

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

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “VA Accountability Act
3 of 2015”.

4 **SEC. 2. REMOVAL OR DEMOTION OF EMPLOYEES BASED ON**
5 **PERFORMANCE OR MISCONDUCT.**

6 (a) IN GENERAL.—Chapter 7 of title 38, United
7 States Code, is amended by adding at the end the fol-
8 lowing new section:

9 **“§ 714. Employees: removal or demotion based on**
10 **performance or misconduct**

11 “(a) IN GENERAL.—The Secretary may remove or
12 demote an individual who is an employee of the Depart-
13 ment if the Secretary determines the performance or mis-
14 conduct of the individual warrants such removal or demo-
15 tion. If the Secretary so removes or demotes such an indi-
16 vidual, the Secretary may—

17 “(1) remove the individual from the civil service
18 (as defined in section 2101 of title 5); or

1 “(2) demote the individual by means of—

2 “(A) a reduction in grade for which the in-
3 dividual is qualified and that the Secretary de-
4 termines is appropriate; or

5 “(B) a reduction in annual rate of pay
6 that the Secretary determines is appropriate.

7 “(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1)
8 Notwithstanding any other provision of law, any individual
9 subject to a demotion under subsection (a)(2)(A) shall, be-
10 ginning on the date of such demotion, receive the annual
11 rate of pay applicable to such grade.

12 “(2) An individual so demoted may not be placed on
13 administrative leave or any other category of paid leave
14 during the period during which an appeal (if any) under
15 this section is ongoing, and may only receive pay if the
16 individual reports for duty. If an individual so demoted
17 does not report for duty, such individual shall not receive
18 pay or other benefits pursuant to subsection (e)(5).

19 “(c) NOTICE TO CONGRESS.—Not later than 30 days
20 after removing or demoting an individual under subsection
21 (a), the Secretary shall submit to the Committees on Vet-
22 erans’ Affairs of the Senate and House of Representatives
23 notice in writing of such removal or demotion and the rea-
24 son for such removal or demotion.

1 “(d) PROCEDURE.—(1) The procedures under section
2 7513(b) of title 5 and chapter 43 of such title shall not
3 apply to a removal or demotion under this section.

4 “(2)(A) Subject to subparagraph (B) and subsection
5 (e), any removal or demotion under subsection (a) may
6 be appealed to the Merit Systems Protection Board under
7 section 7701 of title 5.

8 “(B) An appeal under subparagraph (A) of a removal
9 or demotion may only be made if such appeal is made not
10 later than seven days after the date of such removal or
11 demotion.

12 “(e) EXPEDITED REVIEW BY ADMINISTRATIVE
13 JUDGE.—(1) Upon receipt of an appeal under subsection
14 (d)(2)(A), the Merit Systems Protection Board shall refer
15 such appeal to an administrative judge pursuant to section
16 7701(b)(1) of title 5. The administrative judge shall expe-
17 dite any such appeal under such section and, in any such
18 case, shall issue a decision not later than 45 days after
19 the date of the appeal.

20 “(2) Notwithstanding any other provision of law, in-
21 cluding section 7703 of title 5, the decision of an adminis-
22 trative judge under paragraph (1) shall be final and shall
23 not be subject to any further appeal.

24 “(3) In any case in which the administrative judge
25 cannot issue a decision in accordance with the 45-day re-

1 quirement under paragraph (1), the removal or demotion
2 is final. In such a case, the Merit Systems Protection
3 Board shall, within 14 days after the date that such re-
4 moval or demotion is final, submit to Congress and the
5 Committees on Veterans' Affairs of the Senate and House
6 of Representatives a report that explains the reasons why
7 a decision was not issued in accordance with such require-
8 ment.

9 “(4) The Merit Systems Protection Board or admin-
10 istrative judge may not stay any removal or demotion
11 under this section.

12 “(5) During the period beginning on the date on
13 which an individual appeals a removal from the civil serv-
14 ice under subsection (d) and ending on the date that the
15 administrative judge issues a final decision on such appeal,
16 such individual may not receive any pay, awards, bonuses,
17 incentives, allowances, differentials, student loan repay-
18 ments, special payments, or benefits.

19 “(6) To the maximum extent practicable, the Sec-
20 retary shall provide to the Merit Systems Protection
21 Board, and to any administrative judge to whom an appeal
22 under this section is referred, such information and assist-
23 ance as may be necessary to ensure an appeal under this
24 subsection is expedited.

1 “(f) WHISTLEBLOWER PROTECTION.—In the case of
2 an individual seeking corrective action (or on behalf of
3 whom corrective action is sought) from the Office of Spe-
4 cial Counsel based on an alleged prohibited personnel
5 practice described in section 2302(b) of title 5, the Sec-
6 retary may not remove or demote such individual under
7 subsection (a) without the approval of the Special Counsel
8 under section 1214(f) of title 5.

