
PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1994) TO AMEND TITLE 38, UNITED STATES CODE, TO PROVIDE FOR THE REMOVAL OR DEMOTION OF EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS BASED ON PERFORMANCE OR MISCONDUCT, AND FOR OTHER PURPOSES, AND PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 3236) TO PROVIDE AN EXTENSION OF FEDERAL-AID HIGHWAY, HIGHWAY SAFETY, MOTOR CARRIER SAFETY, TRANSIT, AND OTHER PROGRAMS FUNDED OUT OF THE HIGHWAY TRUST FUND, TO PROVIDE RESOURCE FLEXIBILITY TO THE DEPARTMENT OF VETERANS AFFAIRS FOR HEALTH CARE SERVICES, AND FOR OTHER PURPOSES

July 28, 2015.—Referred to the House Calendar and ordered to be printed

MR. SESSIONS, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. __]

The Committee on Rules, having had under consideration House Resolution ____, by a record vote of 9 to 4, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1994, the VA Accountability Act of 2015, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Veterans' Affairs. The resolution waives all points of order against consideration of the bill. The resolution makes in order as original text for the purpose of amendment the amendment in the nature of a substitute recommended by the Committee on Veterans' Affairs now printed in the bill and provides that it shall be considered as read. The resolution waives all points of order against that amendment in the nature of a substitute. The resolution makes in order only those further amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be

offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in this report. The resolution provides one motion to recommit with or without instructions.

Section 2 of the resolution provides for consideration of H.R. 3236, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, under a closed rule. The resolution provides one hour of debate equally divided among and controlled by the respective chairs and ranking minority members of the Committees on Transportation and Infrastructure, Ways and Means, and Veterans' Affairs. The resolution waives all points of order against consideration of the bill. The resolution provides that the bill shall be considered as read. The resolution waives all points of order against provisions in the bill. The resolution provides one motion to recommit.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of H.R. 1994 includes a waiver of the following:

Clause 3(c)(4) of rule XIII, requiring the inclusion of general performance goals and objectives in the committee report. It is important to note that while the report to accompany H.R. 1994 did include a statement reflecting the performance goals, the statement was insufficient to comply with the rule.

Clause 3(e)(1) of rule XIII ("Ramseyer"), requiring a committee report accompanying a bill amending or repealing statutes to show, by typographical device, parts of statute affected. The waiver is provided because the submission provided by the Committee on Veterans' Affairs was insufficient to meet the standards established by the rule in its current form. The Committee on Rules continues to work with the House Office of Legislative Counsel and committees to determine the steps necessary to comply with the updated rule.

Although the resolution waives all points of order against the amendment in the nature of a substitute to H.R. 1994 made in order as original text, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

The waiver of all points of order against consideration of H.R. 3236 include a waiver of clause 11 of rule XXI, prohibiting the consideration of a bill or joint resolution which has not been reported by a committee until the third calendar day on which such measure has been available to Members, Delegates, and the Resident Commissioner.

Although the resolution waives all points of order against provisions in H.R. 3236, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Record Vote No. 94

Motion by Ms. Slaughter to amend the rule to H.R. 3236 to make in order and provide the appropriate waivers for amendment #1, offered by Rep. Fincher (TN), which reforms and reauthorizes the Export-Import Bank of the United States through September 30, 2019. Defeated: 6-7

Majority Members	Vote	Minority Members	Vote
Ms. Foxx.....	Nay	Ms. Slaughter.....	Yea
Mr. Cole.....	Nay	Mr. McGovern.....	Yea
Mr. Woodall.....	Nay	Mr. Hastings of Florida.....	Yea
Mr. Burgess.....	Nay	Mr. Polis.....	Yea
Mr. Stivers.....	Yea		
Mr. Collins.....	Nay		
Mr. Byrne.....	Nay		
Mr. Newhouse.....	Yea		
Mr. Sessions, Chairman.....	Nay		

Rules Committee Record Vote No. 95

Motion by Mr. McGovern to report open rules for H.R. 1994 and H.R. 3236.
 Defeated: 4-9

