

115TH CONGRESS
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S. 766

To amend titles 10 and 32, United States Code, to improve and enhance authorities relating to the employment, use, status, and benefits of military technicians (dual status), and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2017

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

A BILL

To amend titles 10 and 32, United States Code, to improve and enhance authorities relating to the employment, use, status, and benefits of military technicians (dual status), 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. IMPROVEMENT AND ENHANCEMENT OF AU-**
4 **THORITIES RELATING TO THE EMPLOYMENT,**
5 **USE, AND STATUS OF MILITARY TECHNI-**
6 **CIANS (DUAL STATUS).**

7 (a) IN GENERAL.—The text of section 709 of title
8 32, United States Code, as amended by sections 512 and

1 513 of the National Defense Authorization Act for Fiscal
2 Year 2017 (Public Law 114–328), is further amended to
3 read as follows:

4 “(a) Under regulations prescribed by the Secretary
5 of Defense, persons may be employed as technicians for
6 the purposes of—

7 “(1) the support of the readiness, organization,
8 administration, instruction, or training of the Na-
9 tional Guard;

10 “(2) the maintenance and repair of supplies
11 and equipment or facilities issued to the National
12 Guard or the armed forces; and

13 “(3) the performance of the following additional
14 duties to the extent that the performance of such
15 duties does not interfere with the performance of the
16 duties described by paragraphs (1) and (2):

17 “(A) Support of operations or missions un-
18 dertaken by the technician’s unit at the request
19 of the President or the Secretary of Defense.

20 “(B) Support of Federal training oper-
21 ations or Federal training missions assigned in
22 whole or in part to the technician’s unit.

23 “(C) Instructing or training in the United
24 States or the Commonwealth of Puerto Rico or
25 possessions of the United States of—

1 “(i) active-duty members of the armed
2 forces;

3 “(ii) members of foreign military
4 forces (under the same authorities and re-
5 strictions applicable to active-duty mem-
6 bers providing such instruction or train-
7 ing);

8 “(iii) Department of Defense con-
9 tractor personnel; or

10 “(iv) Department of Defense civilian
11 employees.

12 “(b) In this section, a technician is a person employed
13 under subsection (a) who is an employee of the Depart-
14 ment of the Army or the Department of the Air Force,
15 as the case may be, and an employee of the United States,
16 and who is either of the following:

17 “(1) A military technician (dual status) as de-
18 fined in section 10216(a) of title 10 who—

19 “(A) is a member of the National Guard of
20 the jurisdiction in which the person is em-
21 ployed;

22 “(B) is outside the competitive service;

23 “(C) holds the military grade specified
24 pursuant to regulations prescribed by the Sec-
25 retary of Defense for that position; and

1 “(D) while performing duties as a military
2 technician (dual status)—

3 “(i) wears the uniform appropriate for
4 the member’s grade and component of the
5 armed forces; and

6 “(ii) adheres to all military regula-
7 tions of the component concerned.

8 “(2) A non-dual status technician as defined in
9 section 10217 of title 10, in a technician position
10 designated in accordance with regulations prescribed
11 by the Secretary of Defense.

12 “(c) The adjutants general referred to in section 314
13 of this title shall appoint, employ, administer, detail, and
14 assign the technicians authorized by this section.

15 “(d) Notwithstanding any other provision of law and
16 under regulations prescribed by the Secretary of De-
17 fense—

18 “(1) a person employed under subsection (a)
19 who is a military technician (dual status) and other-
20 wise subject to the requirements of subsection (b)(1)
21 who—

22 “(A) is separated from the National Guard
23 shall be promptly separated from military tech-
24 nician (dual status) employment by the adju-
25 tant general of the jurisdiction concerned; or

1 “(B) ceases to hold the military grade
2 specified by the Secretary concerned for that
3 position or fails to maintain the security or
4 other military standards established for a mem-
5 ber of a reserve component pursuant to regula-
6 tions prescribed by the Secretary of Defense
7 that are required for that position shall be sep-
8 arated from employment as a military techni-
9 cian (dual status) and concurrently discharged
10 from the National Guard by the adjutant gen-
11 eral of the jurisdiction concerned;

12 “(2) a technician may, at any time, be sepa-
13 rated from technician employment for cause by the
14 adjutant general of the jurisdiction concerned;

