SEC. __. APPOINTMENT OF COUNCIL OF DIRECTORS OF THE HENRY M. JACKSON FOUNDATION FOR THE ADVANCEMENT OF MILITARY MEDICINE.

(a) IN GENERAL.—Section 178(c) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking "composed of" and all that follows through the period at the end and inserting the following: "composed of seven individuals appointed by the Secretary of Defense. Such individuals may not be officers or employees of the Federal Government (other than for purposes of membership on the Council) nor be members of the Board of Regents under section 2113a of this title. The members of the Council shall be removable at will by, and subject to the plenary supervision of, the Secretary of Defense."; and

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking "clause (C) of"; and

(B) in subparagraph (B)—

(i) by striking "ex officio members of the Council" and inserting "Secretary";

(ii) by striking "two" the first place it appears and inserting "three"; and

(iii) by striking "two" the last place it appears and inserting "four".

(b) RULE OF CONSTRUCTION AND TREATMENT OF PRIOR DECISIONS.—Nothing in the amendments made by this section shall be construed to invalidate any action taken by the Foundation or the Council of Directors prior to the effective date of the amendments made by this section. The Council, as appointed pursuant to subsection (a) of this section, may ratify any decision made by the Council prior to the date this section becomes effective if the Council

independently evaluates the merits of the decision and concludes that the decision was appropriate. Any decision ratified in accordance with this subsection shall be treated as valid and lawful as of the date it was originally made.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective January 1, 2021. The terms of any members of the Council of Directors holding office as of December 31 , 2020, shall terminate on December 31 , 2020. The Secretary of Defense shall appoint the members of the Council of Directors by January 1, 2021.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would resolve constitutional defects in the current provisions of law governing appointment of members of the Council of Directors of the Henry M. Jackson Foundation for the Advancement of Military Medicine. Currently, the Council is composed of the Chairmen and Ranking Members of the House and Senate Armed Services Committees, the President (referred to in the statute as "Dean") of the Uniformed Services University of the Health Sciences (USUHS), and several additional members appointed by those five *ex officio* members. Section 739 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 increased from four to six the number of additional members. With respect to this provision, the President's signing statement included the following:

> [S]ection 739 would deepen existing violations of the Appointments Clause, the Incompatibility Clause, and the separation of powers contained within the statute that established the Henry M. Jackson Foundation for the Advancement of Military Medicine. President Reagan signed that legislation on the understanding that these constitutional defects would be remedied (see Statement on Signing the Foundation for the Advancement of Military Medicine Act of 1983, 1 Pub. Papers 782, 782 (May 27, 1983)), but that has not happened. The Attorney General and the Secretary of Defense should confer about measures that would allow this Foundation to continue its important work in compliance with the Constitution.

The concern reflected in the President's signing statement is consistent not only with President Reagan's signing statement when the authorizing legislation was first enacted, but also with the recent Supreme Court decision in *Department of Transportation v. Ass'n of American Railroads,* 135 S. Ct. 1225 (2015), relating to the Board of Directors and operations of Amtrak. To remedy the constitutional defects, this proposal would provide that the Foundation's Council of Directors be made up of seven individuals appointed and removable by, and subject to the plenary supervision of, the Secretary of Defense. Seven is

the current number of members exclusive of the members of Congress. To avoid any appearance of conflicting interests, the proposal also provides that Council members may not be officers or employees of the Federal Government or members of the USUHS Board of Regents.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount and are included within the Fiscal Year (FY) 2021 President's Budget request.

Changes to Existing Law: This proposal would make the following changes to section 178 of title 10, United States Code:

§178. The Henry M. Jackson Foundation for the Advancement of Military Medicine

(a) There is authorized to be established a nonprofit corporation to be known as the Henry M. Jackson Foundation for the Advancement of Military Medicine (hereinafter in this section referred to as the "Foundation") which shall not for any purpose be an agency or instrumentality of the United States Government. The Foundation shall be subject to the provisions of this section and, to the extent not inconsistent with this section, the Corporations and Associations Articles of the State of Maryland.

(b) It shall be the purpose of the Foundation (1) to carry out medical research and education projects under cooperative arrangements with the Uniformed Services University of the Health Sciences, (2) to serve as a focus for the interchange between military and civilian medical personnel, and (3) to encourage the participation of the medical, dental, nursing, veterinary, and other biomedical sciences in the work of the Foundation for the mutual benefit of military and civilian medicine.

(c)(1) The Foundation shall have a Council of Directors (hereinafter in this section referred to as the "Council") composed of.~~-~~

~~(A) the Chairmen and ranking minority members of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives (or their designees from the membership of such committees), who shall be ex officio members,~~

~~(B) the Dean of the Uniformed Services University of the Health Sciences, who shall be an ex officio member, and~~

~~(C) six members appointed by the ex officio members of the Council designated in clauses (A) and (B).~~

seven individuals appointed by the Secretary of Defense. Such individuals may not be officers or employees of the Federal Government (other than for purposes of membership on the Council) nor be members of the Board of Regents under section 2113a of this title. The members of the Council shall be removable at will by, and subject to the plenary supervision of, the Secretary of Defense

(2) The term of office of each member of the Council appointed under ~~clause (C) of~~ paragraph (1) shall be four years, except that-

(A) any person appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(B) the terms of office of members first taking office shall expire, as designated by the ~~ex-officio members of the Council~~ Secretary at the time of the appointment, ~~two~~ three at the end of two years and ~~two~~ four at the end of four years.

(3) The Council shall elect a chairman from among its members.

(d)(1) The Foundation shall have an Executive Director who shall be appointed by the Council and shall serve at the pleasure of the Council. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Council shall prescribe.

(2) The rate of compensation of the Executive Director shall be fixed by the Council.

(e) The initial members of the Council shall serve as incorporators and take whatever actions as are necessary to establish under the Corporations and Associations Articles of the State of Maryland the corporation authorized by subsection (a).

(f) Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner in which the original designation or appointment was made.

(g) In order to carry out the purposes of this section, the Foundation is authorized to-

(1) enter into contracts with, accept grants from, and make grants to the Uniformed Services University of the Health Sciences for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education, including contracts for provision of such personnel and services as may be necessary to carry out such cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

(3) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

(4) accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

(5) enter into contracts with individuals, public or private organizations, professional societies, and government agencies for the purpose of carrying out the functions of the Foundation;

(6) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation; and

(7) charge such fees for professional services furnished by the Foundation as the Executive Director determines reasonable and appropriate.

(h) A person who is a full-time or part-time employee of the Foundation may not be an employee (full-time or part-time) of the Federal Government.

(i) The Council shall transmit to the President annually, and at such other times as the Council considers desirable, a report on the operations, activities, and accomplishments of the Foundation.