

## Calendar No. 123

112TH CONGRESS }  
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SENATE

{ REPORT  
112-42

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### CARING FOR CAMP LEJEUNE VETERANS ACT OF 2011

—————  
AUGUST 1, 2011.—Ordered to be printed  
—————

Mrs. MURRAY, from the Committee on Veterans' Affairs,  
submitted the following

### R E P O R T

[To accompany S. 277]

The Committee on Veterans' Affairs (hereinafter, "the Committee"), to which was referred the bill (S. 277), to amend title 38, United States Code (hereinafter, "U.S.C."), to provide 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, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

#### INTRODUCTION

On February 3, 2011, Committee Ranking Member Richard Burr introduced S. 277, to provide 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, and for other purposes. Senators Grassley, Hagan, and Nelson of Florida were original cosponsors. Senators Blumenthal, Graham, Harkin, Isakson, and Johanns were later added as cosponsors.

On June 8, 2011, the Committee held a hearing on pending health and benefits legislation, including S. 277. Testimony was offered by: Robert L. Jesse, M.D., Ph.D., Principal Deputy Under Secretary for Health, Veterans Health Administration, Department of Veterans Affairs; Jeff Steele, Assistant Legislative Director, The American Legion; Joseph Violante, National Legislative Director, Disabled American Veterans; Raymond Kelley, Director, National Legislative Service, Veterans of Foreign Wars of the United States;

and Jerry Ensminger, Master Sergeant, United States Marine Corps (Ret.).

#### COMMITTEE MEETING

After carefully reviewing the testimony from the June 8, 2011, hearing, the Committee met in open session on June 29, 2011, to consider, among other legislation, an amended version of S. 277. The Committee voted without dissent to report favorably S. 277, as amended, to the Senate.

#### SUMMARY OF S. 277 AS REPORTED

S. 277, as reported (hereinafter, “the Committee bill”), would 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, and for other purposes.

Section 1 would establish the short title for the bill, “Caring for Camp Lejeune Veterans Act of 2011.”

Section 2 would provide certain veterans and their families with eligibility for hospital care, medical services, and nursing home care through the Department of Veterans Affairs (hereinafter, “VA”) if they were stationed or resided at Camp Lejeune, North Carolina, during the period that the water was contaminated on Camp Lejeune. It would also require the Department of Defense (hereinafter, “DOD”) to reimburse VA for the costs of that care.

Section 3 would require DOD to merge and consolidate the system of commissaries and exchange stores to achieve a single system of stores.

#### 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. On a few 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.

At an October 8, 2009, hearing, one exposure that was specifically addressed by the Committee was the water contamination at Camp Lejeune. The extent of the exposure at Camp Lejeune is considered to have been the result of the largest domestic environmental contamination incident in the history of DOD and the complexity and scope of the contamination presented questions that were both significant and unprecedented because of exposure to military personnel and their dependents.

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 and is the largest East Coast base of the United States 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 ap-

proximately 180 feet below the ground. Groundwater is pumped from wells located throughout the base. After the water is treated, it is stored in ground and elevated storage reservoirs. When needed, the treated water is pumped from the reservoirs and tanks to facilities such as offices, schools, or houses on the base. Camp Lejeune's only source of drinking water is ground water wells.

According to the U.S. Marine Corps, Camp Lejeune officials in 1980 first became aware of volatile organic compounds (hereinafter, "VOCs") in finished drinking water (tap water) samples that were being collected to comply with future drinking water standards. After those results were compiled, none of the water supply wells were tested for VOCs. In January 1982, the Navy 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, continued testing identified two VOCs—trichloroethylene (hereinafter, "TCE"), a metal degreaser used for industrial purposes on the base, and perchloroethylene (hereinafter, "PCE"), a dry cleaning solvent—in two water systems that served Camp Lejeune base housing areas: Hadnot Point and Tarawa Terrace. Base officials stated they did not know the source of these VOCs; water treatment plants and piping infrastructure were investigated as the possible sources, but were eliminated as possible sources in 1983. Following that unsubstantiated explanation, there was no effort to test the water supply wells for VOCs.

