

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
TAKANO OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR
20 MINUTES

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**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1994
OFFERED BY MR. TAKANO OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair VA Accountability
3 Act”.

4 **SEC. 2. SUSPENSION AND REMOVAL OF DEPARTMENT OF**
5 **VETERANS AFFAIRS EMPLOYEES FOR PER-**
6 **FORMANCE OR MISCONDUCT THAT IS A**
7 **THREAT TO PUBLIC HEALTH OR SAFETY.**

8 (a) IN GENERAL.—Chapter 7 of title 38, United
9 States Code, is amended by adding after section 713 the
10 following new section:

11 **“§ 715. Employees: suspension and removal for per-**
12 **formance or misconduct that is a threat**
13 **to public health or safety**

14 “(a) SUSPENSION AND REMOVAL.—Subject to sub-
15 sections (b) and (c), the Secretary may—

16 “(1) suspend without pay an employee of the
17 Department of Veterans Affairs if the Secretary de-
18 termines the performance or misconduct of the em-

1 ployee is a clear and direct threat to public health
2 or safety; and

3 “(2) remove an employee suspended under
4 paragraph (1) when, after such investigation and re-
5 view as the Secretary considers necessary, the Sec-
6 retary determines that removal is necessary in the
7 interests of public health or safety.

8 “(b) PROCEDURE.—An employee suspended under
9 subsection (a)(1) is entitled, after suspension and before
10 removal, to—

11 “(1) within 30 days after suspension, a written
12 statement of the specific charges against the em-
13 ployee, which may be amended within 30 days there-
14 after;

15 “(2) an opportunity within 30 days thereafter,
16 plus an additional 30 days if the charges are amend-
17 ed, to answer the charges and submit affidavits;

18 “(3) a hearing, at the request of the employee,
19 by a Department authority duly constituted for this
20 purpose;

21 “(4) a review of the case by the Secretary, be-
22 fore a decision adverse to the employee is made
23 final; and

24 “(5) written statement of the decision of the
25 Secretary.

1 “(c) RELATION TO OTHER DISCIPLINARY RULES.—

2 The authority provided under this section shall be in addi-
3 tion to the authority provided under section 713 and title
4 5 with respect to disciplinary actions for performance or
5 misconduct.

6 “(d) BACK PAY FOR WHISTLEBLOWERS.—If any em-
7 ployee of the Department of Veterans Affairs is subject
8 to a suspension or removal under this section and such
9 suspension or removal is determined by an appropriate au-
10 thority under applicable law, rule, regulation, or collective
11 bargaining agreement to be a prohibited personnel prac-
12 tice described under section 2302(b)(8) or (9) of title 5,
13 such employee shall receive back pay equal to the total
14 amount of basic pay that such employee would have re-
15 ceived during the period that the suspension and removal
16 (as the case may be) was in effect, less any amounts
17 earned by the employee through other employment during
18 that period.

19 “(e) DEFINITIONS.—In this section, the term ‘em-
20 ployee’ means any individual occupying a position within
21 the Department of Veterans Affairs under a permanent
22 or indefinite appointment and who is not serving a proba-
23 tionary or trial period.”.

24 (b) CLERICAL AND CONFORMING AMENDMENTS.—

1 (1) CLERICAL.—The table of sections at the be-
2 ginning of such chapter is amended by adding after
3 the item relating to section 713 the following new
4 item:

 “715. Employees: suspension and removal for performance or misconduct that
 is a threat to public health or safety.”.

5 (2) CONFORMING.—Section 4303(f) of title 5,
6 United States Code, is amended—

7 (A) by striking “or” at the end of para-
8 graph (2);

9 (B) by striking the period at the end of
10 paragraph (3) and inserting “, or”; and

11 (C) by adding at the end the following:

12 “(4) any suspension or removal under section
13 715 of title 38.”.

