# Association of Civilian Technicians, Inc.

**Proposed Amendment of 10 U.S.C. § 10216(g) to**

**Prevent Loss of Civilian Employment Due Solely to Loss of Military Membership**

**Under Certain Conditions 1 February 2022**

**Problem**

Under law dual status technicians employed under 32 U.S.C. §709 (1968) & 10 USC

§10216 (1996) National Guard technicians are required to maintain membership in Guard or Reserve units as a condition of their civilian employment. Much like other DoD employees these technicians work to maintain equipment and perform other support functions to ensure the readiness of Guard and Reserve units. Unlike other DoD employees, technicians automatically lose their civilian employment if for any reason they are separated from the military—even if the separation was no fault of their own and not for cause.

The problem is that these technicians are finding it more and more difficult to retain their membership in the Guard and Reserve long enough to reach eligibility for retirement under the Federal Employee Retirement System (FERS). The Guard and Reserve separate many members for reasons that are not within the member’s control. Once separated, they are thrust into the unenviable position of being in mid-career with a family to support, no income, no affordable health insurance, and an uncertain career outlook. Adding insult to injury, most technicians, due to the dual status requirement, are veterans of overseas deployments.

This destructive practice is contrary to the intent of Congress when it enacted the Technician Act (32 USC §709) (1968). The legislative history of the Act—Senate Report 1446, page 12—expressly states that Guard technicians who properly do their jobs should be employed until they reach age 60, normal retirement age. When the Technician Act was made law in 1968 Guard and Reserve members (including technicians) could be confident in maintaining their membership until they chose to retire voluntarily or at age 60. As the Guard and Reserve have transitioned from a strategic to operational force, that is no longer the case.

A right to reach normal retirement—absent misconduct justifying removal, unsatisfactory job performance, or medical disability warranting disability retirement—is necessary to recruit and retain high quality technician personnel. Vulnerability to arbitrary separation in mid-career impedes recruitment and retention of qualified technicians. With respect to those who accept

technician employment initially it creates a strong incentive to take their taxpayer-funded training elsewhere, to careers where they have ample assurance of reaching normal retirement age.

# Proposed Solution

Dual status technicians who are separated from the military, other than for unacceptable job performance or misconduct of a kind that also warrants removal from civilian employment, should not be separated involuntarily from their civilian positions until they reach entitlement to an unreduced retirement annuity—unless they are separated for unacceptable performance, misconduct, or failure to meet physical fitness or height weight standards, or disability entitling them to civilian employment disability retirement.1

# Enhancement of Military Readiness

The proposed solution would enhance, not reduce, military readiness. The original concept of dual status employment is that, with some exceptions, technicians should hold identical civilian and military positions so that when the entire unit is activated to full-time overseas military service the unit’s capabilities are unchanged. This concept has continued validity today, but with a significant modification.

Since 9/11, state Army or Air National Guards no longer deploy overseas en masse. Since Guard or Reserve units normally deploy on a rotational basis, units activated for overseas military deployments typically do not take all personnel and unit equipment with them.

Depending on the type of unit, deployed personnel normally use and maintain equipment that is already at the deployment site. Some equipment always remains at the home base for training non-deployed unit personnel or in case another federal mission or State emergency develops.

Non-deployed personnel must be trained and stay-behind equipment must be maintained.

Consequently, there always is a continuing need at the home base for employees who perform the same jobs as those who have been activated for overseas military duty. Having available for home base work experienced former dual status technicians who have lost military membership without fault would ensure that this work is in capable hands and also make these experienced employees available to train younger technicians and Traditional Guard members.