That same year, the NACIP initial assessment study was published. This study eventually led to the sampling of individual water supply wells in 1984. A direct association between VOCs in the 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 July 1984, but analysis of those samples was not received at Camp Lejeune until November 1984. Officials at Camp Lejeune confirmed the wells were impacted by VOCs in November 1984 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. 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 National Academy of Sciences (hereinafter, "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 for the Tarawa Terrace area 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, ATSDR conducted a public health assessment (hereinafter, "PHA") at Camp Lejeune that was required by law, under title 42, U.S.C., because of the installation's listing on the National Priorities List. 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. In 1998, ATSDR completed a birth outcome study of women who conceived or gave birth to children while at Camp Lejeune and concluded that drinking water contaminated with VOCs may be associated with decreased average birth weight-for-gestational-age births in infants born to mothers over the age of 35 or in women who had a history of adverse pregnancy outcomes. As reported by ATSDR, health outcomes linked to exposure to PCE and TCE include eye defects, miscarriages, fetal death, leukemia, and many forms of cancer.

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 TCE and PCE in 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 between exposure to TCE and PCE and adverse health outcomes.

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 inclusive in results to make an in-

formed 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 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. It is informative to note that the EPA has issued a new draft risk assessment for TCE which classifies TCE as a “known human carcinogen.”

In 2007, 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 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 pregnancies, 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 a hearing in the 111th Congress 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 ATSDR’s additional health studies before making policy decisions about how to follow up on the evident solvent exposures on the base and their possible health consequences.

In 2009, ATSDR retracted the 1997 PHA after ATSDR acknowledged it had not fully investigated the extent of benzene contamination on the base. ATSDR will reissue a revised PHA and continues to conduct a series of studies and surveys to investigate the contamination of the water system at Camp Lejeune. The most prominent of these is a Water Model, which will synthesize the data from multiple samples of the water and other data in order to map out the most likely dispersion and concentration of the VOCs on various areas of the base. The Water Model and a Mortality Study of former base military personnel are expected to be completed by early 2012. ATSDR also began in July 2011 a Health Survey to be sent to 300,000 former residents of the base, military and civilian. This survey is expected to be completed by 2014.

At the June 8, 2011, hearing, Jerry Ensminger, a retired Marine Corps Master Sergeant, testified that his daughter, who was conceived, carried, and born at Camp Lejeune, died at age nine after she was diagnosed with acute lymphoblastic leukemia. Mr. Ensminger, a member of ATSDR’s Community Assistance Panel for its Camp Lejeune studies, indicated that, since 2009, significant new information pertaining to extensive fuel leaks from underground tanks on the base and subsequent benzene contamination had been discovered by ATSDR during reviews of previously unavailable documents and that, in some of those documents, Navy contractors had estimated the magnitude of the fuel losses on the base at close to one million gallons over several decades. The ATSDR Water Model will ascertain the severity of benzene contamination in the base drinking water. VA’s Dr. Jesse testified that one million people may have been exposed to hazardous chemicals in the Camp Lejeune well water.

Also of note, at the Louisville, Kentucky, Regional Office, VA has consolidated all disability claims based on exposure to contaminated drinking water at Camp Lejeune from veterans throughout the United States. A team of VA employees there is tasked with reviewing and adjudicating these claims. As of the June 8, 2011, hearing, that office had adjudicated 125 such claims and had granted service connection in 22 percent of those cases. That office had another 967 claims based on the contaminated water pending adjudication.

*Committee Bill.* The Committee bill would authorize health care benefits through VA to certain veterans for any illness that is attributable to the contaminated drinking water on Camp Lejeune beginning in fiscal year 2013. The Committee bill would provide health care benefits to spouses and dependents of veterans for conditions associated with exposure to the contaminated drinking water on Camp Lejeune. The Committee bill would direct DOD to transfer funds to VA to cover the costs of the health care provided to these veterans and their families. In order to pay for the increase in funding for providing health care to veterans and their families, the Committee bill would decrease DOD spending by consolidating the systems of commissary and exchange stores in DOD.

