

1 **SEC. ___. AMENDMENT TO THE LIMITATION ON SENIOR EXECUTIVE SERVICE**
2 **PERSONNEL WITHIN THE DEPARTMENT OF DEFENSE AND**
3 **CODIFICATION OF LIMITATIONS.**

4 (a) SES LIMITATION.—Section 3133(c) of title 5, United States Code, is amended by
5 striking the second sentence and inserting “The number of such positions authorized under the
6 preceding sentence for the Department of Defense may not exceed 1,327.”.

7 (b) LIMITATION ON HQES IN SES POSITIONS.—Section 9903(e) of such title is amended—

8 (1) by inserting “(1)” before “The number of”; and

9 (2) by adding at the end the following new paragraph:

10 “(2) Of the total number of positions authorized in section 3133 for the Department of
11 Defense, not more than 20 may be occupied by an individual appointed under the authority in
12 this section.”.

13 (c) CONFORMING REPEAL.—Section 1109 of the National Defense Authorization Act for
14 Fiscal Year 2017 (Public Law 114–328; 5 U.S.C. 3133 note) is repealed.

**[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 increase the number of Senior Executive Service (SES) positions in the Department of Defense (DoD) from 1,260 to 1,327, an increase of 67 SES positions. Section 1109 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 directed a reduction to the number of SES personnel within the DoD (creating a “cap” of 1,260) to be achieved no later than December 31, 2022. The Department has achieved these reductions; however, the Department’s missions and need for strong senior leadership continue to expand in the areas of cyber, data, and artificial intelligence; space governance; defense industrial base matters; special operations and low-intensity conflict; and other critical mission functions. In accomplishing the directed reductions, the Department was forced to eliminate valid SES requirements to meet the constraint. Moreover, certain capabilities that warrant an SES level leader cannot be filled because of the limitation.

The Department is concerned that the reduction to SES allocations will shift decision-making on strategic issues away from civilian leadership. The same concern was expressed by the conferees in the NDAA for FY 2020 related to the continued reductions to headquarters civilian personnel. In response, section 901 of the NDAA for FY 2020 increased the limits on the size constraints of the headquarters elements, including the Offices of the Secretaries of Defense, the Army, the Navy, and the Air Force and the Joint Staff. While the Department is concerned with an enduring arbitrary limit on the number of SES positions, some relief on the limit is critically needed. The Department eliminated its reserve pool of SES allocations during the mandated reduction, which forces the components to meet all emerging requirements from within their limited pool of allocations. This results in an internal re-prioritizing of positions to find required offsets.

The proposed increase will allow for some relief for critical emerging requirements. DoD intends to prioritize the 67 additional SES positions to support operational activities, including in the Military Departments where SES allocations have remained stagnant for over five years, and as follows:

- Defense Health Agency – 10 positions
- Department of the Army – 5 positions
- Department of the Navy – 12 positions
- Department of the Air Force – 16 positions

DoD is also committed to briefing on the distribution and fill of the additional positions no later than six months after the proposed increase is enacted, as well as on the findings of the RAND study on General/Flag Officer and SES reductions upon the study's completion, including any actions DoD plans to take to implement the report recommendations.

Additionally, for ease in referencing the limit, this proposal would codify the SES limit in section 3133(c) of title 5, United States Code (U.S.C.), and codify and reduce the limit on the use of SES allocations for highly qualified expert (HQE) positions in section 9903 of title 5, U.S.C., and would then repeal the original section. Of note, these amendments would not reduce the number of HQE appointments allowed by section 9903 of title 5, U.S.C.

