-
12 veloped appeal directly to the Board of Vet-
13 erans' Appeals.

14 (2) DOCKET.—

15 (A) The Board of Veterans' Appeals
16 shall—

17 (i) maintain fully developed appeals
18 on a separate docket than standard ap-
19 peals;

20 (ii) decide fully developed appeals in
21 the order that the fully developed appeals
22 are received on the fully developed appeal
23 docket;

24 (iii) except as provided by subpara-
25 graph (B), decide not more than one fully

1 developed appeal for each four standard
2 appeals decided; and

3 (iv) to the extent practicable, decide
4 each fully developed appeal by the date
5 that is one year following the date on
6 which the claimant files the notice of dis-
7 agreement.

8 (B) Beginning one year after the date on
9 which the pilot program under subsection (a)
10 commences, the Board may adjust the number
11 of standard appeals decided for each fully devel-
12 oped appeal under subparagraph (A)(iii) if the
13 Board determines that such adjustment is fair
14 for both standard appeals and fully developed
15 appeals.

16 (3) LIMITATION ON USE OF NEW EVIDENCE.—

17 (A) Except as provided by subparagraphs
18 (B) and (C)—

19 (i) a claimant may not submit or iden-
20 tify to the Board of Veterans' Appeals any
21 new evidence relating to a fully developed
22 appeal after filing such appeal unless the
23 claimant reverts to the standard appeals
24 process pursuant to subsection (b)(3); and

1 (ii) if a claimant submits or identifies
2 any such new evidence, such submission or
3 identification shall be deemed to be an
4 election to make such a reversion pursuant
5 to subsection (b)(3).

6 (B) Subparagraph (A) shall not apply to
7 evidence developed pursuant to paragraphs (4)
8 and (5). The Board shall consider such evidence
9 in the first instance without consideration by
10 the Veterans Benefits Administration.

11 (C) The representative of record of a
12 claimant for appeals purposes, if any, shall be
13 provided an opportunity to review the fully de-
14 veloped appeal of the claimant and submit any
15 additional arguments or evidence that the rep-
16 resentative determines necessary during a pe-
17 riod specified by the Board for purposes of this
18 subparagraph.

19 (4) PROHIBITION ON REMAND FOR ADDITIONAL
20 DEVELOPMENT.—If the Board of Veterans' Appeals
21 determines that a fully developed appeal requires
22 Federal records, independent medical opinions, or
23 new medical exams, the Board shall—

24 (A) in accordance with paragraph (5), take
25 such actions as may be necessary to develop

1 such records, opinions, or exams in accordance
2 with section 5103A of title 38, United States
3 Code;

4 (B) retain jurisdiction of the fully devel-
5 oped appeal without requiring a determination
6 by the Veterans Benefits Administration based
7 on such records, opinions, or exams;

8 (C) ensure the claimant, and the represent-
9 ative of record of a claimant, if any, receives a
10 copy of such records, opinions, or exams; and

11 (D) provide the claimant a period of 90
12 days after the date of mailing such records,
13 opinions, or exams during which the claimant
14 may provide the Board any additional evidence
15 without requiring the claimant to make a rever-
16 sion pursuant to subsection (b)(3).

17 (5) DEVELOPMENT UNIT.—

18 (A) The Board of Veterans' Appeals shall
19 establish an office to develop Federal records,
20 independent medical opinions, and new medical
21 exams pursuant to paragraph (4)(A) that the
22 Board determines necessary to decide a fully
23 developed appeal.

24 (B) The Secretary shall—

1 (i) ensure that the Veterans Benefits
2 Administration cooperates with the Board
3 of Veterans' Appeals in carrying out sub-
4 paragraph (A); and

5 (ii) transfer employees of the Veterans
6 Benefits Administration who, prior to the
7 enactment of this Act, were responsible for
8 processing claims remanded by the Board
9 of Veterans' Appeals to positions within
10 the office of the Board established under
11 subparagraph (A) in a number the Sec-
12 retary determines sufficient to carry out
13 such subparagraph.

14 (6) HEARINGS.—Notwithstanding section 7107
15 of title 38, United States Code, the Secretary may
16 not provide hearings with respect to fully developed
17 appeals. If a claimant requests to hold a hearing
18 pursuant to such section 7107, such request shall be
19 deemed to be an election to revert to the standard
20 appeals process pursuant to subsection (b)(3).

21 (d) DURATION; APPLICATION.—The Secretary shall
22 carry out the pilot program under subsection (a) for a five-
23 year period beginning not later than one year after the
24 date of the enactment of this Act. This section shall apply

1 only to fully developed appeals that are filed during such
2 period.

3 (e) REPORTS.—During each year in which the pilot
4 program under subsection (a) is carried out, the Secretary
5 shall submit to the Committees on Veterans' Affairs of
6 the House of Representatives and the Senate a report on
7 the pilot program. The first such report shall be submitted
8 by not later than 180 days after the date on which the
9 pilot program commences. Each report shall include the
10 following:

11 (1) For the period covered by the report—

12 (A) the number of claimants who filed a
13 fully developed appeal under the pilot program;

14 (B) the average processing time for each
15 such appeal, measured by each phase of the ap-
16 peal, and, if the processing time for appeals ex-
17 ceed one year, the reasons for such processing
18 time;

19 (C) a summary of reasons for which the
20 development of evidence was required under
21 subsection (c)(5);

22 (D) the number of issues decided, listed by
23 the disposition of the issue;

24 (E) of the number identified in subpara-
25 graph (D), the number of issues for which evi-

1 dence was not so developed, listed by the dis-
2 position of the issue;

3 (F) of the number of fully developed ap-
4 peals decided by the Board of Veterans' Ap-
5 peals, the number of cases from each agency of
6 original jurisdiction, listed by the disposition of
7 the issue;

8 (G) the number of fully developed appeals
9 appealed to the Court of Appeals for Veterans
10 Claims, listed by the disposition of the case;

11 (H) the number of reversions made under
12 subsection (b)(3); and

13 (I) any reasons for why a claimant was de-
14 termined to be ineligible to participate in the
15 pilot program.

16 (2) A review, made in conjunction with veterans
17 service organizations, of the efforts of the Secretary
18 to provide clear rating decisions and improve dis-
19 ability rating notification letters, including with re-
20 spect to—

21 (A) the opinions of veterans service organi-
22 zations regarding such efforts; and

23 (B) how the pilot program improves such
24 efforts.

1 (3) A recommendation for any changes to im-
2 prove the pilot program.

3 (4) An assessment of the feasibility and advis-
4 ability of expanding the pilot program.

5 (f) REGULATIONS.—Not later than one day after the
6 date of the enactment of this Act, the Secretary shall pub-
7 lish interim guidance on the pilot program under sub-
8 section (a). Not later than 90 days after such date of en-
9 actment, the Secretary shall prescribe regulations to carry
10 out such pilot program.

11 (g) DEFINITIONS.—In this section:

12 (1) The term “claimant” has the meaning given
13 that term in section 5100 of title 38, United States
14 Code.

15 (2) The term “compensation” has the meaning
16 given that term in section 101 of title 38, United
17 States Code.

18 (3) The term “fully developed appeal” means
19 an appeal of a claim for disability compensation that
20 is—

21 (A) filed by a claimant in accordance with
22 subsection (b)(1); and

23 (B) considered in accordance with this sec-
24 tion.

1 (4) The term “standard appeal” means an ap-
2 peal of a claim for disability compensation that is
3 not a fully developed appeal.