Section 2(a) of the Committee bill would amend section 1710(e)(1) of title 38, U.S.C., to add a new subparagraph (F), that would authorize VA to provide veterans who were stationed at Camp Lejeune during the period the water was contaminated with hospital care, medical services, and nursing home care for any illness, despite insufficient evidence that the illness is attributable to the contamination.

Section 2(b) of the Committee bill would amend subchapter VIII of chapter 17 of title 38, U.S.C., by adding a new section 1787 that would make family members of Camp Lejeune veterans eligible for hospital care, medical services, and nursing home care for conditions that are associated with exposure to the VOCs known to have been in the water at Camp Lejeune, North Carolina. VA would be required to promulgate regulations that specify the conditions associated with the exposure, and disabilities related to those conditions.

Section 2(c) of the Committee bill would amend section 8111 of title 38, U.S.C., by adding new subsection (f) that would require DOD and VA to enter into an agreement for DOD to reimburse VA for the costs of providing hospital care to veterans and their dependents under this bill. The costs would include the overhead and administrative costs of the care and services provided to veterans and their dependents. The Committee believes that DOD should reimburse VA for costs of treating the Camp Lejeune veterans and their family members.

Section 2(d) of the Committee bill would provide that the changes made by section 2 would take effect on October 1, 2012, and apply with respect to care provided on or after that date.

Section 3 of the Committee bill would, in a freestanding provision, direct DOD to merge and consolidate the system of commissary stores and the system of exchange stores into a single system of commissary and exchange stores to eliminate duplicative administrative functions. This section would instruct DOD to achieve a single system of stores that would operate on a self-sufficient

basis without the need for appropriated funds by September 30, 2015.

It is the Committee's intent that this provision would create management efficiencies by consolidating management functions. It is not the Committee's intent to close or consolidate individual stores. The longstanding issue of the contaminated water on Camp Lejeune will not be resolved without a coordinated effort from the Committee on Armed Services of the Senate (hereinafter, "SASC"), DOD, VA and this Committee. The Committee is not opposed to entertaining an alternative cost savings provision within the DOD budget that SASC may deem appropriate to fulfill the intent of this legislation.

#### 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 the Congressional Budget Office (hereinafter, "CBO"), estimates that enactment of the Committee bill would, relative to current law, reduce discretionary costs by about \$2 billion over the 2012–2016 period, but would not affect direct spending or revenues. Enactment of the Committee bill would not affect the budget of state, local, or tribal governments.

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

CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 25, 2011.*

Hon. PATTY MURRAY,  
*Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.*

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 277, the Caring for Camp Lejeune Veterans Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ann E. Futrell.

Sincerely,

DOUGLAS W. ELMENDORF,  
*Director.*

Enclosure.

#### *S. 277—Caring for Camp Lejeune Veterans Act of 2011*

Summary: S. 277 would authorize a new federal health benefit for former military members who were stationed at Camp Lejeune, North Carolina, and their dependents whose health was affected by exposure to environmental contaminants while residing on the base. The bill also would consolidate the Department of Defense (DOD) Commissary and Exchange Systems. CBO estimates that implementing this bill would, in total, reduce discretionary costs by about \$2 billion over the 2012–2016 period, assuming appropriation actions consistent with the bill.

Enacting S. 277 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 277 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 277 is shown in the following table. The costs of this legislation fall within budget functions 050 (national defense) and 700 (veterans benefits and services).

	By fiscal year, in millions of dollars—					
	2012	2013	2014	2015	2016	2012–2016
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Camp Lejeune Health Benefits:						
Estimated Authorization Level .....	0	32	101	155	193	481
Estimated Outlays .....	0	29	93	149	188	459
Department of Defense Retail Consolidation:						
Estimated Authorization Level .....	0	0	–400	–1,000	–1,700	–3,100
Estimated Outlays .....	0	0	–300	–800	–1,400	–2,500
Total Changes:						
Estimated Authorization Level .....	0	32	–299	–845	–1,507	–2,619
Estimated Outlays .....	0	29	–207	–651	–1,212	–2,041

Basis of estimate: For this estimate, CBO assumes the legislation will be enacted near the start of fiscal year 2012, that the authorized amounts will be provided near the start of fiscal year 2013 and each subsequent fiscal year, and that outlays will follow historical patterns for similar and existing programs.