Currently, DoD policy does not allow HQEs to perform work that is considered supervisory (e.g., "SES-like duties" such as (1) directing the work of an organizational unit, (2) being held accountable for the success of one or more specific programs or projects, (3) supervising the work of employees, and (4) otherwise exercising important policymaking, policy-determining, or other executive functions). However, a DoD organization may request an exception to policy to allow an HQE to exercise SES-like duties, and if the exception is granted an SES allocation is required for the HQE appointment. Current law allows this arrangement for a maximum of 200 individuals. Under DoD policy, such an arrangement must be specifically requested and approved by the Under Secretary of Defense for Personnel and Readiness, and historically only a small number of these arrangements have been allowed. This proposal would reduce the number of allowable HQE-SES arrangements to a maximum of 20 individuals.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2025 President’s Budget that are impacted by this proposal. The cost of this proposal is the marginal increase caused by changing a manpower billet from a GS-15 to an SES. The specific cost will be based upon the gaining DoD Component and tiering of the SES. For the purposes of this table, we have established the cost based upon the marginal increase (\$66,775.44) in the programing cost between a Defense-wide GS-15 step 5 (\$214,123.56) and a Defense-wide Tier 2 SES (\$280,899) times the change from 1,260 to 1,327 allocations (+67).

RESOURCE IMPACT (\$MILLIONS)										
Program	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	Appropriation	Budget Activity	BLI/SAG	Program Element
Civilian Labor	\$4.5	\$4.6	\$4.7	\$4.8	\$4.9	\$5.0	Operation and Maintenance, Defense-wide	04	Various	N/A
Total	\$4.5	\$4.6	\$4.7	\$4.8	\$4.9	\$5.0				

Changes to Existing Law: This proposal would amend title 5, United States Code, as follows:

TITLE 5, UNITED STATES CODE

§ 3133. Authorization of positions; authority for appointment

(a) ***

(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (a) of this section, a specific number of Senior Executive Service positions for each agency. ~~Beginning in 2023, the number of such positions authorized under the preceding sentence for the Department of Defense may not exceed the limitation provided in section 1109 of the National Defense Authorization Act for Fiscal Year 2017. The number of such positions authorized under the preceding sentence for the Department of Defense may not exceed 1,327.~~

(d) ***

§ 9903. Attracting highly qualified experts

(a) ***

(b) AUTHORITY.—Under the program, the Secretary may—

(1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in section 2101) to positions in the Department of Defense without regard to any provision of this title governing the appointment of employees to positions in the Department of Defense;

(2) ***

(e) LIMITATION ON NUMBER OF HIGHLY QUALIFIED EXPERTS.—(1) The number of highly qualified experts appointed and retained by the Secretary under subsection (b)(1) shall not exceed 2,500 at any time.

(2) Of the total number of positions authorized in section 3133 for the Department of Defense, not more than 20 may be occupied by an individual appointed under the authority in this section.

(f) ***

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2017
(PUBLIC LAW 114-328)**

~~SEC. 1109. [5 U.S.C. 3133 note] LIMITATION ON NUMBER OF DOD SES POSITIONS.~~

~~(a) LIMITATION ON NUMBER OF DOD SES POSITIONS.—~~

~~(1) IN GENERAL.— Not later than December 31, 2022, the total number of Senior Executive Service positions authorized under section 3133 of title 5, United States Code, for the Department of Defense may not exceed 1,260.~~

~~(2) HIGHLY QUALIFIED EXPERTS.— Of the total number of positions authorized under paragraph (1), not more than 200 of such positions may be occupied by an individual appointed under the authority provided in section 9903 of such title.~~

~~(b) PLAN TO ACHIEVE REQUIRED LIMITATION.—~~

~~(1) IN GENERAL.— The Secretary of Defense shall develop a plan to achieve the limitation required by subsection (a) that includes—~~

~~(A) the distribution of Senior Executive Service positions across the Office of the Secretary of Defense, the Joint Staff, the Military Departments, the Defense Agencies and Field Activities, the unified and specified combatant commands, and other key elements of the Department of Defense;~~

~~(B) the by-year reductions to Senior Executive Service positions consistent with the distribution required under subparagraph (A); and~~

~~(C) recommendations for any legislative action that may be necessary for personnel management and shaping authorities to achieve the required limitation.~~

