

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.

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 “National Guard Tech-
5 nician Equity Act”.

1 **SEC. 2. TITLES 10 AND 32, UNITED STATES CODE, AMEND-**
2 **MENTS REGARDING NATIONAL GUARD TECH-**
3 **NICIANS AND RELATED PROVISIONS.**

4 (a) **AUTHORITY TO EMPLOY TECHNICIAN AS NON-**
5 **DUAL STATUS TECHNICIAN AFTER 20 YEARS OF CRED-**
6 **ITABLE SERVICE.**—Subsection (c) of section 709 of title
7 32, United States Code, is amended to read as follows:

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

11 “(1) the technician position occupied by the
12 person has been designated by the Secretary con-
13 cerned to be filled only by a non-dual status techni-
14 cian; or

15 “(2) the person occupying the technician posi-
16 tion has at least 20 years of creditable service as a
17 military technician (dual status).”.

18 (b) **EXCEPTION TO DUAL-STATUS EMPLOYMENT**
19 **CONDITION OF MEMBERSHIP IN SELECTED RESERVE.**—
20 Section 10216 of title 10, United States Code, is amend-
21 ed—

22 (1) in subsection (a)(1)(B), by inserting “sub-
23 ject to subsection (d),” before “is required”; and

24 (2) in subsection (d)(1), by striking “Unless
25 specifically exempted by law” and inserting “Except

1 as provided in section 709(c)(2) of title 32 or as oth-
 2 erwise specifically exempted by law”.

3 (c) CONTINUED COMPENSATION AFTER LOSS OF
 4 MEMBERSHIP IN SELECTED RESERVE.—Subsection (e) of
 5 section 10216 of title 10, United States Code, is amended
 6 to read as follows:

7 “(e) CONTINUED COMPENSATION AFTER LOSS OF
 8 MEMBERSHIP IN SELECTED RESERVE.—Funds appro-
 9 priated for the Department of Defense may continue to
 10 be used to provide compensation to a military technician
 11 who was hired as a military technician (dual status), but
 12 who is no longer a member of the Selected Reserve.”.

13 (d) REPEAL OF PERMANENT LIMITATIONS ON NUM-
 14 BER OF NON-DUAL STATUS TECHNICIANS.—Section
 15 10217 of title 10, United States Code, is amended by
 16 striking subsection (c).

17 (e) TECHNICIAN RESTRICTED RIGHT OF APPEAL
 18 AND ADVERSE ACTIONS COVERED.—

19 (1) RIGHTS OF GRIEVANCE, ARBITRATION, AP-
 20 PEAL, AND REVIEW BEYOND AG.—Section 709 of
 21 title 32, United States Code, is amended—

22 (A) in subsection (f)—

23 (i) in the matter preceding paragraph

24 (1), by striking “Notwithstanding any

1 other provision of law and under” and in-
2 sserting “Under”; and

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

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

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

21 “(2) This subsection does not apply to a technician
22 who is serving under a temporary appointment or in a trial
23 or probationary period.”.

1 (2) ADVERSE ACTIONS COVERED.—Section
2 709(g) of title 32, United States Code, is amended
3 by striking “7511, and 7512”.

4 (3) CONFORMING AMENDMENT.—Section
5 7511(b) of title 5, United States Code, is amend-
6 ed—

7 (A) by striking paragraph (5); and

8 (B) by redesignating paragraphs (6)
9 through (10) as paragraphs (5) through (9), re-
10 spectively.

11 (f) TECHNICIAN SENIORITY RIGHTS DURING RIF.—
12 Subsection (g) of section 709 of title 32, United States
13 Code, as amended by subsection (e)(2), is amended to read
14 as follows:

15 “(g) Section 2108 of title 5 does not apply to a per-
16 son employed under this section.”.

17 (g) AVAILABILITY OF CERTAIN ENLISTMENT, REEN-
18 LISTMENT, AND STUDENT LOAN BENEFITS FOR MILI-
19 TARY TECHNICIANS.—Section 10216 of title 10, United
20 States Code, is amended by adding at the end the fol-
21 lowing new subsection:

22 “(h) ELIGIBILITY FOR BONUSES AND OTHER BENE-
23 FITS.—(1) If an individual becomes employed as a military
24 technician (dual status) while the individual is already a
25 member of a reserve component, the Secretary concerned

1 may not require the individual to repay any enlistment,
2 reenlistment, or affiliation bonus provided to the indi-
3 vidual in connection with the individual's enlistment or re-
4 enlistment before such employment.