#### *Camp Lejeune Health Benefits*

Effective October 1, 2012, section 2 would authorize creation of a new federal health benefit for former military members who were stationed at Camp Lejeune, North Carolina, and their dependents whose health was affected by environmental contamination. The drinking water at Camp Lejeune was contaminated from 1957 through 1987, allegedly causing higher incidence rates of some cancers (for example, esophageal, breast, and kidney), birth defects, and other physical ailments.

Based on information from the Department of Defense, CBO estimates that 650,000 people were stationed at Camp Lejeune during the period of contamination. However, CBO expects that less than 10 percent of those individuals would eventually be newly enrolled to receive certain health care benefits provided by the Department of Veterans Affairs. That estimate is based on take-up rates for two other government programs that provide compensation for occupational illnesses: the Radiation Exposure Compensation Program 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 beneficiaries either would not have adequate proof of an ailment connected to the contamination (for dependents), would not be able to be located, or would have died.

Of those who enroll for health benefits in the first five years, CBO estimates that most—about 42,000—would be former military members, while the rest—about 3,000—would be spouses and children of former servicemembers. We expect that use of this program would phase in over time, with about 9,000 individuals enrolling in the first year. CBO uses disease prevalence rates from the Surveillance Epidemiology and End Results Cancer Statistics Review to estimate roughly how many spouses and children may have diseases that would make them eligible for health benefits.



Based on the cost of health benefits provided to veterans exposed to other environmental contamination, CBO estimates that the cost of health care for each eligible veteran would be about \$2,700 in 2013. For spouses and children, CBO assumes higher health care costs similar to those for health benefits provided by EEOICP. CBO estimates that the annual cost of the new health benefit for dependents would be about \$10,700 in 2013 for each approved claim. Costs for dependents would be higher than the average annual medical costs for veterans because the bill specifies that spouses and children must be diagnosed with diseases and conditions directly related to the exposures in question. 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.

Based on costs for existing programs, CBO estimates administrative costs to process the new health claims would amount to \$43 million over the 2013–2016 period. CBO assumes a gradual implementation rate to reflect the time necessary to establish regulations.

In total, CBO estimates that providing health benefits to veterans and their family members previously stationed at Camp Lejeune would cost \$459 million over the 2013–2016 period, assuming appropriation of the necessary amounts.

#### *Department of Defense retail consolidation*

Section 3 would require DOD to combine their retail stores into a single system, beginning in fiscal year 2013. Currently DOD operates a network of grocery stores (commissaries) that serves all branches of the armed forces and three separate chains of general retail stores (exchanges). One system of exchanges serves the Army and Air Force, a second serves the Navy, and a third serves the Marine Corps. The bill would combine all those entities into one system, and require the consolidated system to be self-sustaining (that is, operate without appropriations) starting in fiscal year 2016.

Currently the commissary system relies on appropriated funds to pay its operating costs. In fiscal year 2011, the commissary system has received appropriations of approximately \$1.3 billion to pay for the salaries of employees, the transportation of its inventory, and other costs associated with operating and maintaining approximately 250 stores. The commissary's inventory is financed on a revolving basis, using the cash generated from sales of that inventory.

The three exchange systems are less reliant on appropriations. Although certain expenses of the exchanges are paid for through appropriations—including the transportation of certain items and the salaries of military personnel employed by the exchanges—the majority of the exchanges' costs are funded from sales revenues generated by the exchanges. Based on information from DOD, CBO estimates that appropriations provided to DOD cover approximately \$200 million of exchange-related costs annually.

Overall, CBO estimates that DOD's retail system currently receives approximately \$1.5 billion in appropriated funds each year, and, including the effects of inflation, those systems could expect to receive approximately \$1.7 billion in 2016. For the retail system

to operate without appropriated funds, CBO anticipates that two adjustments would be necessary: consolidating headquarters and certain operations and an increase in sales revenue. CBO estimates that the efficiencies that would result from consolidating operations would produce approximately 20 percent of the saving necessary for the combined system to achieve self-sufficiency.