~~(2) SUBMISSION OF PLAN.— Not less than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the plan developed under paragraph (1).~~

~~(3) PROGRESS REPORTS.— The Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives semi-annual progress report briefings describing and assessing the progress of the Secretary in implementing the plan developed under paragraph (1).~~

~~(c) CONFORMING AMENDMENT.—Section 3133(c) of title 5, United States Code, is amended by adding at the end the following new sentence: “Beginning in 2023, the number of such positions authorized under the preceding sentence for the Department of Defense may not exceed the limitation provided in section 1109 of the National Defense Authorization Act for Fiscal Year 2017.”.~~

~~(d) DEFINITION OF SENIOR EXECUTIVE SERVICE POSITION.—In this section, the term “Senior Executive Service position” has the meaning given such term in section 3132(a)(2) of title 5, United States Code.~~

1 **SEC. ___. AUTHORITY TO ACCEPT GIFTS FOR PURPOSE OF PARTICIPATION IN**
2 **UNITED STATES SENATE YOUTH PROGRAM.**

3 (a) IN GENERAL.—The Secretary concerned may accept gifts, in-kind or by
4 reimbursement, from non-Federal sources, including organizations, associations, and
5 businesses, for the purpose of participation by the Armed Forces in the United States Senate
6 Youth Program.

7 (b) SECRETARY CONCERNED DEFINED.—In this section, the term “Secretary
8 concerned” has the meaning given that term by section 101(a)(9) of title 10, United States
9 Code.

Section-by-Section Analysis

This proposal would provide authority for the Secretary concerned to accept gifts, in-kind or by reimbursement, from non-Federal sources, including organizations, associations, and businesses, for the purpose of participation by the Armed Forces in the United States Senate Youth Program (USSYP).

This educational experience for outstanding high school juniors and seniors interested in pursuing careers in public service was established in 1962 by U.S. Senate Resolution 324 (87th Congress) and personifies one of the longest standing commitments of the Office of the Secretary of Defense to a national youth program.

The Vice President of the United States and the Senate majority and minority leaders serve as honorary co-chairs of the program; two Senators, one from each party, serve as acting co-chairs; and an eight-member bipartisan Senate panel make up the annual Senate advisory committee.

For 61 years, DoD has provided military officers (O2-O5) to represent their individual Service components as mentors and ambassadors of the Armed Forces to the 104 USSYP student delegates during “Washington Week,” a week-long study of the workings of the Federal Government.

Pairing USSYP delegates with military mentors presents a unique opportunity for these bright and influential young Americans to gain a better understanding of DoD’s mission, people, and interrelationship with the other branches of the Federal Government, along with the importance of public service.

In his 1962 statement to the Senate, Randolph A. Hearst specifically stated that the “students will be chaperoned by selected officers of the armed services.”

This fully immersive experience requires members of the Armed Forces who are assigned as military mentors to be on-site with the USSYP delegates and Hearst Foundations staff for the duration of the program.

While the Hearst Foundations have historically paid the lodging (Mayflower Hotel), meals, and incidental costs for Service members/mentors participating in USSYP, they have never paid the travel expenses of Service members/mentors to and from Washington, D.C. Participating Service members/mentors were personally responsible for expenses related to travel to Washington, D.C and were required to be on leave or in a permissive TDY status to participate in the program.

There are a number of concerns with this approach:

- Improper acceptance of gifts from the Hearst Foundations.
- Liability issues for participating Service members, particularly if they were deemed to be participating in USSYP in a personal capacity.
- Service members using personal funds to travel to Washington, D.C.
- Confusion as to whether participation was in a personal or official capacity.

Extending the authority for the Secretary concerned to accept gifts that permit participation by Service members in USSYP enables accomplishment of DoD Community Relations Policy objectives and increases trust and confidence in the military that directly contributes to sustainment of the all-volunteer force.

