

114TH CONGRESS
1ST SESSION

S. _____

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.

IN THE SENATE OF THE UNITED STATES

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Vet-
5 erans Affairs Accountability Act of 2015”.

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

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

6 **“§ 714. Employees: removal or demotion based on**
7 **performance or misconduct**

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

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

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

17 “(A) a reduction in grade for which the in-
18 dividual is qualified and that the Secretary de-
19 termines is appropriate; or

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

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

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

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

14 “(d) PROCEDURE.—(1) The procedures under section
15 7513(b) of title 5 and chapter 43 of such title shall not
16 apply to a removal or demotion under this section.

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

21 “(B) An appeal under subparagraph (A) of a removal
22 or demotion may only be made if such appeal is made not
23 later than seven days after the date of such removal or
24 demotion.

1 “(e) EXPEDITED REVIEW BY ADMINISTRATIVE LAW
2 JUDGE.—(1) Upon receipt of an appeal under subsection
3 (d)(2)(A), the Merit Systems Protection Board shall refer
4 such appeal to an administrative law judge pursuant to
5 section 7701(b)(1) of title 5. The administrative law judge
6 shall expedite any such appeal under such section and, in
7 any such case, shall issue a decision not later than 45 days
8 after the date of the appeal.

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

13 “(3) In any case in which the administrative judge
14 cannot issue a decision in accordance with the 45-day re-
15 quirement under paragraph (1), the removal or demotion
16 is final. In such a case, the Merit Systems Protection
17 Board shall, within 14 days after the date that such re-
18 moval or demotion is final, submit to Congress and the
19 Committees on Veterans’ Affairs of the Senate and House
20 of Representatives a report that explains the reasons why
21 a decision was not issued in accordance with such require-
22 ment.

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

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

8 “(6) To the maximum extent practicable, the Sec-
9 retary shall provide to the Merit Systems Protection
10 Board, and to any administrative law judge to whom an
11 appeal under this section is referred, such information and
12 assistance as may be necessary to ensure an appeal under
13 this subsection is expedited.

14 “(f) LIMITATION ON REMOVAL OR DEMOTION.—In
15 the case of an individual seeking corrective action (or on
16 behalf of whom corrective action is sought) from the Office
17 of Special Counsel based on an alleged prohibited per-
18 sonnel practice described in section 2302(b) of title 5, the
19 Secretary may not remove or demote such individual
20 under subsection (a) without the approval of the Special
21 Counsel under section 1214(f) of title 5.

22 “(g) RELATION TO OTHER PROVISIONS OF LAW.—
23 (1) The authority provided by this section is in addition
24 to the authority provided by subchapter V of chapter 75
25 of title 5 and chapter 43 of such title.

1 “(2) Subchapter V of chapter 74 of this title shall
2 not apply to any action under this section.

3 “(h) DEFINITIONS.—In this section:

4 “(1) The term ‘individual’ means an individual
5 occupying a position at the Department of Veterans
6 Affairs but does not include—

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

9 “(B) a political appointee.

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

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

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

18 “(A) employed in a position described
19 under sections 5312 through 5316 of title 5,
20 (relating to the Executive Schedule);

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

1 “(C) is employed in a position of a con-
2 fidential or policy-determining character under
3 schedule C of subpart C of part 213 of title 5
4 of the Code of Federal Regulations.”.

5 (b) CLERICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

16 “(4) any removal or demotion under section
17 714 of title 38.”.

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

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

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

2 “(a) IN GENERAL.—Notwithstanding sections 3321
3 and 3393(d) of title 5, the appointment of a covered em-
4 ployee shall become final only after such employee has
5 served a probationary period of 540 days. The Secretary
6 may extend a probationary period under this subsection
7 at the discretion of the Secretary.

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

10 “(1) means any individual—

11 “(A) appointed to a permanent position
12 within the competitive service at the Depart-
13 ment; or

14 “(B) appointed as a career appointee (as
15 that term is defined in section 3132(a)(4) of
16 title 5) within the Senior Executive Service at
17 the Department; and

18 “(2) does not include any individual with a pro-
19 bationary period prescribed by section 7403 of this
20 title.

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

1 (b) APPLICATION.—The amendment made by sub-
2 section (a) shall apply to any covered employee (as that
3 term is defined in section 715 of title 38, United States
4 Code, as added by such subsection) appointed after the
5 date of enactment of this section.

6 (c) CLERICAL AND CONFORMING AMENDMENTS.—

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

“715. Probationary period for employees.”.

11 (2) CONFORMING.—Title 5, United States
12 Code, is amended—

13 (A) in section 3321(e), by—

14 (i) striking “Service or” and inserting
15 “Service,”; and

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

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

1 **SEC. 4. COMPTROLLER GENERAL STUDY OF DEPARTMENT**
2 **TIME AND SPACE USED FOR LABOR ORGANI-**
3 **ZATION ACTIVITY.**

4 (a) **STUDY REQUIRED.**—Not later than 180 days
5 after the date of the enactment of this Act, the Comp-
6 troller General of the United States shall conduct a study
7 on the amount of time spent by Department of Veterans
8 Affairs employees carrying out organizing activities relat-
9 ing to labor organizations and the amount of space in De-
10 partment facilities used for such activities. The study shall
11 include a cost-benefit analysis of the use of such time and
12 space for such activities.

13 (b) **REPORT TO CONGRESS.**—Not later than 90 days
14 after the completion of the study required under sub-
15 section (a), the Comptroller General shall submit to the
16 Committee on Veterans' Affairs of the Senate and the
17 Committee on Veterans' Affairs of the House of Rep-
18 resentatives a report on the results of the study.