The remaining portion of the funds to operate a self-sufficient system would need to be generated through increasing prices in the combined system. The commissary and exchange systems currently offer their patrons savings of approximately 30 percent and 20 percent, respectively, as compared to retail operations in the private sector. CBO estimates that prices in the combined system would need to rise by approximately 7 percent to generate sufficient revenue to offset the loss of appropriated funds. Assuming that the retail system is fully consolidated by 2015, that such a price increase is phased in gradually over the 2013–2016 period, and that appropriations are in turn reduced over the same period, CBO estimates that implementing section 3 of the bill would yield discretionary savings of \$2.5 billion over the 2013–2016 period.

Intergovernmental and private-sector impact: S. 277 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

*Estimate prepared by:* Federal Costs: Health Benefits—Ann E. Futrell; DOD Retail Consolidation—Jason Wheelock; 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 or result in any impact on the personal privacy of any individuals and that the paperwork resulting from enactment would be minimal.

#### TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7(b) 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 June 29, 2011, meeting. On that date, the Committee, by voice vote, without objection, ordered to favorably report S. 277, as amended.

#### AGENCY REPORT

On June 8, 2011, Robert L. Jesse, M.D., Ph.D., Principal Deputy Under Secretary for Health, Veterans Health Administration, VA, appeared before the Committee and submitted testimony on, among other items, S. 277. Excerpts from this statement are reprinted below:

ROBERT L. JESSE, M.D., PH.D., PRINCIPAL DEPUTY  
 UNDER SECRETARY FOR HEALTH, VETERANS  
 HEALTH ADMINISTRATION, DEPARTMENT OF  
 VETERANS AFFAIRS

Good Morning Chairman Murray, Ranking Member Burr and Members of the Committee. Thank you for inviting me here today to present the Administration's views on several bills that would affect Department of Veterans Affairs (VA) benefits programs and services.

\* \* \* \* \*

S. 277, CARING FOR CAMP LEJEUNE VETERANS ACT OF 2011

S. 277 would amend title 38 to extend special 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 scientific 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 a variety of significant concerns with this bill. For example, although we believe that the intent of S. 277 is to provide these Veterans with the same enrollment and treatment authority as for Persian Gulf and post-Persian Gulf Veterans, the bill does not do so because it fails to amend section 1710(e)(2) to address the new special eligibility provision. As the legislation is written, VA would be required to provide treatment for any condition that cannot be specifically eliminated as related to the contaminated water at Camp Lejeune. This bill would not make the special eligibility of these Veterans subject to the limitation that care may not be provided "with respect to a disability that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than the service or testing described in such subparagraph." As a result, this bill grants these Veterans a broader special eligibility than that conferred on Persian Gulf and post-Persian Gulf Veterans.

The Agency for Toxic Substances and Disease Registry (ATSDR) is conducting ongoing research related to the potential exposures at Camp Lejeune. Current ATSDR research is concentrating on refining hydrological modeling to determine the extent of benzene contamination. This information will then be used along with results from ongoing population studies to determine if the potentially exposed population at Camp Lejeune has experienced an increase in adverse health effects such as birth defects, cancers, and mortality. VA will closely monitor this research and will quickly consider the findings and take appropriate action. In addition, VA will support these studies by acting

on ATSDR requests to confirm specific Veteran's health issues. VA has a close working relationship with ATSDR which allows the Department to stay informed about current research.

We are also greatly concerned that the Department of Defense (DOD), and consequently VA, is unable to accurately identify those that may have visited for short periods of time at Camp Lejeune and surrounding areas during the period of potential exposure. While the legislation provides that the Secretary in conjunction with ATSDR shall determine the applicable period, discussion usually centers on the period of 1957–1987. DOD records have proven problematic in identifying all potential beneficiaries, especially since the legislation does not provide for any limitations as to how long an individual had to be on base at Camp Lejeune. It is possible through the Defense Manpower Data Center to identify Veterans assigned to Camp Lejeune. However, it is impossible to identify those Veterans who visited Camp Lejeune for temporary duty and many of the family members who resided at or visited the base. We note that VA treatment of family members as prescribed by veterans.