Participation by the Armed Forces in USSYP provides unique mission capabilities that connect America’s future leaders with their elected officials during USSYP and ensures continuance of the Senate’s flagship program.

Interagency keynotes and interactions with senior Cabinet officials that inspire delegates to future public service are also a cornerstone of Washington Week programming, enabled by DoD’s flawless logistical support and mission execution with the Hearst Foundations.

Distinguished USSYP alumni include: Senator Susan Collins, the first alumnus to be elected to the U.S. Senate, currently serving in her fifth term; current Secretary of Transportation Pete Buttigieg, the first alumnus to be elected as a cabinet secretary; Jaime Harrison, current Chairman of the Democratic National Committee; former Senator Cory Gardner, the second alumnus to be elected to the U.S. Senate and the first to be elected to the U.S. House of Representatives; former Chief Judge Robert Henry, U.S. Court of Appeals for the Tenth Circuit; former New Jersey Governor Chris Christie, the first alumnus to be elected governor; former Ambassador to West Germany Richard Burt; and former presidential advisors Thomas “Mack” McLarty and Karl Rove. Additional notables include Rogan Kersh, Provost of Wake Forest University; former Lt. Governor of Idaho David LeRoy; former President of the Progressive Policy Institute Robert Shapiro; and many military officers, members of state legislatures, Foreign Service officers, top congressional staff, healthcare providers, and university educators.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2025 President's Budget. The Hearst Foundations has historically paid the lodging (Mayflower Hotel), meals, and incidental costs for Service members/mentors participating in USSYP.

Changes to Existing Law: This proposal would not change the text of any existing provision of law.

1 **SEC. ___. MILITARY TECHNICIAN MODERNIZATION.**

2 (a) IN GENERAL.—Section 709 of title 32, United States Code, is amended to read as
3 follows:

4 **“§709. Military Technicians (dual status): employment, use, status**

5 “(a) Under regulations prescribed in accordance with section 10503(9) of title 10, persons
6 may be appointed, employed, administered, detailed, assigned, and disciplined by the adjutants
7 general as military technicians (dual status) in—

8 “(1) the organizing, administering, instructing, or training of Army National
9 Guard or Air National Guard units or personnel to meet Federal readiness standards set
10 by the Secretary of the Army or the Secretary of the Air Force;

11 “(2) the maintenance and repair of supplies issued to the National Guard or the
12 armed forces; and

13 “(3) the performance of the following additional duties to the extent that the
14 performance of those duties does not interfere with the performance of the duties
15 described by paragraphs (1) and (2):

16 “(A) Support of any operation or mission undertaken by the technician’s
17 unit at the request of the President or the Secretary of Defense.

18 “(B) Support of Federal training operations or Federal training missions
19 assigned in whole or in part to the technician’s unit.

20 “(C) Instructing or training in the United States or the Commonwealth of
21 Puerto Rico or possessions of the United States of—

22 “(i) active-duty members of the armed forces;

1 “(ii) members of foreign military forces (under the same
2 authorities and restrictions applicable to active-duty members providing
3 such instruction or training);

4 “(iii) Department of Defense contractor personnel; or

5 “(iv) Department of Defense civilian employees.

6 “(b) A person employed under this section must meet each of the following requirements:

7 “(1) Be a military technician (dual status) as defined in section 10216(a) of title
8 10.

9 “(2) Be a member of the Service component of the National Guard of the State,
10 Commonwealth, Territory, or District in which the person is serving as a military
11 technician (dual status).

12 “(3) Hold the military grade specified by the Chief of the National Guard Bureau
13 for the military technician (dual status) position.

14 “(4) While performing duties as a military technician (dual status) wear the
15 military uniform appropriate for the member’s grade and component of the armed forces,
16 conform to military grooming standards, display proper military customs and courtesies,
17 and refrain from conduct that is prejudicial to the efficiency of the service or military
18 good order and discipline.

19 “(c) The Chief of the National Guard Bureau shall designate the adjutants general
20 referred to in section 314 of this title to employ and administer the technicians authorized by this
21 section.

