

January 14, 2016

The Honorable John McCain

Chairman
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, DC 20510-6050

Dear Chairman McCain:

On behalf of the 5,000 National Guard technicians represented by the Laborers International Union of North America (LIUNA), I am writing to inform you of our strong support for section 1053 of the National Defense Authorization Act for Fiscal Year 2016. We understand that some, though not all, State Adjutant Generals, through the Council of Governors, have expressed their opposition to this provision, and wish to see it repealed. We strongly oppose any repeal.

The National Guard (NG) dual-status technician (DST) program is over 100 years old, evolving from state-employed horse "caretakers" in 1916 to the unique federal-employee category we know today. We believe the program is outdated, and the changes initiated by Section 1053 of FY16 NDAA are a great start towards modernizing this force by streamlining administration and cutting overall operating costs to the US Government.

Over 48,000 technicians currently serve our nation. As federal civilians, they work for the reserve component (RC) bringing specialized capabilities on par with, and at a marked savings over, their active duty counterparts. However, they're also required to maintain satisfactory military membership in the RC *as a condition of their federal civilian employment*, hence their "dual-status." This dual-status causes adverse career impacts for employees that are not present in other federal programs.

For example, RC regulations do not exempt technicians from either the Army's Qualitative Retention Program (AR 135-20) or the Air National Guard's Selective Retention Program (ANGI 36-2606). As a result, technicians are often involuntarily separated from military service by these review boards before reaching full retirement age regardless of job performance. This goes against Congressional intent since technician employment was expected to be career employment, with retention of qualified technicians in the military until age 60.

More troubling, technicians, though ostensibly federal civilian employees, do not enjoy the full due process protections guaranteed to other federal employees. This is the equivalent of having 54 separate and autonomous federal agencies that enjoy little to no oversight or control over the administrative decision by anyone outside of their respective state or territory, not even federal courts. Technicians do not have the right to appeal to an arbitrator, the Merit Systems Protection Board, or the Office of Special Counsel, which means they are also not protected by whistleblower provisions. The result is a program that is often susceptible to fraud, waste, and

abuse. This is the only program in the federal government where the person who fires you also hears and decides your appeal.

We see the partial transition required by Sec. 1053 as the start of a much-needed reform of this important program. While we believe that all technicians should eventually transfer to title 5 status, this is a good start. The provision is based on the independent report prepared by the Center for Naval Analysis at the direction of Congress in section 519 of the 2012 defense bill, and takes a conservative approach, setting an effective date a year out and affording the Department, the Guard, and State authorities the ability to provide input on how the transition should occur, including how best to maintain these employees under the control and authority of State AGs, all while affording them the rights enjoyed by every other federal civilian employee. Section 1053 will allow these employees an opportunity to reach full civilian retirement age, provide access to federal appeal rights, and simultaneously correct other inconsistencies that only affect this small but much-needed workforce.

For more information, please feel free to contact me via telephone at (985) 249-2315, or via email at benbanchs@liuna-ngdc.org.

Respectfully,

A handwritten signature in black ink, appearing to read 'B. Banchs', with a long horizontal line extending to the right.

Bienvenido Banchs
Business Manager