

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1259**

OFFERED BY MR. TAKANO

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SUSPENSION AND REMOVAL OF DEPARTMENT
2 OF VETERANS AFFAIRS EMPLOYEES FOR
3 PERFORMANCE OR MISCONDUCT THAT IS A
4 THREAT TO PUBLIC HEALTH OR SAFETY.**

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

8 **“§ 715. Employees: suspension and removal for per-
9 formance or misconduct that is a threat
10 to public health or safety**

11 “(a) SUSPENSION AND REMOVAL.—Subject to sub-
12 sections (b) and (c), the Secretary may—

13 “(1) suspend without pay an employee of the
14 Department of Veterans Affairs if the Secretary de-
15 termines the performance or misconduct of the em-
16 ployee is a threat to public health or safety, includ-
17 ing the health and safety of veterans; and

1 “(2) remove an employee suspended under
2 paragraph (1) when, after such investigation and re-
3 view as the Secretary considers necessary, the Sec-
4 retary determines that removal is necessary in the
5 interests of public health or safety.

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

9 “(1) within 30 days after suspension, a written
10 statement of the specific charges against the em-
11 ployee, which may be amended within 30 days there-
12 after;

13 “(2) an opportunity within 30 days thereafter,
14 plus an additional 30 days if the charges are amend-
15 ed, to answer the charges and submit affidavits;

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

19 “(4) a review of the case by the Secretary, be-
20 fore a decision adverse to the employee is made
21 final; and

22 “(5) written statement of the decision of the
23 Secretary.

24 “(c) RELATION TO OTHER DISCIPLINARY RULES.—
25 The authority provided under this section shall be in addi-

1 tion to the authority provided under section 713 and title
2 5 with respect to disciplinary actions for performance or
3 misconduct.

4 “(d) BACK PAY FOR WHISTLEBLOWERS.—If any em-
5 ployee of the Department of Veterans Affairs is subject
6 to a suspension or removal under this section and such
7 suspension or removal is determined by an appropriate au-
8 thority under applicable law, rule, regulation, or collective
9 bargaining agreement to be a prohibited personnel prac-
10 tice described under section 2302(b)(8) or (9) of title 5,
11 such employee shall receive back pay equal to the total
12 amount of basic pay that such employee would have re-
13 ceived during the period that the suspension and removal
14 (as the case may be) was in effect, less any amounts
15 earned by the employee through other employment during
16 that period.

17 “(e) DEFINITIONS.—In this section, the term ‘em-
18 ployee’ means any individual occupying a position within
19 the Department of Veterans Affairs under a permanent
20 or indefinite appointment and who is not serving a proba-
21 tionary or trial period.”

22 (b) CLERICAL AND CONFORMING AMENDMENTS.—

23 (1) CLERICAL.—The table of sections at the be-
24 ginning of such chapter is amended by adding after

1 the item relating to section 713 the following new
2 item:

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

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

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

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

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

10 “(4) any suspension or removal under section
11 715 of title 38.”.

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

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

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

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

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

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

14 (B) the safety of a patient at a medical fa-
15 cility of the Department.

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

20 (6) The number of such suspensions or remov-
21 als that were of an employee who was the subject of
22 a complaint made to the Department regarding the
23 health or safety of a patient at a medical facility of
24 the Department.

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