Veterans who are part of this cohort may apply to enroll in VA health care if they are otherwise eligible, and are encouraged to discuss any specific concerns they have about this issue with their health care provider. 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. 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. Currently, Camp Lejeune disability claims are handled on a case by case basis and significant weight is given to the opinions provided by qualified medical examiners who are aware of the contaminants and their potential long-term health effects. In an effort to provide fair and consistent decisions based on service at Camp Lejeune during the period of water contamination, VA has consolidated claims processing at the Louisville Regional Office.

Because of these concerns and others about the adequacy of the underlying scientific evidence, VA does not support this bill.

It is unclear exactly how many people were potentially affected by the water contamination at Camp Lejeune, but some estimates place the number at one million Veterans and family members. VA estimates that the costs associated with this bill are \$292 million in fiscal year 2012, \$1.6 billion over five years, and \$3.9 billion over ten years. In addition, the Department anticipates that this legislation would result in lost revenue associated with collections. VA estimates this loss of revenue to be \$19.5 million

in fiscal year 2012, \$110 million over five years, and \$213 million over ten years.

\* \* \* \* \*

On June 8, 2011, DOD submitted testimony for the record on, among other bills, S. 277. Excerpts from this statement are reprinted below:

STATEMENT OF THE U.S. DEPARTMENT OF DEFENSE

Chairman Murray, Ranking Member Burr, and members of this distinguished Committee thank you for extending the invitation to the Department of Defense to address pending legislation that would significantly affect our Servicemembers [including] S. 277, the proposed “Caring for Camp Lejeune Veterans Act of 2011.”

\* \* \* \* \*

S. 277

The Department does not support S. 277. S. 277 would furnish hospital care, medical services, and nursing home care implemented and funded by VA to veterans who were stationed at Camp Lejeune “while the water was contaminated,” as well as family members who accompanied them. As explained in testimony by the Department of Veterans Affairs (VA), there is insufficient medical evidence to support this approach.

In addition, the Marine Corps notes that this bill creates inequities between veterans, family members, civilian employees, and government contractors. Section 2(a) of S. 277 provides that veterans who were stationed at Camp Lejeune during the applicable period (to be determined by the VA Secretary in consultation with Agency for Toxic Substances and Disease Registry) would be eligible for hospital care, medical services, and nursing home care from the VA “for any illness, notwithstanding that there is insufficient medical evidence to conclude that such illness is attributable” to water that was contaminated by volatile organic compounds (VOCs). Section 2(b) of S. 277 states that family members of veterans who resided at Camp Lejeune during the applicable time would be “eligible for hospital care, medical services, and nursing home care” from the VA for any condition or disability associated with exposure to contaminants in the water. The legislation makes no provision for civilian employees and government contractors.

\* \* \* \* \*

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 277 as amended, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

## Title 10. Armed Forces

\* \* \* \* \*

### Subtitle A. General Military Law

\* \* \* \* \*

### Part IV. Service, Supply, and Procurement

\* \* \* \* \*

#### Chapter 147. Commissaries and Exchanges and Other Morale, Welfare, and Recreation Activities

\* \* \* \* \*

#### Subchapter I. Defense Commissary and Exchange Systems

Sec.

**[2481. Defense commissary and exchange systems: existence and purpose.]**

*2481. Commissary and exchange system: existence and purpose.*

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**[SEC. 2481. DEFENSE COMMISSARY AND EXCHANGE SYSTEMS: EXISTENCE AND PURPOSE]**

**SEC. 2481. COMMISSARY AND EXCHANGE SYSTEM: EXISTENCE AND PURPOSE**

(a) **[SEPARATE SYSTEMS.—]** *IN GENERAL.*—The Secretary of Defense shall operate, in the manner provided by this chapter and other provisions of law, **[a world-wide system of commissary stores and a separate world-wide system of exchange stores. The stores of each system]** may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title.