5 “(2) Even though an individual employed as a mili-
6 tary technician (dual status) is required as a condition of
7 that employment to maintain membership in the Selected
8 Reserve, the individual shall not be precluded from receiv-
9 ing an enlistment, reenlistment, or affiliation bonus nor
10 be denied the opportunity to participate in an educational
11 loan repayment program under chapter 1609 of this title
12 as an additional incentive for the individual to accept and
13 maintain such membership”.

14 (h) REPEAL OF PROHIBITION AGAINST OVERTIME
15 PAY FOR NATIONAL GUARD TECHNICIANS.—Section
16 709(h) of title 32, United States Code, is amended by
17 striking the second sentence and inserting the following
18 new sentence: “The Secretary concerned shall pay a tech-
19 nician for irregular or overtime work at a rate equal to
20 one and one-half times the rate of basic pay applicable
21 to the technician, except that, at the request of the techni-
22 cian, the Secretary may grant the technician, instead of
23 such pay, an amount of compensatory time off from the
24 technician's scheduled tour of duty equal to the amount
25 of time spent in such irregular or overtime work.”.

1 **SEC. 3. TITLE 5, UNITED STATES CODE, AMENDMENTS RE-**
2 **GARDING NATIONAL GUARD TECHNICIANS**
3 **AND RELATED PROVISIONS.**

4 (a) LOWERING RETIREMENT AGE.—

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

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

12 “(A) separating from the Selected Reserve; or

13 “(B) ceasing to hold the military grade speci-
14 fied by the Secretary concerned for the position in-
15 volved.

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

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

21 “(B) after becoming 50 years of age and com-
22 pleting 20 years of service as such a technician.

23 “(3) Paragraph (1) does not apply if separation or
24 removal is for cause on charges of misconduct or delin-
25 quency.”.

1 (2) AMENDMENT TO CSRS.—Section 8336 of
2 title 5, United States Code, is amended by adding
3 at the end the following new subsection:

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

8 “(A) separating from the Selected Reserve; or

9 “(B) ceasing to hold the military grade speci-
10 fied by the Secretary concerned for the position in-
11 volved.

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

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

17 “(B) after becoming 50 years of age and com-
18 pleting 20 years of service as such a technician.

19 “(3) Paragraph (1) does not apply if separation or
20 removal is for cause on charges of misconduct or delin-
21 quency.”.

22 (b) ADEQUATE LEAVE TIME FOR MILITARY ACTIVA-
23 TIONS.—Section 6323(a)(1) of title 5, United States Code,
24 is amended by striking the last sentence and inserting the
25 following new sentence: “Leave under this subsection ac-

1 cruces for an employee or individual at the rate of 30 days
2 per fiscal year and, to the extent that such leave is not
3 used by the employee or individual during the fiscal year
4 accrued, accumulates without limitation for use in suc-
5 ceeding fiscal years.”.

6 (c) IMPROVED HEALTH CARE BENEFITS.—

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

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

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

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

16 “(iii) is placed on leave without pay or sepa-
17 rated from service to perform the active duty or
18 other duties described in clause (iv); and

19 “(iv) is called or ordered to—

20 “(I) active duty in support of a contin-
21 gency operation (as defined in section
22 101(a)(13) of title 10);

23 “(II) active duty for a period of more than
24 30 consecutive days;

1 “(III) active duty under section 12406 of
2 title 10;

3 “(IV) perform training or other duties de-
4 scribed under paragraph (1) or (2) of section
5 502(f) of title 32; or

6 “(V) while not in Federal service, perform
7 duties related to an emergency declared by the
8 chief executive of a State, the District of Co-
9 lumbia, the Commonwealth of Puerto Rico, or
10 a territory or possession of the United States.”.

11 (2) STUDY AND REPORT.—

12 (A) IN GENERAL.—Within 6 months after
13 the date of the enactment of this Act, the Sec-
14 retary of Defense and the Director of the Office
15 of Personnel Management shall jointly conduct
16 a study and submit to Congress a report—

17 (i) evaluating the feasibility of con-
18 verting military technicians from FEHBP
19 coverage to coverage provided under the
20 TRICARE or TRICARE Reserve Select
21 program (or both); and

22 (ii) identifying any problems associ-
23 ated with the conversion of military techni-
24 cians from FEHBP coverage to coverage
25 provided under chapter 55 of title 10,

1 United States Code, during contingency
2 operations.

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

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

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

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

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

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