AMENDMENT TO H.R. 5620
OFFERED BY M . ____________

Strike section 3 and insert the following:

SEC. 3. REMOVAL OF EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS BASED ON PERFORMANCE OR MISCONDUCT.

(a) In general.—Chapter 7 of title 38, United States Code, as amended by subtitles A and B, is further amended by inserting after section 714, as added by section 114, the following new section:

“§ 715. Employees: removal based on performance or misconduct

“(a) In general.—(1) The Secretary may remove a covered individual who is an employee of the Department if the Secretary determines that—

“(A) the performance or misconduct of the covered individual warrants such removal; and

“(B) in the case of removal for performance, a portion of such performance occurred during the two-year period ending on the date of the determination.

“(2) If the Secretary removes a covered individual under paragraph (1), the Secretary may remove the cov-
tered individual from the civil service (as defined in section 2101 of title 5).

“(3) Nothing in this section may be construed to au-
thorize a finalized performance appraisal of an employee
to be retroactively amended.

“(b) NOTICE TO CONGRESS.—Not later than 30 days
after removing a covered individual under subsection (a),
the Secretary shall submit to the Committees on Veterans’
Affairs of the Senate and House of Representatives notice
in writing of such removal and the reason for such re-
moval.

“(c) PROCEDURE.—(1) An employee removed under
subsection (a) is entitled, before removal, to—

“(A) at least 10 business days written notice
(which, in the case of removal for performance, shall
identify specific instances as described in clause (i)
of section 4303(b)(1)(A) of title 5 and critical ele-
ments as described in clause (ii) of such section),
unless there is reasonable cause to believe that the
employee committed a crime for which a sentence of
imprisonment can be imposed—

“(i) stating the specific reasons for the
proposed action; and

“(ii) including a file containing all evidence
in support of the proposed action;
“(B) 10 business days to answer the charges orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

“(C) be represented by an attorney or other representative;

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

“(E) as soon as practicable, a decision of the Secretary with respect to the charges of the employee; and

“(F) a written statement of the decision of the Secretary that—

“(i) includes the specific reasons of the decision; and

“(ii) in the case of a removal based on performance, complies with section 4303(b)(1)(D) of title 5.

“(2)(A) Subject to subparagraph (B) and subsection (e), any final decision of the Secretary regarding removal under subsection (a) may be appealed to the Merit Systems Protection Board.
“(B) An appeal under subparagraph (A) of a removal may only be made if such appeal is made not later than 10 business days after the date of such removal.

“(C)(i) Subject to clause (ii), the decision of the Secretary shall be sustained under subparagraph (A) only if the Secretary’s decision—

“(I) in the case of an action based on performance, is supported by substantial evidence; or

“(II) in any other case, is supported by a preponderance of the evidence.

“(ii) Notwithstanding clause (i), the Secretary’s decision may not be sustained under subparagraph (A) if the covered individual—

“(I) shows harmful error in the application of the Secretary’s procedures in arriving at such decision;

“(II) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of title 5; or

“(III) shows that the decision was not in accordance with law.

“(3) The procedures under section 7513(b) of title 5 and chapter 43 of such title shall not apply to a removal under this section.
“(d) EXPEDITED REVIEW.—(1) The Merit Systems Protection Board shall promulgate such rules as the Board considers appropriate to expedite appeals under subsection (c)(2).

“(2) The Board shall ensure that a final decision on an appeal described in paragraph (1) is issued not later than 90 days after the appeal is made.

“(3) During the period beginning on the date on which a covered individual appeals a removal from the civil service under subsection (c)(2) and ending on the date that the Board issues a final decision on such appeal, such covered individual may not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits.

“(4) To the maximum extent practicable, the Secretary shall provide to the Merit Systems Protection Board such information and assistance as may be necessary to ensure an appeal under subsection (c)(2) is expedited.

“(e) RELATION TO TITLE 5.—The authority provided by this section is in addition to the authority provided by subchapter V of chapter 75 of title 5 and chapter 43 of such title.

“(f) DEFINITIONS.—In this section:
“(1) The term ‘covered individual’ means an individual occupying a position at the Department but does not include—

“(A) an individual, as that term is defined in section 713(d); or

“(B) a political appointee.

“(2) The term ‘misconduct’ includes a violation of paragraph (8) or (9) of section 2302(b) of title 5, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

“(3) The term ‘political appointee’ means an individual who is—

“(A) employed in a position described under sections 5312 through 5316 of title 5 (relating to the Executive Schedule);

“(B) a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5; or

“(C) employed in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.”.
(b) **CLERICAL AND CONFORMING AMENDMENTS.**—

(1) **CLERICAL.**—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 714, as added by section 114, the following new item:

“715. Employees: removal based on performance or misconduct.”.

(2) **CONFORMING.**—

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

(i) in paragraph (2), by striking “or” at the end;

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

(iii) by adding at the end the following:

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

(B) **TITLE 38.**—Subchapter V of chapter 74 of title 38, United States Code, is amended—

(i) in section 7461(b)(1), by striking “If the” and inserting “Except as provided in section 715 of this title, if the”; and

(ii) in section 7462—

(I) in subsection (a)(1), by striking “Disciplinary” and inserting “Ex-
except as provided in section 715 of this title, the Disciplinary’; and

(II) in subsection (b)(1), by striking “In any case” and inserting “Except as provided in section 715 of this title, in any case”.

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