(b) **[PURPOSE OF SYSTEMS.—]** *PURPOSE OF SYSTEM.*—The defense **[commissary system and the exchange system]** *commissary and exchange system* are intended to enhance the quality of life of members of the uniformed services, retired members, and dependents of such members, and to support military readiness, recruitment, and retention.

(c) **OVERSIGHT.**—

(1) The Secretary of Defense shall designate a senior official of the Department of Defense to oversee the operation of **[both the defense commissary system and the exchange system]** *the commissary and exchange system.*

(2) The Secretary of Defense shall establish an executive governing body to provide advice to the senior official designated under paragraph (1) regarding the operation of the defense commissary and **[exchange systems and to ensure the complementary operation of the systems]** *exchange system.*

(d) **CONSTRUCTION OF REFERENCES.**—*Any reference in this subchapter to a commissary store shall be deemed to be a reference to a store operated under the single system of commissary stores and*

*exchange stores required by subsection (a). Any reference in this subchapter to the defense commissary system shall be deemed to be a reference to such system of commissary stores and exchange stores.*

(e) **[(d)] REDUCED PRICES DEFINED.**—In this section, the term “reduced prices” means prices for food and other merchandise determined using the price setting process specified in section 2484 of this title.

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## **Subchapter II. Relationship, Continuation, and Common Policies of Defense Commissary and Exchange Systems**

Sec.

**2487.** Relationship between defense commissary system and exchange stores system

**2488.** Combined exchange and commissary stores

**2489.** Overseas commissary and exchange stores: access and purchase restrictions

### **[SEC. 2487. RELATIONSHIP BETWEEN DEFENSE COMMISSARY SYSTEM AND EXCHANGE STORES SYSTEM**

**[(a)] SEPARATE OPERATION OF SYSTEMS.—**

**[(1)]** Except as provided in paragraph (2), the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.

**[(2)]** Paragraph (1) does not apply to the following:

**[(A)]** Combined exchange and commissary stores operated under the authority provided by section 2489 of this title.

**[(B)]** NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.

**[(b)] CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEFENSE RETAIL SYSTEMS.—**

**[(1)]** The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by an Act of Congress.

**[(2)]** In this subsection, the term “defense retail systems” means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.]

### **[SEC. 2488. COMBINED EXCHANGE AND COMMISSARY STORES**

**[(a)] AUTHORITY.—**The Secretary of Defense may authorize a nonappropriated fund instrumentality to operate a military exchange and a commissary store as a combined exchange and commissary store on a military installation.

**[(b)] LIMITATIONS.—**

**[(1)]** Not more than ten combined exchange and commissary stores may be operated pursuant to this section.

**[(2)]** The Secretary may select a military installation for the operation of a combined exchange and commissary store under this section only if—

**[(A)]** the installation is to be closed, or has been or is to be realigned, under a base closure law; or

[(B) a military exchange and a commissary store are operated at the installation by separate entities at the time of, or immediately before, such selection and it is not economically feasible to continue that separate operation.

[(c) OPERATION AT CARSWELL FIELD.—Combined exchange and commissary stores operated under this section shall include the combined exchange and commissary store that is operated at the Naval Air Station Fort Worth, Joint Reserve Center, Carswell Field, Texas, under the authority provided in section 375 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2736).

[(d) ADJUSTMENTS AND SURCHARGES.—Adjustments to, and surcharges on, the sales price of a grocery food item sold in a combined exchange and commissary store under this section shall be provided for in accordance with the same laws that govern such adjustments and surcharges for items sold in a commissary store of the Defense Commissary Agency.

[(e) USE OF APPROPRIATED FUNDS.—

[(1) If a nonappropriated fund instrumentality incurs a loss in operating a combined exchange and commissary store at a military installation under this section as a result of the requirement set forth in subsection (d), the Secretary may authorize a transfer of funds available for the Defense Commissary Agency to the nonappropriated fund instrumentality to offset the loss.

