112TH CONGRESS
1ST SESSION
S. 1893

To amend titles 5, 10, and 32, United States Code, to eliminate inequities in the treatment of National Guard technicians, to reduce the eligibility age for retirement for non-Regular service, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2011

Mr. REED introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend titles 5, 10, and 32, United States Code, to eliminate inequities in the treatment of National Guard technicians, to reduce the eligibility age for retirement for non-Regular service, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Guard Technician Equity Act”.

SEC. 2. TITLES 10 AND 32, UNITED STATES CODE, AMENDMENTS REGARDING NATIONAL GUARD TECHNICIANS AND RELATED PROVISIONS.

(a) Authority To Employ Technician as Non-Dual Status Technician After 20 Years of Creditable Service.—Subsection (c) of section 709 of title 32, United States Code, is amended to read as follows:

“(c) A person shall have the right to be employed under subsection (a) as a non-dual status technician (as defined by section 10217 of title 10) if—

“(1) the technician position occupied by the person has been designated by the Secretary concerned to be filled only by a non-dual status technician; or

“(2) the person occupying the technician position has at least 20 years of creditable service as a military technician (dual status).”.

(b) Exception to Dual-Status Employment Condition of Membership in Selected Reserve.—Section 10216 of title 10, United States Code, is amended—

(1) in subsection (a)(1)(B), by inserting “subject to subsection (d),” before “is required”; and

(2) in subsection (d)(1), by striking “Unless specifically exempted by law” and inserting “Except
as provided in section 709(c)(2) of title 32 or as otherwise specifically exempted by law”.

(c) Continued Compensation After Loss of Membership in Selected Reserve.—Subsection (e) of section 10216 of title 10, United States Code, is amended to read as follows:

“(e) Continued Compensation After Loss of Membership in Selected Reserve.—Funds appropriated for the Department of Defense may continue to be used to provide compensation to a military technician who was hired as a military technician (dual status), but who is no longer a member of the Selected Reserve.”.

(d) Repeal of Permanent Limitations on Number of Non-Dual Status Technicians.—Section 10217 of title 10, United States Code, is amended by striking subsection (e).

(e) Technician Restricted Right of Appeal and Adverse Actions Covered.—

(1) Rights of Grievance, Arbitration, Appeal, and Review Beyond AG.—Section 709 of title 32, United States Code, is amended—

(A) in subsection (f)—

(i) in the matter preceding paragraph (1), by striking “Notwithstanding any
other provision of law and under” and inserting “Under”; and

(ii) in paragraph (4), by striking “a right of appeal” and inserting “subject to subsection (j), a right of appeal”; and

(B) by adding at the end the following new subsection:

“(j)(1) Notwithstanding subsection (f)(4) or any other provision of law, a technician and a labor organization that is the exclusive representative of a bargaining unit including the technician shall have the rights of grievance, arbitration, appeal, and review extending beyond the adjutant general of the jurisdiction concerned and to the Merit Systems Protection Board and thereafter to the United States Court of Appeals for the Federal Circuit, in the same manner as provided in sections 4303, 7121, and 7701–7703 of title 5, with respect to a performance-based or adverse action imposing removal, suspension for more than 14 days, furlough for 30 days or less, or reduction in pay or pay band (or comparable reduction).

“(2) This subsection does not apply to a technician who is serving under a temporary appointment or in a trial or probationary period.”.
(2) Adverse actions covered.—Section 709(g) of title 32, United States Code, is amended by striking “7511, and 7512”.

(3) Conforming amendment.—Section 7511(b) of title 5, United States Code, is amended—

(A) by striking paragraph (5); and

(B) by redesignating paragraphs (6) through (10) as paragraphs (5) through (9), respectively.

(f) Technician seniority rights during RIF.—

Subsection (g) of section 709 of title 32, United States Code, as amended by subsection (e)(2), is amended to read as follows:

“(g) Section 2108 of title 5 does not apply to a person employed under this section.”.

(g) Availability of certain enlistment, reenlistment, and student loan benefits for military technicians.—Section 10216 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(h) Eligibility for bonuses and other benefits.—(1) If an individual becomes employed as a military technician (dual status) while the individual is already a member of a reserve component, the Secretary concerned
may not require the individual to repay any enlistment, reenlistment, or affiliation bonus provided to the individual in connection with the individual’s enlistment or reenlistment before such employment.

“(2) Even though an individual employed as a military technician (dual status) is required as a condition of that employment to maintain membership in the Selected Reserve, the individual shall not be precluded from receiving an enlistment, reenlistment, or affiliation bonus nor be denied the opportunity to participate in an educational loan repayment program under chapter 1609 of this title as an additional incentive for the individual to accept and maintain such membership”.

