

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

R E P O R T

[To accompany H. Res. 388]

The Committee on Rules, having had under consideration House Resolution 388, 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

Add at the end the following new section:

SEC. 11. ACCOUNTABILITY OF SECRETARY OF VETERANS AFFAIRS TO INSPECTOR GENERAL OF THE DEPARTMENT OF VETERANS AFFAIRS.

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

“§ 727. Accountability of Secretary to Inspector General

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

“(2) The Inspector General shall include in each covered report submitted under paragraph (1)—

“(A) an explanation of any changes to the covered report recommended by the Secretary during the period in which the Inspector General was preparing the covered report; and

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

“(3) The Inspector General may not make public the names of responsible managers submitted under paragraph (2)(B).

“(b) PERFORMANCE OF RESPONSIBLE MANAGERS.—(1) The Secretary shall—

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

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

“(C) provide such manager with appropriate counseling and a mitigation plan with respect to resolving such issue.

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

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

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

“(d) DEFINITIONS.—In this section:

“(1) The term ‘covered issue’ means, with respect to a responsible manager, an issue described in a covered report for which the manager is or was responsible.

“(2) The term ‘covered report’ means a report by the Inspector General of the Department of Veterans Affairs that recommends actions to the Secretary of Veterans Affairs (or other official or employee of the Department) to address an issue in the Department with respect to public health or safety relating to misconduct, or alleged misconduct, by an employee of the Department.

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

“(A) is an employee of the Department;

“(B) is or was responsible for an issue included in a covered report; and

“(C) in being so responsible, is or was employed in a management position, regardless of whether the employee is in the competitive civil service, Senior Executive Service, or other type of civil service.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter, as amended by section 8, is amended by inserting after the item relating to section 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

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fair VA Accountability Act”.

SEC. 2. SUSPENSION AND REMOVAL OF DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES FOR PERFORMANCE OR MISCONDUCT THAT IS A THREAT TO PUBLIC HEALTH OR SAFETY.

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

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

“(a) SUSPENSION AND REMOVAL.—Subject to subsections (b) and (c), the Secretary may—

“(1) suspend without pay an employee of the Department of Veterans Affairs if the Secretary determines the performance or misconduct of the employee is a clear and direct threat to public health or safety; and

“(2) remove an employee suspended under paragraph (1) when, after such investigation and review as the Secretary considers necessary, the Secretary determines that removal is necessary in the interests of public health or safety.

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

“(1) within 30 days after suspension, a written statement of the specific charges against the employee, which may be amended within 30 days thereafter;

“(2) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

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

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

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

“(c) RELATION TO OTHER DISCIPLINARY RULES.—The authority provided under this section shall be in addition to the authority provided under section 713 and title 5 with respect to disciplinary actions for performance or misconduct.

“(d) BACK PAY FOR WHISTLEBLOWERS.—If any employee of the Department of Veterans Affairs is subject to a suspension or removal under this section and such suspension or removal is determined by an appropriate authority under applicable law, rule, regulation, or collective bargaining agreement to be a prohibited personnel practice described under section 2302(b)(8) or (9) of title 5, such employee shall receive back pay equal to the total amount of basic pay that such employee would have received during the period that the suspension and removal (as the case may be) was in effect, less any amounts earned by the employee through other employment during that period.

“(e) DEFINITIONS.—In this section, the term ‘employee’ means any individual occupying a position within the Department of Veterans Affairs under a permanent or indefinite appointment and who is not serving a probationary or trial period.”

(b) CLERICAL AND CONFORMING AMENDMENTS.—

(1) CLERICAL.—The table of sections at the beginning of such chapter is amended by adding after the item relating to section 713 the following new item:

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

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

(A) by striking “or” at the end of paragraph (2);

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

(C) by adding at the end the following:

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

(c) EFFECTIVE DATE OF BACK PAY PROVISION.—Subsection (d) of section 715 of title 38, United States Code, as added by subsection (a), shall take effect on October 1, 2015.

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

(1) The number of employees who were suspended under such section.

(2) The number of employees who were removed under such section.

(3) A description of the threats to public health or safety that caused such suspensions and removals.

(4) The number of such suspensions or removals, or proposed suspensions or removals, that were of employees who filed a complaint regarding—

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

(B) the safety of a patient at a medical facility of the Department.

(5) Of the number of suspensions and removals listed under paragraph (4), the number that the Inspector General considers to be retaliation for whistleblowing.

(6) The number of such suspensions or removals that were of an employee who was the subject of a complaint made to the Department regarding the health or safety of a patient at a medical facility of the Department.

(7) Any recommendations by the Inspector General, based on the information described in paragraphs (1) through (6), to improve the authority to make such suspensions and removals.

SEC. 3. LIMITATION ON ADMINISTRATIVE LEAVE FOR EMPLOYEES WITHIN THE DEPARTMENT OF VETERANS AFFAIRS.

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

“§ 717. Administrative leave limitation and report

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

“(2) The Secretary may waive the limitation under paragraph (1) and extend the administrative leave or other paid non-duty status without charge to leave of a covered individual placed on such leave or status under paragraph (1) if the Secretary submits to the Committees on Veterans’ Affairs of the Senate and House of Representatives a detailed explanation of the reasons the individual was placed on administrative leave or other paid non-duty status without charge to leave and the reasons for the extension of such leave or status. Such explanation shall include the name of the covered individual, the location where the individual is employed, and the individual’s job title.

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

“(A) who is subject to an investigation for purposes of determining whether such individual should be subject to any disciplinary action under this title or title 5; or

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

“(b) REPORT ON ADMINISTRATIVE LEAVE.—(1) Not later than 30 days after the end of each quarter of any calendar year, the Sec-

retary shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report listing the name of any employee of the Department (if any) who has been placed on administrative leave, or any other type of paid non-duty status, for a period longer than 7 days during such quarter.

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

(b) APPLICATION.—

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

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

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter 7 is amended by adding 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 performance or misconduct that is a threat to public health or safety.”.