22 “(d) A military technician (dual status) employed under this subsection is an employee of
23 the Department of Defense and an employee of the United States. Notwithstanding paragraphs

1 (2) and (4) of section 101(c) of title 10, any act or omission by a military technician (dual-status)
2 performing duty under this subsection or any member performing duties under sections 502 and
3 503 of this title, including the use of force in defense of Federal property taken pursuant to
4 regulations prescribed by the Chief, National Guard Bureau, shall be considered an act by an
5 employee of the United States Government under section 2671 of title 28.

6 “(e) Notwithstanding any other provision of law:

7 “(1) A military technician (dual status) who is separated from the National Guard
8 or ceases to hold the military grade specified for that position shall be promptly removed
9 from technician employment by the adjutant general of the jurisdiction concerned. A
10 technician who is involuntarily separated from technician employment under this
11 paragraph, not as a result of misconduct or personal failure to maintain military fitness
12 for duty standards and is certified in writing by the adjutant general as not pending
13 investigation nor awaiting action for misconduct, shall, at the election of the technician
14 concerned, be granted priority placement under Federal law.

15 “(2) A military technician (dual status) who fails to meet the military security
16 standards established for a member of a reserve component may be removed from
17 employment as a technician and concurrently discharged from the National Guard by the
18 adjutant general of the jurisdiction concerned.

19 “(3) A military technician (dual status) may, at any time, be separated from
20 technician employment for cause by the adjutant general of the jurisdiction concerned.
21 For cause includes conduct, committed at any time, that is prejudicial to the efficiency of
22 the service or military good order and discipline.

1 “(4)(A) When designated by the Chief of the National Guard Bureau, the adjutant
2 general of the jurisdiction concerned exercises the authority of the Department of
3 Defense under title 5 for the purposes of personnel actions, discipline, and conditions of
4 employment pertaining to a military technician (dual status), including any action brought
5 under such title based on such personnel actions, discipline, or conditions of employment.

6 “(B) No appeal, complaint, grievance, claim, or action arising under the
7 provisions of sections 2108, 2302, 3502, 7511, 7512, and 7513 of title 5; section 717 of
8 the Civil Rights Act of 1964 (42 U.S.C. 2000e-16); the Age Discrimination in
9 Employment Act of 1967 (29 U.S.C. 621-634); the Rehabilitation Act of 1973 (29 U.S.C.
10 701-7961); or any other provision of law, shall extend beyond the adjutant general
11 concerned related to activity occurring while the member is in a military pay status or to
12 actions, including separations, based upon laws or regulations relating to military
13 membership as a member of the National Guard of the jurisdiction concerned or relating
14 to service as a reserve of the Army or Air Force, or pertaining to actions undertaken
15 under paragraph (1) or (2).

16 “(C) With respect to any appeal, complaint, grievance, claim, or action
17 concerning any activity not covered by subparagraph (B), the provisions of sections 7511,
18 7512, and 7513 of title 5 and section 717 of the Civil Rights Act of 1964 (42 U.S.C.
19 2000e-16) shall apply.

20 “(5) A technician shall be notified in writing of the termination of the technician’s
21 employment as a technician and, unless the technician is serving under a temporary
22 appointment, is serving in a trial or probationary period, or has voluntarily ceased to be a
23 member of the National Guard when such membership is a condition of employment,

1 such notification shall be given at least 30 days before the termination date of such
2 employment.

3 “(6) Any administratively imposed civilian hiring controls or restrictions,
4 including personnel ceilings, hiring freezes, administrative furloughs, grade restrictions,
5 or reductions shall not apply to military technicians (dual status) unless such hiring
6 controls are determined by the Chief of the National Guard Bureau to be a direct result of
7 a reduction in military force structure. For the purposes of a furlough due to a lapse in
8 appropriations, technicians shall be treated as uniformed members of the armed forces.

