

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

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

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

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

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

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

16                 (B) the safety of a patient at a medical fa-  
17                 cility of the Department.

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

22          (6) The number of such suspensions or remov-  
23          als that were of an employee who was the subject of  
24          a complaint made to the Department regarding the

1 health or safety of a patient at a medical facility of  
2 the Department.

3 (7) Any recommendations by the Inspector  
4 General, based on the information described in para-  
5 graphs (1) through (6), to improve the authority to  
6 make such suspensions and removals.

7 **SEC. 3. PROHIBITION ON CERTAIN FORMER EMPLOYEE'S**  
8 **ACCEPTANCE OF COMPENSATION FROM CON-**  
9 **TRACTOR.**

10 (a) IN GENERAL.—Chapter 7 of title 38, United  
11 States Code, is further amended by adding after section  
12 715, as added by section 2, the following new section:

13 **“§ 717. Prohibition on certain former employee's ac-**  
14 **ceptance of compensation from contrac-**  
15 **tors of the Department**

16 “(a) IN GENERAL.—An individual who was formerly  
17 employed in a senior executive position at the Department  
18 may not accept compensation from a covered contractor  
19 as an employee, officer, director, or consultant of the cov-  
20 ered contractor during the one-year period beginning on  
21 the date on which the individual was last employed in a  
22 senior executive position at the Department.

23 “(b) DEFINITIONS.—In this section:

24 “(1) The term ‘covered contractor’ means a  
25 contractor carrying out a contract entered into with

1 the Department, including pursuant to a sub-  
2 contract.

3 “(2) The term ‘senior executive position’ has  
4 the meaning given such term in section 713(g) of  
5 this title.”.

6 (b) CLERICAL AMENDMENT.—The table of sections  
7 at the beginning of such chapter is further amended by  
8 adding at the end the following new item:

“717. Prohibition on certain former employee’s acceptance of compensation from  
contractors of the Department.”.

9 **SEC. 4. LIMITATION ON CONTRACTING WITH ENTITIES EM-**  
10 **PLOYING CERTAIN RECENTLY SEPARATED**  
11 **DEPARTMENT EMPLOYEES.**

12 (a) IN GENERAL.—Subchapter II of chapter 81 of  
13 title 38, United States Code, is amended by adding at the  
14 end the following new section:

15 **“§ 8129. Limitation on contracting with entities em-**  
16 **ploying certain recently separated De-**  
17 **partment employees**

18 “(a) IN GENERAL.—The Secretary may not enter  
19 into a contract with any entity if the entity employs an  
20 individual who is prohibited from accepting compensation  
21 from a contractor under section 717 of this title.

22 “(b) CERTIFICATION.—Before entering into a con-  
23 tract with any entity, the Secretary shall require the entity  
24 to submit to the Secretary certification that the entity

1 does not employ, and will not employ during the period  
2 covered by the contract, any individual who is prohibited  
3 from accepting compensation from a contractor under sec-  
4 tion 717 of this title.

5 “(c) DEFINITIONS.—In this section, the term ‘senior  
6 executive position’ has the meaning given such term in  
7 section 713(g)(3) of this title.”.

8 (b) CLERICAL AMENDMENT.—The table of sections  
9 at the beginning of such chapter is amended by adding  
10 after the item relating to section 8128 the following new  
11 item:

“8129. Limitation of contracting with entities employing certain recently separated Department employees.”.

12 **SEC. 5. LIMITATION ON ADMINISTRATIVE LEAVE FOR EM-**  
13 **EMPLOYEES WITHIN THE DEPARTMENT OF VET-**  
14 **ERANS AFFAIRS.**

15 (a) IN GENERAL.—Chapter 7 of title 38, United  
16 States Code, is further amended by adding after section  
17 717, as added by section 3, the following new section:

18 **“§ 719. Administrative leave limitation and report**

19 **LIMITATION APPLICABLE TO EMPLOYEES**  
20 **WITHIN THE DEPARTMENT OF VETERANS AFFAIRS.—(1)**  
21 **The Secretary may not place any covered individual on**  
22 **administrative leave, or any other type of paid non-duty**  
23 **status without charge to leave, for more than a total of**  
24 **14 days during any 365-day period.**



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

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

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

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

21           “(b) REPORT ON ADMINISTRATIVE LEAVE.—(1) Not  
22 later than 30 days after the end of each quarter of any  
23 calendar year, the Secretary shall submit to the Commit-  
24 tees on Veterans’ Affairs of the House of Representatives  
25 and the Senate a report listing the name of any employee

1 of the Department (if any) who has been placed on admin-  
2 istrative leave, or any other type of paid non-duty status,  
3 for a period longer than 7 days during such quarter.

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

9 (b) APPLICATION.—

10 (1) ADMINISTRATIVE LEAVE LIMITATION.—Sec-  
11 tion 719(a) of title 38, United States Code (as  
12 added by subsection (a)), shall apply to any action  
13 of removal or transfer under section 713 of such  
14 title or title 5, United States Code, commencing on  
15 or after the date of enactment of this section.

16 (2) REPORT.—The report under section 719(b)  
17 of such title (as added by subsection (a)) shall begin  
18 to apply in the quarter that ends after the date that  
19 is 6 months after the date of enactment of this sec-  
20 tion.

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

“719. Administrative leave limitation and report.”.

Amend the title so as to read: “A bill 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 performance or misconduct that is a threat to public health or safety.”.