Majority Members	Vote	Minority Members	Vote
Ms. Foxx.....	Nay	Ms. Slaughter.....	Yea
Mr. Cole.....	Nay	Mr. McGovern.....	Yea
Mr. Woodall.....	Nay	Mr. Hastings of Florida.....	Yea
Mr. Burgess.....	Nay	Mr. Polis.....	Yea
Mr. Stivers.....	Nay		
Mr. Collins.....	Nay		
Mr. Byrne.....	Nay		
Mr. Newhouse.....	Nay		
Mr. Sessions, Chairman.....	Nay		

Rules Committee Record Vote No. 96

Motion by Ms. Foxx to report the rule. Adopted: 9-4

Majority Members	Vote	Minority Members	Vote
Ms. Foxx.....	Yea	Ms. Slaughter.....	Nay
Mr. Cole.....	Yea	Mr. McGovern.....	Nay
Mr. Woodall.....	Yea	Mr. Hastings of Florida.....	Nay
Mr. Burgess.....	Yea	Mr. Polis.....	Nay
Mr. Stivers.....	Yea		
Mr. Collins.....	Yea		
Mr. Byrne.....	Yea		
Mr. Newhouse.....	Yea		
Mr. Sessions, Chairman.....	Yea		

SUMMARY OF THE AMENDMENTS TO H.R. 1994 MADE IN ORDER

1. Benishek (MI), Sinema (AZ): Reforms and improves the VA Inspector General's ability to report on problems and problem employees at the VA. Requires the IG to release reports including employee misconduct to the public and explain what changes the VA has requested, requires the IG to identify a manager responsible for fixing an identified problem, makes it easier to fire an identified employee, and targets the bonuses of employees that fail to solve problems. (10 minutes)
2. Takano (CA): SUBSTITUTE Provides VA Secretary the authority to immediately suspend without pay any employee whose performance or misconduct is a threat to health or safety; ensures back pay for whistleblowers unfairly terminated, and caps the payment of administrative leave to 14 days. Makes effective date of back pay provision October 1, 2015. (20 minutes)

TEXT OF AMENDMENTS TO H.R. 1994 MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BENISHEK OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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**AMENDMENT TO H.R. 1994, AS REPORTED
OFFERED BY MR. BENISHEK OF MICHIGAN**

Add at the end the following new section:

1 **SEC. 11. ACCOUNTABILITY OF SECRETARY OF VETERANS**
2 **AFFAIRS TO INSPECTOR GENERAL OF THE**
3 **DEPARTMENT OF VETERANS AFFAIRS.**

4 (a) IN GENERAL.—Chapter 7 of title 38, United
5 States Code, as amended by section 8, is amended by add-
6 ing at the end the following new section:

7 **“§ 727. Accountability of Secretary to Inspector Gen-**
8 **eral**

9 “(a) SUBMISSION OF REPORTS.—(1) At the same
10 time as the Inspector General of the Department submits
11 to the Secretary a covered report, the Inspector General
12 shall submit to the Committees on Veterans’ Affairs of
13 the Senate and House of Representatives a copy of such
14 covered report.

15 “(2) The Inspector General shall include in each cov-
16 ered report submitted under paragraph (1)—

17 “(A) an explanation of any changes to the cov-
18 ered report recommended by the Secretary during
19 the period in which the Inspector General was pre-
20 paring the covered report; and

1 “(B) a list of the names of each responsible
2 manager.

3 “(3) The Inspector General may not make public the
4 names of responsible managers submitted under para-
5 graph (2)(B).

6 “(b) PERFORMANCE OF RESPONSIBLE MANAGERS.—

7 (1) The Secretary shall—

8 “(A) promptly notify each responsible manager
9 of a covered issue by not later than seven days after
10 the date on which the Inspector General submits a
11 covered report to the Secretary;

12 “(B) direct such manager to resolve such issue;
13 and

14 “(C) provide such manager with appropriate
15 counseling and a mitigation plan with respect to re-
16 solving such issue.