15 “(3)(A) a reduction in force, furlough, removal,
16 or other adverse action involving military technician
17 (dual status) employment shall be accomplished by
18 the adjutant general of the jurisdiction concerned,
19 and neither the Secretary of Defense nor the Chief
20 of the National Guard Bureau may order persons
21 employed as military technicians (dual status) under
22 subsection (a) to be furloughed; or

23 “(B) a reduction in force, removal, or adverse
24 action involving discharge from non-dual status tech-
25 nician employment, suspension, furlough without

1 pay, or reduction in rank or compensation shall be
2 accomplished by the adjutant general of the jurisdic-
3 tion concerned;

4 “(4)(A) in the case of a military technician
5 (dual status) a right of appeal which may exist
6 under paragraph (1), (2), or (3) shall be through
7 military proceedings, and shall not extend beyond
8 the adjutant general of the jurisdiction concerned
9 when the appeal concerns activity occurring while
10 the member is in a military pay status or military
11 duty standards; or

12 “(B) in the case of a non-dual status techni-
13 cian, a right of appeal which may exist with respect
14 to paragraph (1), (2), or (3) shall not extend beyond
15 the adjutant general of the jurisdiction concerned
16 when the appeal concerns activity occurring while
17 the member is in a military pay status or concerns
18 military duty standards;

19 “(5)(A) in the case of a military technician
20 (dual status), under regulations prescribed by the
21 Secretary of Defense, a right of appeal of the final
22 decision of the adjutant general of the jurisdiction
23 concerned which may exist under paragraph (1), (2),
24 or (3) shall be to an administrative panel when the
25 appeal concerns activities that occur while the tech-

1 nician is performing technician duties or that relate
2 to aspects of technician employment not covered by
3 paragraph (4), and the decision of the administra-
4 tive panel shall be binding upon the adjutant general
5 of the jurisdiction concerned and may not be further
6 appealed; or

7 “(B) in the case of a non-dual status techni-
8 cian, with respect to an appeal concerning any activ-
9 ity not covered by paragraph (4), the provisions of
10 sections 7511, 7512, and 7513 of title 5 and section
11 717 of the Civil Rights Act of 1991 (42 U.S.C.
12 2000e–16) shall apply;

13 “(6) in the case of a military technician (dual
14 status), with respect to an appeal of any final deci-
15 sion by the adjutant general of the jurisdiction con-
16 cerned alleging discrimination based upon race,
17 color, religion, sex, or national origin (including an
18 appeal of an action under paragraph (1), (2), or (3)
19 that alleges such discrimination) in the non-military
20 aspects of technician employment (but not in activi-
21 ties that occur while the military technician is in a
22 military pay or duty status or that concern military
23 duty standards), the provisions of section 717 of the
24 Civil Rights Act of 1991 shall apply;

1 “(7) a technician shall be notified in writing of
2 the termination of employment as a technician and,
3 unless the technician is serving under a temporary
4 appointment, is serving in a trial or probationary pe-
5 riod, or has voluntarily ceased to be a member of the
6 National Guard when such membership is a condi-
7 tion of employment, such notification shall be given
8 at least 30 days before the termination date of such
9 employment; and

10 “(8) a military technician (dual status) who is
11 involuntarily separated from military technician
12 (dual status) employment under paragraph (1) or
13 (3), other than for misconduct, shall—

14 “(A) be granted priority 1 consideration
15 under the Department of Defense priority
16 placement program; and

17 “(B) be granted full eligibility under the
18 Interagency Career Transition Assistance Plan
19 (ICTAP) under subpart G of part 330 of title
20 5, Code of Federal Regulations (5 C.F.R.
21 330.701 et seq.).

22 “(e)(1) Except as provided in subsection (d), sections
23 2108, 3502, 7511, and 7512 of title 5 do not apply to
24 a person employed under this section.

1 “(2) In addition to the sections referred to in para-
2 graph (1), section 6323(a)(1) of title 5 also does not apply
3 to a person employed under this section who is performing
4 active Guard and Reserve duty (as that term is defined
5 in section 101(d)(6) of title 10).

6 “(f)(1) Notwithstanding sections 5544(a) and
7 6101(a) of title 5 or any other provision of law, the Sec-
8 retary concerned may prescribe the hours of duty for tech-
9 nicians.

