

**AMENDMENT TO H.R. 5620**  
**OFFERED BY MS. KUSTER OF NEW HAMPSHIRE**

Strike section 7 and insert the following:

1 **SEC. 7. IMPROVED AUTHORITIES OF SECRETARY OF VET-**  
2 **ERANS AFFAIRS TO IMPROVE ACCOUNT-**  
3 **ABILITY OF SENIOR EXECUTIVES.**

4 (a) ACCOUNTABILITY OF SENIOR EXECUTIVES.—

5 (1) IN GENERAL.—Section 713 of title 38,  
6 United States Code, is amended to read as follows:

7 **“§ 713. Accountability of senior executives**

8 “(a) AUTHORITY.—(1) The Secretary may, as pro-  
9 vided in this section, reprimand or suspend, involuntarily  
10 reassign, demote, or remove a covered individual from a  
11 senior executive position at the Department if the Sec-  
12 retary determines that the misconduct or performance of  
13 the covered individual warrants such action.

14 “(2) If the Secretary so removes such an individual,  
15 the Secretary may remove the individual from the civil  
16 service (as defined in section 2101 of title 5).

17 “(b) RIGHTS AND PROCEDURES.—(1) A covered indi-  
18 vidual who is the subject of an action under subsection  
19 (a) is entitled to—

1           “(A) be represented by an attorney or other  
2 representative of the covered individual’s choice;

3           “(B) not fewer than 10 business days advance  
4 written notice of the charges and evidence sup-  
5 porting the action and an opportunity to respond, in  
6 a manner prescribed by the Secretary, before a deci-  
7 sion is made regarding the action; and

8           “(C) grieve the action in accordance with an in-  
9 ternal grievance process that the Secretary, in con-  
10 sultation with the Assistant Secretary for Account-  
11 ability and Whistleblower Protection, shall establish  
12 for purposes of this subsection.

13          “(2)(A) The Secretary shall ensure that the grievance  
14 process established under paragraph (1)(C) takes fewer  
15 than 21 days.

16          “(B) The Secretary shall ensure that, under the proc-  
17 ess established pursuant to paragraph (1)(C), grievances  
18 are reviewed only by employees of the Department.

19          “(3) A decision or grievance decision under para-  
20 graph (1)(C) shall be final and conclusive.

21          “(4) A covered individual adversely affected by a final  
22 decision under paragraph (1)(C) may obtain judicial re-  
23 view of the decision.

1       “(5) In any case in which judicial review is sought  
2 under paragraph (4), the court shall review the record and  
3 may set aside any Department action found to be—

4               “(A) arbitrary, capricious, an abuse of discre-  
5 tion, or otherwise not in accordance with a provision  
6 of law;

7               “(B) obtained without procedures required by a  
8 provision of law having been followed; or

9               “(C) unsupported by substantial evidence.

10       “(c) RELATION TO OTHER PROVISIONS OF LAW.—

11 (1) The authority provided by subsection (a) is in addition  
12 to the authority provided by section 3592 or subchapter  
13 V of chapter 75 of title 5.

14       “(2) Section 3592(b)(1) of title 5 and the procedures  
15 under section 7543(b) of such title do not apply to an ac-  
16 tion under subsection (a).

17       “(d) DEFINITIONS.—In this section:

18               “(1) The term ‘covered individual’ means—

19                       “(A) a career appointee (as that term is  
20 defined in section 3132(a)(4) of title 5); or

21                       “(B) any individual who occupies an ad-  
22 ministrative or executive position and who was  
23 appointed under section 7306(a) or section  
24 7401(1) of this title.

1           “(2) The term ‘misconduct’ includes neglect of  
2           duty, malfeasance, or failure to accept a directed re-  
3           assignment or to accompany a position in a transfer  
4           of function.

5           “(3) The term ‘senior executive position’  
6           means—

7                   “(A) with respect to a career appointee (as  
8                   that term is defined in section 3132(a) of title  
9                   5), a Senior Executive Service position (as such  
10                  term is defined in such section); and

11                  “(B) with respect to a covered individual  
12                  appointed under section 7306(a) or section  
13                  7401(1) of this title, an administrative or execu-  
14                  tive position.”.

15           (2) CONFORMING AMENDMENT.—Section  
16           7461(e)(1) of such title is amended by inserting  
17           “employees in senior executive positions (as defined  
18           in section 713(d) of this title) and” before “interns”.

19           (b) PERFORMANCE MANAGEMENT.—

20                  (1) IN GENERAL.—The Secretary of Veterans  
21                  Affairs shall establish a performance management  
22                  system for employees in senior executive positions,  
23                  as defined in section 713(d) of title 38, United  
24                  States Code, as amended by subsection (a), that en-

1       sures performance ratings and awards given to such  
2       employees—

3               (A) meaningfully differentiate extraor-  
4               dinary from satisfactory contributions; and

5               (B) substantively reflect organizational  
6               achievements over which the employee has re-  
7               sponsibility and control.

8               (2) REGULATIONS.—The Secretary shall pre-  
9       scribe regulations to carry out paragraph (1).