17 “(2) The Secretary shall ensure that any performance
18 review of a responsible manager includes an evaluation of
19 whether the manager took appropriate actions during the
20 period covered by the review to respond to a covered issue.

21 “(3) The Secretary may not pay to a responsible
22 manager any bonus or award under chapter 45 or 53 of
23 title 5 or any other bonus or award authorized under such
24 title or this title if a covered issue is unresolved.

1 “(c) ROLE OF INSPECTOR GENERAL.—Any authority
2 of the Inspector General provided under this section is in
3 addition to any responsibility or authority provided to the
4 Inspector General in the Inspector General Act of 1978
5 (5 U.S.C. App.).

6 “(d) DEFINITIONS.—In this section:

7 “(1) The term ‘covered issue’ means, with re-
8 spect to a responsible manager, an issue described in
9 a covered report for which the manager is or was re-
10 sponsible.

11 “(2) The term ‘covered report’ means a report
12 by the Inspector General of the Department of Vet-
13 erans Affairs that recommends actions to the Sec-
14 retary of Veterans Affairs (or other official or em-
15 ployee of the Department) to address an issue in the
16 Department with respect to public health or safety
17 relating to misconduct, or alleged misconduct, by an
18 employee of the Department.

19 “(3) The term ‘responsible manager’ means an
20 individual who—

21 “(A) is an employee of the Department;

22 “(B) is or was responsible for an issue in-
23 cluded in a covered report; and

24 “(C) in being so responsible, is or was em-
25 ployed in a management position, regardless of

1 whether the employee is in the competitive civil
2 service, Senior Executive Service, or other type
3 of civil service.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 at the beginning of such chapter, as amended by section
6 8, is amended by inserting after the item relating to sec-
7 tion 725 the following new item:

“727. Accountability of Secretary to Inspector General.”.



2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE TAKANO OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 20 MINUTES

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**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 employee 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) EFFECTIVE DATE OF BACK PAY PROVISION.—
15 Subsection (d) of section 715 of title 38, United States
16 Code, as added by subsection (a), shall take effect on Oc-
17 tober 1, 2015.

18 (d) REPORT ON SUSPENSIONS AND REMOVALS.—Not
19 later than one year after the date of the enactment of this
20 Act, the Inspector General of the Department of Veterans
21 Affairs shall submit to the Committees on Veterans’ Af-
22 fairs of the House of Representatives and the Senate a
23 report on suspensions and removals of employees of the
24 Department made under section 715 of title 38, United

1 States Code, as added by subsection (a). Such report shall
2 include, with respect to the period covered by the report,
3 the following:

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

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

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

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

14 (A) an alleged prohibited personnel prac-
15 tice committed by an officer or employee of the
16 Department and described in section
17 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or
18 (D) of title 5, United States Code; or

19 (B) the safety of a patient at a medical fa-
20 cility of the Department.

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

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

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

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

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

18 “(b) REPORT ON ADMINISTRATIVE LEAVE.—(1) Not
19 later than 30 days after the end of each quarter of any
20 calendar year, the Secretary shall submit to the Commit-
21 tees on Veterans' Affairs of the House of Representatives
22 and the Senate a report listing the name of any employee
23 of the Department (if any) who has been placed on admin-
24 istrative leave, or any other type of paid non-duty status,
25 for a period longer than 7 days during such quarter.

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

6 (b) APPLICATION.—

7 (1) ADMINISTRATIVE LEAVE LIMITATION.—Sec-
8 tion 717(a) of title 38, United States Code (as
9 added by subsection (a)), shall apply to any action
10 of removal or transfer under section 713 of such
11 title or title 5, United States Code, commencing on
12 or after the date of enactment of this section.

13 (2) REPORT.—The report under section 717(b)
14 of such title (as added by subsection (a)) shall begin
15 to apply in the quarter that ends after the date that
16 is 6 months after the date of enactment of this sec-
17 tion.

18 (c) CLERICAL AMENDMENT.—The table of sections
19 at the beginning of such chapter 7 is amended by adding
20 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.”.