14 (c) EFFECTIVE DATE OF BACK PAY PROVISION.—
15 Subsection (d) of section 715 of title 38, United States
16 Code, as added by subsection (a), shall take effect on Oc-
17 tober 1, 2015.

18 (d) REPORT ON SUSPENSIONS AND REMOVALS.—Not
19 later than one year after the date of the enactment of this
20 Act, the Inspector General of the Department of Veterans
21 Affairs shall submit to the Committees on Veterans’ Af-
22 fairs of the House of Representatives and the Senate a
23 report on suspensions and removals of employees of the
24 Department made under section 715 of title 38, United

1 States Code, as added by subsection (a). Such report shall
2 include, with respect to the period covered by the report,
3 the following:

4 (1) The number of employees who were sus-
5 pended under such section.

6 (2) The number of employees who were re-
7 moved under such section.

8 (3) A description of the threats to public health
9 or safety that caused such suspensions and remov-
10 als.

11 (4) The number of such suspensions or remov-
12 als, or proposed suspensions or removals, that were
13 of employees who filed a complaint regarding—

14 (A) an alleged prohibited personnel prac-
15 tice committed by an officer or employee of the
16 Department and described in section
17 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or
18 (D) of title 5, United States Code; or

19 (B) the safety of a patient at a medical fa-
20 cility of the Department.

21 (5) Of the number of suspensions and removals
22 listed under paragraph (4), the number that the In-
23 spector General considers to be retaliation for whis-
24 tleblowing.

1 individual placed on such leave or status under paragraph
2 (1) if the Secretary submits to the Committees on Vet-
3 erans' Affairs of the Senate and House of Representatives
4 a detailed explanation of the reasons the individual was
5 placed on administrative leave or other paid non-duty sta-
6 tus without charge to leave and the reasons for the exten-
7 sion of such leave or status. Such explanation shall include
8 the name of the covered individual, the location where the
9 individual is employed, and the individual's job title.

10 “(3) In this subsection, the term ‘covered individual’
11 means an employee of the Department—

12 “(A) who is subject to an investigation for pur-
13 poses of determining whether such individual should
14 be subject to any disciplinary action under this title
15 or title 5; or

16 “(B) against whom any disciplinary action is
17 proposed or initiated under this title or title 5.

18 “(b) REPORT ON ADMINISTRATIVE LEAVE.—(1) Not
19 later than 30 days after the end of each quarter of any
20 calendar year, the Secretary shall submit to the Commit-
21 tees on Veterans' Affairs of the House of Representatives
22 and the Senate a report listing the name of any employee
23 of the Department (if any) who has been placed on admin-
24 istrative leave, or any other type of paid non-duty status,
25 for a period longer than 7 days during such quarter.

1 “(2) Any report submitted under subsection (a) shall
2 include, with respect to any employee listed in such report,
3 the position occupied by the employee, the number of days
4 of such leave, and the reason that such employee was
5 placed on such leave.”.

6 (b) APPLICATION.—

7 (1) ADMINISTRATIVE LEAVE LIMITATION.—Sec-
8 tion 717(a) of title 38, United States Code (as
9 added by subsection (a)), shall apply to any action
10 of removal or transfer under section 713 of such
11 title or title 5, United States Code, commencing on
12 or after the date of enactment of this section.

13 (2) REPORT.—The report under section 717(b)
14 of such title (as added by subsection (a)) shall begin
15 to apply in the quarter that ends after the date that
16 is 6 months after the date of enactment of this sec-
17 tion.

18 (c) CLERICAL AMENDMENT.—The table of sections
19 at the beginning of such chapter 7 is amended by adding
20 at the end the following new item:

“717. Administrative leave limitation and report.”.

Amend the title so as to read: “A bill to amend title
38, United States Code, to improve the authority of the
Secretary of Veterans Affairs to suspend and remove em-
ployees of the Department of Veterans Affairs for per-

formance or misconduct that is a threat to public health or safety.”

