February 22, 2016

The Honorable John McCain
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Mac Thornberry
Chairman
Committee on Armed Services
United States House of Representatives
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
United States House of Representatives
Washington, DC 20515

Dear Chairman McCain, Senator Reed, Chairman Thornberry, and Representative Smith:

The Association of Civilian Technicians (ACT), which represents a nationwide majority of National Guard bargaining unit technicians—22,000 in 43 jurisdictions—supports full implementation of § 1053 of NDAA 2016.

The enclosed ACT Position Paper shows that § 1053 reduces costs without impairing military readiness. It reduces costs by converting some dual status technicians—full-time Reserve or National Guard civilian employees who also are required to be military members available for activation to military duty—to non-dual status employees who are not required to be military members. This cost reduction does not reduce readiness, however, because the law converts only dual status technicians, such as finance clerks, who do not need to be military members to effectively perform their duties.

The January 7, 2016, Council of Governors letter to you urging repeal of § 1053 asserts with respect to Guard technicians that § 1053 (a) is a “shift in authority from governors . . . to the federal government,” (b) “reduce[s] National Guard readiness and military cohesion,” (c) “increase[s] federal and state costs,” (d) “undermines state management of a critically important part of our National Guard forces,” and (e) “reduces the number of personnel available to states during times of emergency.” The Council’s letter, however, presents no facts or analysis to support these assertions.

Our Position Paper shows that the Council’s first four assertions are incorrect and that the last—which is correct, and the source of appropriate cost savings—is not a valid basis for repeal of § 1053. This is true for two reasons.
First, § 1053 does not reduce the number of Traditional Guard members who would be available during state emergencies. Dual-status technician employees do not add to the authorized strength of state Guard Units. By law they simply must be assigned to the existing state Guard force structure in a military position having duties similar to those they perform as civilian employees. Technicians do not perform state active duty in a civilian status. They are placed on state active duty military orders just as other members of their unit when the Guard is required to respond to state emergencies.

Second, part of the intent of the dual-status technician program is to enhance military expertise and skill sets through performing similar duties as a civilian employee. The duties of civilian positions that would be converted under §1053 do not enhance the military skill sets that would be needed in state emergencies. Guard Units that would normally be required for state emergencies would be engineers and medical units for disasters and military police for civil disturbance situations. The civilian positions to be converted are in administration, finance and office support. Very important civilian jobs to be sure, but not skill sets needed as Guardsmen when responding to state emergencies.

The proper criterion for determining whether a position in a state Guard unit needs to be a military position is whether the duties must be performed overseas when members of the unit are activated to Title 10 federal military duty. If during an overseas deployment finance clerks effectively can perform their duties, without deploying themselves, then they do not need to be military members and their conversion to non-dual status does not impair readiness.

This is the principle that § 1053 implements. The Secretary, moreover, to maximize cost savings, should fully implement this principle by converting all dual status technician positions that do not require deployment, not just the minimum percentage required by the law.

Turning to the Council’s other claims, the unexplained assertion that § 1053 simultaneously increases federal and state costs while reducing personnel available for state emergencies is absurd. Obviously, this assertion is self-contradictory.

The truth, as stated above, is that the law reduces the number of positions that require military membership, thereby reducing the number of employees who must be available for state emergency duty; and this reduces, not increases, military costs. (The Council’s unexplained claim of increased costs may be based on the erroneous argument that converted technicians who are no longer military members will need to be replaced in the military unit by new Traditional Guard military members, who cost more because they must be paid enlistment bonuses. As the Position Paper notes, the fallacy of this argument is its premise—that such replacement will be necessary. It will not be, because the duties of a converted position will never need to be performed by anyone in military status. The duties effectively will be performed, at all times, by a non-dual status civilian employee.)
The Council’s assertions that § 1053 shifts power away from governors and undermines state management, moreover, are legally incorrect—as our Position Paper shows, citing applicable authority. Section 1053 converts federal employees from one federal employment status to another federal employment status. The governors have no power over these federal employees now. Adjutants General who employ them must do so in accordance with the regulations of the Secretary; governors have no authority to issue contrary edicts. Section 1053, moreover, creates no management problem, because the Secretary has ample authority to delegate management of converted employees to the Adjutants General, and there is no reason to believe the Secretary will not do this, as it is the sensible thing to do.

The “Dual-Status” employment program that supports the Guard and Reserve has been in place for many decades without much change. Over the years many organizations that represent these employees, ours included, have advocated for needed updating and changes to these employment programs. Now we have a study, directed by Congress, identifying common sense changes that will save money and improve the program by retaining experienced employees. We support the concept of the conversion and any move to repeal or make changes in the intent of Section 1053 should be rejected.

We would be pleased to answer any questions that you may have about the points in this letter or the accompanying Position Paper.

Sincerely,

Terry Garnett, National President
Association of Civilian Technicians