10 “(2) Notwithstanding sections 5542 and 5543 of title
11 5 or any other provision of law, non-dual status techni-
12 cians shall be granted an amount of compensatory time
13 off from their scheduled tour of duty equal to the amount
14 of any time spent by them in irregular or overtime work,
15 and shall not be entitled to compensation for such work.

16 “(3) Notwithstanding sections 5542 and 5543 of title
17 5 or any other provision of law and subject to the avail-
18 ability of funds, military technicians (dual status) shall be
19 paid at a rate of one and one-half times their basic pay
20 rate for irregular or overtime work, except that, upon re-
21 quest or when funds are unavailable, such technicians may
22 be granted an amount of compensatory time off from their
23 scheduled tour of duty equal to the amount of any time
24 spent by them in irregular or overtime work.

1 “(g) The Secretary concerned may not prescribe for
 2 purposes of eligibility for Federal recognition under sec-
 3 tion 301 of this title a qualification applicable to non-dual
 4 status technicians employed under subsection (a) that is
 5 not applicable pursuant to that section to the other mem-
 6 bers of the National Guard in the same grade, branch,
 7 position, and type of unit or organization involved. How-
 8 ever, the adjutant general of the jurisdiction concerned
 9 may prescribe such qualifications for military technicians
 10 (dual status).

11 “(h) In this section:

12 “(1) The term ‘military duty standards’ means
 13 requirements in law, regulation, or policy that are
 14 applicable to military service, including service in the
 15 National Guard or other reserve components of the
 16 armed forces or service on active duty in the armed
 17 forces.

18 “(2) The term ‘military pay status’ means a pe-
 19 riod of service where the amount of pay payable to
 20 a technician for that service is based on rates of
 21 military pay provided by title 37.”.

22 (b) ACCRUAL OF PAY FOR OVERTIME WORK CONTIN-
 23 GENT UPON REGULATIONS.—No entitlement to payment
 24 for overtime work shall accrue under paragraph (3) of
 25 subsection (f) of section 709 of title 32, United States

1 Code, as amended by subsection (a), until the Secretary
 2 of Defense prescribes regulations relating to budgeted for
 3 and paying for overtime work of military technicians
 4 under that section.

5 **SEC. 2. ENHANCEMENT OF BENEFITS FOR MILITARY TECH-**
 6 **NICIANS (DUAL STATUS).**

7 (a) **BONUSES AND RELATED BENEFITS.**—Section
 8 10216 of title 10, United States Code, is amended by add-
 9 ing at the end the following new subsection:

10 “(h) **BONUSES AND RELATED BENEFITS.**—(1) If an
 11 individual becomes employed as a military technician (dual
 12 status) while the individual is already a member of a re-
 13 serve component of the armed forces, the Secretary con-
 14 cerned may not require the individual to repay any enlist-
 15 ment, reenlistment, or affiliation bonus provided to the in-
 16 dividual in connection with the individual’s enlistment or
 17 reenlistment before such employment.

18 “(2) Even though an individual employed as a mili-
 19 tary technician (dual status) is required as a condition of
 20 that employment to maintain membership in the Selected
 21 Reserve, the individual shall not be precluded from receiv-
 22 ing an enlistment, reenlistment, or affiliation bonus nor
 23 be denied the opportunity to participate in an educational
 24 loan repayment program under chapter 1609 of this title

1 as an additional incentive for the individual to accept and
 2 maintain such membership.”.

3 (b) ELIGIBILITY FOR TRICARE STANDARD AS MEM-
 4 BERS OF THE SELECTED RESERVE.—Section 1076d(a)(2)
 5 of title 10, United States Code, is amended—

6 (1) by striking “Paragraph (1) does not” and
 7 inserting “(A) Except as provided in subparagraph
 8 (B), paragraph (1) does not”; and

9 (2) by adding at the end the following new sub-
 10 paragraph:

11 “(B) Notwithstanding subparagraph (A), paragraph
 12 (1) applies to a member who is enrolled, or eligible to en-
 13 roll, in a health benefits plan under chapter 89 of title
 14 5 if the member is a military technician (dual status) as
 15 described in section 10216(a) of this title.”.