[(2) The total amount of appropriated funds transferred during a fiscal year to support the operation of a combined exchange and commissary store at a military installation under this section may not exceed an amount that is equal to 25 percent of the amount of appropriated funds that was provided for the operation of the commissary store of the Defense Commissary Agency on that installation during the last full fiscal year of operation of that commissary store.

[(f) NONAPPROPRIATED FUND INSTRUMENTALITY DEFINED.—In this section, the term “nonappropriated fund instrumentality” means the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.]

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## Title 38. Veterans' Benefits

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### Part II. General Benefits

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**Chapter 17. Hospital, Nursing Home, Domiciliary, and Medical Care**

\* \* \* \* \*

Sec.

**SUBCHAPTER VIII. HEALTH CARE OF PERSONS OTHER THAN VETERANS**

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1786. Care for newborn children of women veterans receiving maternity care.

1787. *Health care of family members of veterans stationed at Camp Lejeune, North Carolina, while the water was contaminated at Camp Lejeune.*

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**Subchapter II. Hospital, Nursing Home, or Domiciliary Care and Medical Treatment**

**SEC. 1710. ELIGIBILITY FOR HOSPITAL, NURSING HOME, AND DOMICILIARY CARE**

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(e)(1)(A) \* \* \*

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*(F) Subject to paragraph (2), a veteran who, as a member of the Armed Forces, was stationed at Camp Lejeune, North Carolina, during a period, determined by the Secretary in consultation with the Agency for Toxic Substances and Disease Registry, in which the water at Camp Lejeune was contaminated by volatile organic compounds, including known human carcinogens and probable human carcinogens, is eligible for hospital care, medical services, and nursing home care under subsection (a)(2)(F) for any illness, notwithstanding that there is insufficient medical evidence to conclude that such illness is attributable to such contamination.*

**Subchapter VIII. Health Care of Persons Other Than Veterans**

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**SEC. 1787. HEALTH CARE OF FAMILY MEMBERS OF VETERANS STATIONED AT CAMP LEJEUNE, NORTH CAROLINA, WHILE THE WATER WAS CONTAMINATED AT CAMP LEJEUNE**

*(a) IN GENERAL.—A family member of a veteran described in subparagraph (F) of section 1710(e)(1) of this title who resided at Camp Lejeune during the period described in such subparagraph or who was in utero during such period while the mother of such family member resided at such location shall be eligible for hospital care, medical services, and nursing home care furnished by the Secretary for any condition, or any disability that is associated with such condition, that is associated with exposure to the contaminants in the water at Camp Lejeune during such period.*

*(b) LIMITATION.—The Secretary may only furnish hospital care, medical services, and nursing home care under subsection (a) to the extent and in the amount provided in advance in appropriations Acts for such purpose.*

*(c) REGULATIONS.—The Secretary shall prescribe regulations that specify which—*

*(1) conditions are associated with exposure to the contaminants described in subsection (a); and*

(2) disabilities are associated with such conditions.

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**Part VI. Acquisition and Disposition of Property**

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**Chapter 81. Acquisition and Operation of Hospital and Domiciliary Facilities; Procurement and Supply; Enhanced-Use Leases of Real Property**

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**Subchapter I. Acquisition and Operation of Medical Facilities**

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**SEC. 8111. SHARING OF DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE HEALTH CARE RESOURCES**

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(f) *CAMP LEJEUNE.*—(1) *The Secretary of Defense shall enter into an agreement with the Secretary of Veterans Affairs under subsection (a) to reimburse the Secretary of Veterans Affairs, from amounts appropriated to the Secretary of Defense, for the costs of all hospital care, medical services, and nursing home care provided under sections 1710(e)(1)(F) and 1787 of this title.*

(2) *Costs described in paragraph (1) shall include reasonable and customary charges associated with oversight and administration of the care and services described in such paragraph.*

(3) *The Secretary of Veterans Affairs may use the authority provided under section 1781 of this title, or such other existing discretionary authorities as the Secretary considers appropriate, to arrange for care and services described in paragraph (1).*

(g) **[(f)] ANNUAL JOINT REPORT.**—

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(h) **[(g)] DEFINITIONS.**—For the purposes of this section:

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