(h) **Repeal of Prohibition Against Overtime Pay for National Guard Technicians.**—Section 709(h) of title 32, United States Code, is amended by striking the second sentence and inserting the following new sentence: “The Secretary concerned shall pay a technician for irregular or overtime work at a rate equal to one and one-half times the rate of basic pay applicable to the technician, except that, at the request of the technician, the Secretary may grant the technician, instead of such pay, an amount of compensatory time off from the technician’s scheduled tour of duty equal to the amount of time spent in such irregular or overtime work.”.
SEC. 3. TITLE 5, UNITED STATES CODE, AMENDMENTS REGARDING NATIONAL GUARD TECHNICIANS AND RELATED PROVISIONS.

(a) LOWERING RETIREMENT AGE.—

(1) AMENDMENT TO FERS.—Subsection (c) of section 8414 of title 5, United States Code, is amended to read as follows:

“(c)(1) Under the circumstances described in paragraph (2), an employee who is separated from service as a military technician (dual status) is entitled to an annuity if the separation is by reason of either—

“(A) separating from the Selected Reserve; or

“(B) ceasing to hold the military grade specified by the Secretary concerned for the position involved.

“(2) Except as provided in paragraph (3), paragraph (1) applies to a military technician (dual status) who is separated—

“(A) after completing 25 years of service as such a technician, or

“(B) after becoming 50 years of age and completing 20 years of service as such a technician.

“(3) Paragraph (1) does not apply if separation or removal is for cause on charges of misconduct or delinquency.”.
(2) Amendment to CSRS.—Section 8336 of title 5, United States Code, is amended by adding at the end the following new subsection:

“(q)(1) Under the circumstances described in paragraph (2), an employee who is separated from service as a military technician (dual status) is entitled to an annuity if the separation is by reason of either—

“(A) separating from the Selected Reserve; or

“(B) ceasing to hold the military grade specified by the Secretary concerned for the position involved.

“(2) Except as provided in paragraph (3), paragraph (1) applies to a military technician (dual status) who is separated—

“(A) after completing 25 years of service as such a technician, or

“(B) after becoming 50 years of age and completing 20 years of service as such a technician.

“(3) Paragraph (1) does not apply if separation or removal is for cause on charges of misconduct or delinquency.”.

(b) Adequate Leave Time for Military Activations.—Section 6323(a)(1) of title 5, United States Code, is amended by striking the last sentence and inserting the following new sentence: “Leave under this subsection ac-
crues for an employee or individual at the rate of 30 days per fiscal year and, to the extent that such leave is not used by the employee or individual during the fiscal year accrued, accumulates without limitation for use in succeeding fiscal years.”.

(c) IMPROVED HEALTH CARE BENEFITS.—

(1) FEHBP CHANGES.—Subparagraph (B) of section 8906(e)(3) of title 5, United States Code, is amended to read as follows:

“(B) An employee referred to in subparagraph (A) is an employee who—

“(i) is enrolled in a health benefits plan under this chapter;

“(ii) is a member of a reserve component of the Armed Forces;

“(iii) is placed on leave without pay or separated from service to perform the active duty or other duties described in clause (iv); and

“(iv) is called or ordered to—

“(I) active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);

“(II) active duty for a period of more than 30 consecutive days;
“(III) active duty under section 12406 of title 10;

“(IV) perform training or other duties described under paragraph (1) or (2) of section 502(f) of title 32; or

“(V) while not in Federal service, perform duties related to an emergency declared by the chief executive of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.”.

(2) STUDY AND REPORT.—

(A) IN GENERAL.—Within 6 months after the date of the enactment of this Act, the Secretary of Defense and the Director of the Office of Personnel Management shall jointly conduct a study and submit to Congress a report—

(i) evaluating the feasibility of converting military technicians from FEHBP coverage to coverage provided under the TRICARE or TRICARE Reserve Select program (or both); and

(ii) identifying any problems associated with the conversion of military technicians from FEHBP coverage to coverage provided under chapter 55 of title 10,
United States Code, during contingency operations.

(B) DEFINITIONS.—For purposes of this subsection—

(i) the term “FEHBP coverage” means coverage provided under chapter 89 of title 5, United States Code; and

(ii) the term “contingency operation” has the meaning given that term in section 101(a)(13) of title 10, United States Code.

SEC. 4. REDUCTION IN ELIGIBILITY AGE FOR RETIREMENT FOR NON-REGULAR SERVICE.

Section 12731(f) of title 10, United States Code, is amended by striking “60 years of age” both places it appears and inserting “55 years of age”.

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