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:

SECTION 1. SHORT TITLE.

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

SEC. 2. SUSPENSION AND REMOVAL OF DEPARTMENT OF
VETERANS AFFAIRS EMPLOYEES FOR PERFORMANCE OR MISCONDUCT THAT IS A
THREAT TO PUBLIC HEALTH OR SAFETY.

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

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

“(a) SUSPENSION AND REMOVAL.—Subject to subsections (b) and (c), the Secretary may—

“(1) suspend without pay an employee of the Department of Veterans Affairs if the Secretary determines the performance or misconduct of the em-

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employee is a clear and direct threat to public health or safety; and

“(2) remove an employee suspended under paragraph (1) when, after such investigation and review as the Secretary considers necessary, the Secretary determines that removal is necessary in the interests of public health or safety.

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

“(1) within 30 days after suspension, a written statement of the specific charges against the employee, which may be amended within 30 days thereafter;

“(2) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

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

“(4) a review of the case by the Secretary, before a decision adverse to the employee is made final; and

“(5) written statement of the decision of the Secretary.
“(c) Relation to Other Disciplinary Rules.—
The authority provided under this section shall be in addition to the authority provided under section 713 and title 5 with respect to disciplinary actions for performance or misconduct.

“(d) Back Pay for Whistleblowers.—If any employee of the Department of Veterans Affairs is subject to a suspension or removal under this section and such suspension or removal is determined by an appropriate authority under applicable law, rule, regulation, or collective bargaining agreement to be a prohibited personnel practice described under section 2302(b)(8) or (9) of title 5, such employee shall receive back pay equal to the total amount of basic pay that such employee would have received during the period that the suspension and removal (as the case may be) was in effect, less any amounts earned by the employee through other employment during that period.

“(e) Definitions.—In this section, the term ‘employee’ means any individual occupying a position within the Department of Veterans Affairs under a permanent or indefinite appointment and who is not serving a probationary or trial period.”.

(b) Clerical and Conforming Amendments.—
(1) **CLERICAL.**—The table of sections at the beginning of such chapter is amended by adding after the item relating to section 713 the following new item:

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

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

(A) by striking “or” at the end of paragraph (2);

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

(C) by adding at the end the following:

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

(c) **EFFECTIVE DATE OF BACK PAY PROVISION.**—

Subsection (d) of section 715 of title 38, United States Code, as added by subsection (a), shall take effect on October 1, 2015.

(d) **REPORT ON SUSPENSIONS AND REMOVALS.**—Not later than one year after the date of the enactment of this Act, the Inspector General of the Department of Veterans Affairs shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report on suspensions and removals of employees of the Department made under section 715 of title 38, United
States Code, as added by subsection (a). Such report shall
include, with respect to the period covered by the report,
the following:

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

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

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

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

   (A) an alleged prohibited personnel prac-
tice committed by an officer or employee of the
   Department and described in section
   2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or
   (D) of title 5, United States Code; or
   (B) the safety of a patient at a medical fa-
cility of the Department.

(5) Of the number of suspensions and removals
listed under paragraph (4), the number that the In-
spector General considers to be retaliation for whis-
tleblowing.
(6) The number of such suspensions or removals that were of an employee who was the subject of a complaint made to the Department regarding the health or safety of a patient at a medical facility of the Department.

(7) Any recommendations by the Inspector General, based on the information described in paragraphs (1) through (6), to improve the authority to make such suspensions and removals.

SEC. 3. LIMITATION ON ADMINISTRATIVE LEAVE FOR EMPLOYEES WITHIN THE DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is further amended by adding after section 715, as added by section 2, the following new section:

"§ 717. Administrative leave limitation and report

“(a) LIMITATION APPLICABLE TO EMPLOYEES WITHIN THE DEPARTMENT OF VETERANS AFFAIRS.—(1) The Secretary may not place any covered individual on administrative leave, or any other type of paid non-duty status without charge to leave, for more than a total of 14 days during any 365-day period.

“(2) The Secretary may waive the limitation under paragraph (1) and extend the administrative leave or other paid non-duty status without charge to leave of a covered
individual placed on such leave or status under paragraph
(1) if the Secretary submits to the Committees on Veter-
ans’ Affairs of the Senate and House of Representatives
a detailed explanation of the reasons the individual was
placed on administrative leave or other paid non-duty sta-
tus without charge to leave and the reasons for the exten-
sion of such leave or status. Such explanation shall include
the name of the covered individual, the location where the
individual is employed, and the individual’s job title.

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

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

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

“(b) Report on Administrative Leave.—(1) Not
later than 30 days after the end of each quarter of any
calendar year, the Secretary shall submit to the Commit-
tees on Veterans’ Affairs of the House of Representatives
and the Senate a report listing the name of any employee
of the Department (if any) who has been placed on admin-
istrative leave, or any other type of paid non-duty status,
for a period longer than 7 days during such quarter.
“(2) Any report submitted under subsection (a) shall include, with respect to any employee listed in such report, the position occupied by the employee, the number of days of such leave, and the reason that such employee was placed on such leave.”.

(b) Application.—

(1) Administrative Leave Limitation.—Section 717(a) of title 38, United States Code (as added by subsection (a)), shall apply to any action of removal or transfer under section 713 of such title or title 5, United States Code, commencing on or after the date of enactment of this section.

(2) Report.—The report under section 717(b) of such title (as added by subsection (a)) shall begin to apply in the quarter that ends after the date that is 6 months after the date of enactment of this section.

(c) Clerical Amendment.—The table of sections at the beginning of such chapter 7 is amended by adding 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 employees of the Department of Veterans Affairs for per-
formance or misconduct that is a threat to public health or safety.”