

BACKGROUND AND CONCERNS RELATED TO THE CONVERSION OF TITLE 32 TECHNICIANS TO TITLE 5 CIVILIAN EMPLOYEES

The fiscal year (FY) 2016 National Defense Authorization Act (NDAA) requires a certain number and type of state-managed National Guard military technicians be converted to federally-managed civilian employees (Section 1053). This provision will negatively impact National Guard readiness, increase costs and reduce resources available to states during times of emergency.

Governors and adjutant generals believe that maintaining state authority over full-time military technicians is essential to effective management of National Guard forces when not serving on active duty, and call upon Congress to repeal Section 1053 in the FY 2017 NDAA.

BACKGROUND ON THE PROVISION

Previous regulation of military technicians:

- The National Guard Technician Act of 1968 recognized the essential military requirements and state characteristics of the National Guard, authorized Federal employee status for National Guard technicians, and assured that military technicians would remain subject to the command and control of governors and adjutants general (32 USC 709).
- Dual-status (DS) technicians are required to maintain membership in the National Guard as a condition of continued employment. Non-dual status (NDS) technicians are not required to maintain membership in the National Guard; however, the number of NDS positions is regulated by Title 10 (10 USC 10217).

New requirements under FY 2016 NDAA, Section 1053:

- Requires the Secretary of Defense to convert not fewer than 20 percent of DS military technician positions to positions to be filled by federal civilian employees under Title 5 (5 USC 3101).
- Requires the phased transition of all NDS technicians, regardless of occupation, to Title 5 federal employees through attrition. This would eliminate the NDS category of military technician over time.
- Implementation begins January 1, 2017.
- The NDAA language is ostensibly based on a September 2013 Center for Naval Analysis study on the “Report of the Termination of Military Technician as a Distinct Personnel Management Category” which found “...the DS MilTech programs are functioning as intended...”

Impact to National Guard units and personnel:

- The Montana National Guard currently employs a total of approx. 500 DS military technicians (300 Army National Guard and 200 Air National Guard) and 22 NDS technicians (19 Army National Guard and 3 Air National Guard).
- Nationally, Section 1053 would result in conversion of a minimum of roughly 100 technician positions (DS and NDS) to Title 5 federal employee status.

KEY ISSUES OF CONCERN FOR STATES

Degraded state-control of its full time force.

- Section 1053 changes the statutory role of the adjutants general as the sole agent and final appeal authority for certain personnel actions affecting all Title 32 military technicians.
- Absent a separate amendment to Title 5, all affected employees would report to a federal official outside of each state’s National Guard force structure.
- Hiring authorities for Title 5 civilian employees fall outside the purview of the state which will cause undue duplication of resources and substantial delays in filling critical positions.

- Section 1053 increases federal costs and makes adverse personnel actions more complicated due to Title 5 regulations and increased appeal rights under the Merit Systems Protection Board.

Increased federal and state costs.

- The additional management burden of this new population of Title 5 federal employees drives up costs to the DoD and states. Unlike federal technicians, Title 5 employees also have the option of receiving overtime pay and certain retention bonuses.

Reduced National Guard readiness and unit cohesion.

- Section 1053 eliminates key developmental positions for military members, reducing adjutants' general flexibility in managing a blended full-time/part-time force and potentially driving stagnation in critical positions encumbered by Title 5 federal employees.
- The 0300 occupational series (i.e. general administrative, clerical and office support) is used throughout the Guard for critical leadership and program management positions such as wing commanders, directors, aircraft maintenance officers, brigade and battalion administrative officers, and logistics management specialists.
- Changing the legal status and oversight of these positions would interrupt the continuity and knowledge flow between the weekday and weekend National Guard force due to the loss of synergy from the military affiliation of DS technicians.
- It would also disrupt DS technicians' support of their military compatible functions that enable seamless continuity to units when mobilized and deployed.

Decreased state emergency response capacity.

- Existing Title 32 dual-status technicians are available to respond to emergencies under both immediate response authority and state active duty. Title 5 civilian employees cannot be used in state emergency responses under the Governor's authority. State emergency response capabilities will therefore be severely degraded by diminishing the number of DS technicians governors can order to State Active Duty in times of domestic crisis.

RECOMMENDATIONS TO CONGRESS

Repeal Section 1053.

- Sustain state management and oversight of full-time National Guard military technician positions by repealing Section 1053 of the FY 2017 NDAA.

Consult Governors and adjutants general.

- Ensure advance engagement with governors and adjutants general through the Council of Governors on legislation affecting states and National Guard forces. Section 1053 was drafted without consultation with or input from governors or their adjutants general. It was included in the final conference agreement despite concerns raised by TAGs to committee staff.