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Sent: Monday, January 11, 2016 1:40 PM

To: Allen, Susan

CC: Springer, Darren; Lovejoy, Mark S BG USARMY NG VTARNG (US); Heston, Michael T BG USARMY (US); Morgan, Michael R Col USAF (US)

Subject: Technician conversion

Attachments: T32 to T5 Paper for Gov.pdf

Hi Sue,

This paper is a follow up to our earlier conversation. It is highly detailed and gives background, discussion and identifies problems with this legislation. If this starts to be discussed through the NGA and you or the Gov have questions please don't hesitate to ask.

Steve

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NGVT-HRO

15 January 2016

MEMORANDUM FOR TAG-VT

FROM: Col Michael R. Morgan, Human Resource Officer, Vermont National Guard

SUBJECT: Informational Paper on the NDAA Conversion of Title 32 Technicians to Title 5 Technicians

1. Purpose: This white paper provides an overview of Section 1053, Management of Military Technicians, of the FY16 National Defense Authorization Act (NDAA) as it applies to the Vermont National Guard.
2. Recommendation: Provisions under section 1053 of the FY16 NDAA be repealed in future legislation to maintain the authorization under 32 USC 709 for military technicians in support of the National Guard.
3. Background:
 - a. Under the U.S. Constitution and the many laws pertaining to the National Guard, the Federal Government supports the National Guard with funds, equipment, and training procedures which require that the members of the Guard must meet Federal standards with respect to mental, physical, and professional qualifications. Until the National Guard is called into active Federal service, however, it is a State military organization, subject to the sole command and control of the Governor concerned.
 - b. The Technician Act of 1968 converted then existing federally funded State technicians to Federal technicians in order to standardize retirement benefits for all National Guard technicians and to clarify technician's legal status under the Federal Tort Claims Act. In making these changes, Congress specifically recognized the military requirements and unique state characteristics of the National Guard and created specific statutory administrative authority at the State level. This authority was created and exists as a matter of law and includes:
 - (1) Requirement for Adjutants General to be the sole agent for employment and administration of the Technician program.
 - (2) Federal status in a non-competitive category.
 - (3) Final level of appeal vested in the Adjutants General for certain adverse personnel actions.
 - (4) Termination of civilian employment upon loss of Guard membership, failure to meet military security standards, or separation for cause.

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(5) Compensatory time in lieu of overtime and differential pay.

c. These requirements were intended to achieve two purposes: (a) recognize the State character of the National Guard and (b) meet the requirement of giving the Adjutants General (who are state officers) the statutory function of employing Federal employees.

d. This program exists today. Current technicians employed by the National Guard are regulated by Title 32 USC 709, and classified as either dual status (DS) or non-dual status (NDS) military technicians. Dual status military technicians are required to maintain membership in the National Guard as a condition of continued employment. Non-dual status military technicians are not required to maintain membership in the National Guard; however the number of non-dual status military technicians is regulated by Title 10 USC 10217(c)(2). Current ceiling for non-dual status Army National Guard is 1,600, and Air National Guard is 350, with a total ceiling of 1,950 NDS civilian technicians.

4. Legislative changes in NDAA 2016:

a. Section 1053, Management of Military Technicians, of the FY16 NDAA directs the conversion of certain military technician positions to civilian technician positions. This change would require the conversion of current military technicians employed under 32 USC 709 to civilian technicians employed under section 3101 of Title 5.

(1) The Secretary of Defense shall convert not fewer than 20 percent of military technician (dual status) positions identified as general administration, clerical, finance, and office service occupations in the report of the Secretary of Defense under section 519 of the National Defense Authorization Act for Fiscal Year 2011¹, to civilian technician positions employed under 5 USC 3101.

(2) No individual may be newly hired or employed, or rehired or reemployed, as a non- dual status military technician after December 31, 2016. Any individual newly hired or employed, or rehired or re-employed, to a position required to be filled shall be an individual employed in such position under 5 USC 3101, and may not be a military technician.

(3) Of the 543 permanent T32 technicians in the Vermont National Guard, 95 Title 32 dual status and 22 T32 non-dual status fall within the identified general administration, clerical, finance, and office service occupations categories identified for conversion to Title 5 civilian employees. Converting not fewer than 20 percent of these military technicians would require a status change for 41 individuals throughout the organization. The National Guard Bureau has not determined whether each state will be allowed to choose the positions to convert, or be directed.

5. Discussion:

a. Authority of The Adjutant General to command and control the National Guard on behalf of the Governor, which includes employment and administration of the military technicians authorized under 32 USC 709, will be dramatically impacted by this legislation. Title 5 employees will fall outside this

¹ (Sec. 519) Directs the Secretary to: (1) study the feasibility and advisability of terminating the military technician as a distinct DOD personnel management category, and (2) report study results to the defense and appropriations committees.

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purview and report to a federal supervisory chain, setting up separate but not equal appellate authorities with which each jurisdiction must contend.

b. Hiring authorities for Title 5 civilian technicians will fall outside the purview of each state causing an undue duplication of resources with regard to the filling of positions within the state. Dual status military positions would continue to be hired and administered under the current system, while Title 5 employees would be hired and administered by the Office of Personnel Management (OPM), resulting in unnecessary redundancies, costs, and possible delays in the hiring of critical positions.

c. Supervisory chains will be complicated through the introduction of Title 5 civilian employees due to the prohibition of Title 32 employees acting in a supervisory role over Title 5 employees and vice versa. Additionally, progressively higher-level Title 5 positions will need to be created to support the need for adequate supervisory structure for Title 5 civilian technicians.

d. Administrative Officers, Chief of Joint Staff, Deputy Chief of Joint Staff, Director of the Joint Staff, Director of Military Support and Supervisory Aircraft Officers (Wing Commanders) being only a few of the key staff positions identified under present FY16 NDAA language would convert to Title 5. A current DS technician in these key staff positions will convert to Title 5, and conceivably create a civilian with no military affiliation; thus rendering the position one of non-value to the military mission required by the Adjutants General and Governors for the State missions; as well as the President for the Federal missions.

(1) Impacts to the readiness of the National Guard are numerous. The continuity and knowledge flow between the full time staff and traditional force will be disrupted due to the loss of synergy with the DS Technicians' military affiliation. Furthermore, Dual Status Technicians' support of their military compatible functions that currently enable seamless continuity to units when deployed will be eliminated.

(2) More immediately, all DS Technicians are available for domestic response under emergency response authority or state active duty at the Governor's discretion. The Title 5 force will not be available for domestic response.

(3) The total projected nation-wide cost to the government of these conversions, civilian and military, is projected to exceed \$160M over the next 10 years. There are no apparent cost savings resulting from this conversion to offset these expenses.

6. Summary: The changes made in Section 1053 of the National Defense Authorization Act undermine governors' authority over the management of their full-time Title 32 military technician force, which will impact readiness of the National Guard and negatively affect military cohesion. Further, this act increases Federal and state costs and places the safety and welfare of our citizens in jeopardy. This law should be repealed.

7. Prepared by: Ms. Jackie Guthrie, Director, Government Affairs

8. Reviewed by: Col David May, Director, Manpower and Personnel

9. AUTHENTICATION and Modified for Vermont by: LTC Samuel W. Gould, Deputy HRO, 8 Jan 2016