16 **SEC. 3. FISCAL YEAR 2018 END STRENGTHS FOR NATIONAL**
 17 **GUARD MILITARY TECHNICIANS (DUAL STA-**
 18 **TUS).**

19 Notwithstanding any other provision of law, the min-
 20 imum number of military technicians (dual status) as of
 21 the last day of fiscal year 2018 for the specified reserve
 22 components of the Army and the Air Force (notwith-
 23 standing section 129 of title 10, United States Code) shall
 24 be the following:

1 (1) For the Army National Guard of the United
2 States, 25,507.

3 (2) For the Air National Guard of the United
4 States, 22,103.

5 **SEC. 4. MODIFICATION OF REQUIREMENTS RELATING TO**
6 **CONVERSION OF MILITARY TECHNICIAN**
7 **(DUAL STATUS) POSITIONS.**

8 Section 1053(a) of the National Defense Authoriza-
9 tion Act for Fiscal Year 2016 (Public Law 114–92; 129
10 Stat. 10 U.S.C. 10216 note), as amended by section
11 1084(a) of the National Defense Authorization Act for
12 Fiscal Year 2017 (Public Law 114–328), is further
13 amended by striking paragraphs (1) and (2) and inserting
14 the following new paragraphs:

15 “(1) IN GENERAL.—Commencing not earlier
16 than October 1, 2017, the Secretary of Defense shall
17 convert the military technician positions described in
18 paragraph (2) to positions filled by individuals who
19 are employed under section 3101 of title 5, United
20 States Code, or section 1601 of title 10, United
21 States Code, and are not military technicians.

22 “(2) COVERED POSITIONS.—The positions de-
23 scribed in this paragraph are military technician
24 (dual status) positions in general administration,
25 clerical, finance, and office service occupations that

1 are identified by the Secretary of Defense as con-
 2 vertible without affecting military readiness.

3 “(3) LIMITATION ON NUMBER CONVERTED.—
 4 The total number of positions converted pursuant to
 5 this subsection may not exceed the number equal to
 6 4.8 percent of military technician (dual status) posi-
 7 tions of the National Guard and the Reserves that
 8 are filled as of October 1, 2017.”.

9 **SEC. 5. SCOPE OF AUTHORIZED DUTIES FOR MEMBERS OF**
 10 **THE NATIONAL GUARD CALLED TO ACTIVE**
 11 **GUARD AND RESERVE DUTY BY THE GOV-**
 12 **ERNORS OF THE STATES.**

13 Section 328(b) of title 32, United States Code, is
 14 amended by inserting “, or additional duties in support
 15 of State missions,” after “additional duties specified in
 16 section 502(f) of this title”.

17 **SEC. 6. MODIFICATION OF PERSONNEL MANAGEMENT AU-**
 18 **THORITIES FOR THE CHIEF OF THE NA-**
 19 **TIONAL GUARD BUREAU.**

20 Section 10508(b) of title 10, United States Code, as
 21 added by section 932(2) of the National Defense Author-
 22 ization Act for Fiscal Year 2017 (Public Law 114–328),
 23 is amended—

24 (1) in paragraph (1), by striking “may” and all
 25 that follows and inserting “may—

1 “(A) program for persons under sections
2 2103, 2105, and 3101 of title 5, and section
3 328 of title 32; and

4 “(B) appoint, employ, administer, detail,
5 and assign persons under sections 2103, 2105,
6 and 3101 of title 5 within the National Guard
7 Bureau and, with the consent and advice of the
8 adjutant general of the jurisdiction concerned,
9 the National Guard of each State, the Common-
10 wealth of Puerto Rico, the District of Columbia,
11 Guam, and the Virgin Islands to execute the
12 functions of the National Guard Bureau, the
13 missions of the National Guard, and missions
14 assigned by the Chief of the National Guard
15 Bureau.”; and

16 (2) by striking paragraph (2) and inserting the
17 following new paragraph (2):

18 “(2) ADMINISTRATION THROUGH ADJUTANTS
19 GENERAL.—The adjutants general referred to in sec-
20 tion 314 of title 32 shall exercise the authority of
21 the Chief of the National Guard Bureau under para-
22 graph (1)(B) to appoint, employ, administer, detail,
23 and assign persons under sections 2103, 2105, and
24 3101 of title 5 within their jurisdictions. The adju-

- 1 tants general may delegate such authority to persons
- 2 under sections 328 and 709 of title 32.”.