9 “(g) TERMINATION OF INVESTIGATIONS BY OFFICE
10 OF SPECIAL COUNSEL.—Notwithstanding any other provi-
11 sion of law, the Special Counsel (established by section
12 1211 of title 5) may terminate an investigation of a pro-
13 hibited personnel practice alleged by an employee or
14 former employee of the Department after the Special
15 Counsel provides to the employee or former employee a
16 written statement of the reasons for the termination of
17 the investigation. Such statement may not be admissible
18 as evidence in any judicial or administrative proceeding
19 without the consent of such employee or former employee.

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

24 “(i) DEFINITIONS.—In this section:

1 “(1) The term ‘individual’ means an individual
2 occupying a position at the Department but does not
3 include—

4 “(A) an individual, as that term is defined
5 in section 713(g)(1); or

6 “(B) a political appointee.

7 “(2) The term ‘grade’ has the meaning given
8 such term in section 7511(a) of title 5.

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

13 “(4) The term ‘political appointee’ means an in-
14 dividual who is—

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

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

23 “(C) employed in a position of a confiden-
24 tial or policy-determining character under

1 schedule C of subpart C of part 213 of title 5
2 of the Code of Federal Regulations.”.

3 (b) CLERICAL AND CONFORMING AMENDMENTS.—

4 (1) CLERICAL.—The table of sections at the be-
5 ginning of such chapter is amended by adding at the
6 end the following new item:

“714. Employees: removal or demotion based on performance or misconduct.”.

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

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

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

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

14 “(4) any removal or demotion under section
15 714 of title 38.”.

16 **SEC. 3. REQUIRED PROBATIONARY PERIOD FOR NEW EM-**
17 **PLOYEES OF DEPARTMENT OF VETERANS AF-**
18 **FAIRS.**

19 (a) IN GENERAL.—Chapter 7 of title 38, United
20 States Code, as amended by section 2, is further amended
21 by adding at the end the following new section:

22 **“§ 715. Probationary period for employees**

23 “(a) IN GENERAL.—Notwithstanding sections 3321
24 and 3393(d) of title 5, the appointment of a covered em-
25 ployee shall become final only after such employee has

1 served a probationary period of 18 months. The Secretary
2 may extend a probationary period under this subsection
3 at the discretion of the Secretary.

4 “(b) COVERED EMPLOYEE.—In this section, the term
5 ‘covered employee’—

6 “(1) means any individual—

7 “(A) appointed to a permanent position
8 within the competitive service at the Depart-
9 ment; or

10 “(B) appointed as a career appointee (as
11 that term is defined in section 3132(a)(4) of
12 title 5) within the Senior Executive Service at
13 the Department; and

14 “(2) does not include any individual with a pro-
15 bationary period prescribed by section 7403 of this
16 title.

17 “(c) PERMANENT HIRES.—Upon the expiration of a
18 covered employee’s probationary period under subsection
19 (a), the supervisor of the employee shall determine wheth-
20 er the appointment becomes final based on regulations
21 prescribed for such purpose by the Secretary.”.

22 (b) APPLICATION.—The amendment made by sub-
23 section (a) shall apply to any covered employee (as that
24 term is defined in section 715 of title 38, United States

1 Code, as added by such subsection) appointed after the
2 date of enactment of this section.

3 (c) CLERICAL AND CONFORMING AMENDMENTS.—

4 (1) CLERICAL.—The table of sections at the be-
5 ginning of such chapter, as amended by section 2,
6 is further amended by adding at the end the fol-
7 lowing new item:

“715. Probationary period for employees.”.

8 (2) CONFORMING.—Title 5, United States
9 Code, is amended—

10 (A) in section 3321(e), by—

11 (i) striking “Service or” and inserting
12 “Service,”; and

13 (ii) inserting at the end before the pe-
14 riod the following: “, or any individual cov-
15 ered by section 715 of title 38”; and

16 (B) in section 3393(d), by adding at the
17 end after the period the following: “The pre-
18 ceding sentence shall not apply to any indi-
19 vidual covered by section 715 of title 38.”.

20 **SEC. 4. COMPTROLLER GENERAL STUDY OF DEPARTMENT**
21 **TIME AND SPACE USED FOR LABOR ORGANI-**
22 **ZATION ACTIVITY.**

23 (a) STUDY REQUIRED.—Not later than 180 days
24 after the date of the enactment of this Act, the Comp-
25 troller General of the United States shall conduct a study

1 on the amount of time spent by Department of Veterans
2 Affairs employees carrying out organizing activities relat-
3 ing to labor organizations and the amount of space in De-
4 partment facilities used for such activities. The study shall
5 include a cost-benefit analysis of the use of such time and
6 space for such activities.

7 (b) REPORT TO CONGRESS.—Not later than 90 days
8 after the completion of the study required under sub-
9 section (a), the Comptroller General shall submit to the
10 Committees on Veterans' Affairs of the Senate and House
11 of Representatives a report on the results of the study.