Additional benefit and flexibility would be afforded by the fact that, although these non- military members could not be compelled by law to perform overseas duty, they could be assigned to work overseas as civilians, if management so desired, and most of them likely would

1 Technicians militarily separated for medical disabilities that do not qualify them for normal civilian disability retirement under 5 U.S.C. § 8337(a) or § 8451 should have the option of continuing their employment or electing the special disability retirement to which technicians are entitled when medically separated from the military. *See* 5

U.S.C. §§ 8337(h) and 8456. The option to elect either continued employment or special technician retirement is available at this time only to Wounded Warrior technicians whose disabilities are combat related. The option should be available to all technicians irrespective of the cause of their military medical disqualification. To date, very few, if any, Wounded Warriors have elected the option of continuing their federal employment—likely because special technician disability retirement plus private sector employment is more remunerative. Nonetheless, the option of continued federal employment should be offered to those who might prefer it, despite the financial sacrifice.

accept the assignments rather than resign from their employment. Case in point: since 9/11, thousands of civilian DoD employees have separated from the military but continued to serve in war zones. Depending on the type of mission, adding civilians employed as equipment maintainers to a deployment could be a force multiplier.

By transforming technician employment back to career employment, as Congress originally intended, ability to recruit and retain the highest quality personnel would be enhanced and greater numbers of more experienced personnel would be available for home base employment, while an ample number of military members—and experienced, willing civilian employees, should management choose them—would be available for overseas deployments.

The attached amendment would require the Secretary of Defense to convert dual status technicians who are separated from the Guard—involuntarily and not for unacceptable performance, misconduct, or failure to meet physical fitness or height weight standards—to Title 5 National Guard employees until they are eligible for early FERS retirement under 5 U.S.C. § 8414(c). The technicians would be required to apply for conversion and would be disqualified if disability prevented them from performing the duties required for the civilian position. Like all federal employees, they would continue to be subject to removal for unacceptable performance or misconduct. The concept of this legislation is quite simple. The Guard retains these experienced employees (like jet engine mechanics) long enough for them to qualify for retirement under §8414(c) and then, once the incumbents have retired, the positions can revert to dual status. This amendment also preserves the original intent of the current §10216(g) by allowing technicians separated for combat related disabilities to be retained.

This amendment would be a win-win for employees and the National Guard. The Guard technician program again would provide career employment—an expectation that, normally, employment will continue at least until eligibility for early retirement benefits is attained. The Guard would enjoy a cadre of experienced employees and, when they reach early retirement age, be able to convert their positions back to dual status.

We ask your support for this amendment.

**Bill Language for New 10 U.S.C. § 10216(g)**

**SEC. . RETENTION OF MILITARY TECHNICIANS WHO LOSE DUAL STATUS.**

Section 10216 of title 10, United States Code, is amended by striking subsection (g) and inserting—

“(g) Retention of Military Technicians Who Lose Dual Status.—(1) Notwithstanding subsection (d) of this section or subsections (a) (3) and (b) of section 10218 of this title, if a military technician (dual status) loses such dual status as the result of involuntary separation from the Selected Reserve, except for misconduct, unsatisfactory performance or failure to meet physical fitness or height weight standards, the Secretary shall convert that person’s position in accordance with section 2102(a) of title 5 to a position under section 3101 or section 5342(a)(2) of that title, as the case may be, and retain the person as a non-dual status employee so long as—

* + 1. the person requests retention;
    2. the person is able to perform the non-dual status duties of the position; and
    3. the person, while a non-dual status employee, is not disqualified from performing the non-dual status duties of the position because of performance, medical, or other reasons.

1. For purposes of section 8414(c) of Title 5, and section 115(d) of Title 10 the service of a person so retained is service as a military reserve technician and as a military technician and the person shall be removed not later than 30 days after becoming eligible for an unreduced

annuity under that section.”

# Current 10 U.S.C. § 10216(g)

(g) Retention of Military Technicians Who Lose Dual Status Due to Combat- Related Disability.—(1) Notwithstanding subsection (d) of this section or subsections (a)

1. and (b) of section 10218 of this title, if a military technician (dual status) loses such dual status as the result of a combat-related disability (as defined in section 1413a of this title), the person may be retained as a non-dual status technician so long as—
   1. the combat-related disability does not prevent the person from performing the non-dual status functions or position; and
   2. the person, while a non-dual status technician, is not disqualified from performing the non-dual status functions or position because of performance, medical, or other reasons.
2. A person so retained shall be removed not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age.
3. Persons retained under the authority of this subsection do not count against the limitations of section 10217(c) of this title.