9 “(f) Section 1076d(a)(2) of title 10 does not apply to a person employed under this
10 section.

11 “(g) A person employed under this section who is performing Active Guard and Reserve
12 duty (as that term is defined in section 101(d)(6) of title 10) may not use civilian employee leave
13 under section 6307 or 6323(a)(1) of title 5 during such duty.

14 “(h) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of
15 law, the Chief of the National Guard Bureau shall establish the hours of duties for military
16 technicians (dual status). Notwithstanding sections 5542 and 5543 of title 5 or any other
17 provision of law, technicians shall be granted an amount of compensatory time off from their
18 scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime
19 work, and shall not be entitled to compensation for such work.

20 “(i) The Chief of the National Guard Bureau may not prescribe for purposes of eligibility
21 for Federal recognition under section 301 of this title a qualification applicable to technicians
22 employed under subsection (a) that is not applicable pursuant to that section to the other

1 members of the National Guard in the same grade, branch, position, and type of unit or
2 organization involved.

3 “(j) Notwithstanding the provisions of section 14506, 14507, or 14508 of title 10, the
4 Chief of the National Guard Bureau may, at the request of the adjutant general of the jurisdiction
5 concerned, and with the officer's consent, retain on the reserve active-status list an officer in the
6 grade of major, lieutenant colonel, colonel, or brigadier general who is a reserve officer of the
7 Army or Air Force and who, as a condition of continued employment as a National Guard
8 military technician (dual status) is required to maintain membership in a Selected Reserve unit or
9 organization.

10 “(k) In this section:

11 “(1) The term ‘military pay status’ means a period of military service under titles
12 10, 32, or State Active Duty, with respect to which the amount of pay payable to a
13 technician for that service is based on rates of military pay provided for under title 37 or
14 state law.

15 “(2) The term ‘fitness for duty in the reserve components’ refers only to military-
16 unique requirements that attend to requirements for military service as a member of the
17 Army National Guard or Air National Guard or as a reserve of the Army or Air Force or
18 service on active duty, that are established by the Secretary of the Army or the Secretary
19 of the Air Force and that pertain to requirements of law or policy relating to military
20 membership as a member of the National Guard of the jurisdiction concerned.

21 “(l) For purposes of any administrative complaint, grievance, claim, action, or appeal
22 arising under subsection (e)(4)(C):

1 “(1) The adjutant general of the jurisdiction concerned shall be considered the
2 head of the agency and the National Guard of the jurisdiction concerned shall be
3 considered the employing agency of the individual and the sole defendant or respondent
4 in any administrative action.

5 “(2) The National Guard of the jurisdiction concerned shall defend any
6 administrative appeal, complaint, grievance, claim, or action, and shall promptly
7 implement all aspects of any final administrative or judicial order, judgment, or decision
8 that does not involve or concern any military aspect of the performance of technician
9 duties under this section.

10 “(3) In any civil action or proceeding brought in any court arising from an action
11 under this section, the United States shall be the sole defendant or respondent.

12 “(4) The Attorney General of the United States shall defend the United States in
13 actions arising under this section.

14 “(5) Any settlement, judgment, or costs arising from an action described in
15 paragraph (1), (2), or (3) shall be paid from appropriated funds allocated to the
16 National Guard of the jurisdiction concerned.

17 “(m) Nothing in this section shall reduce, limit, or eliminate, in any manner, any right or
18 benefit, including any procedural right, provided by chapter 43 of title 38.”.

19 (b) CLERICAL AMENDMENT.—The item relating to section 709 in the table of sections for
20 chapter 7 of title 32, United States Code, is amended to read as follows:

“709. Military Technicians (dual status): employment, use, status.”.

**[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 extend and enhance authority to conduct the Military Technician program under 32 U.S.C. § 709 informed by lessons learned from the National Guard Bureau's (NGB) and Adjutants General's implementation of the Dual Status Technician (DST) program. Extension and enhancement of this authority would afford the Chief of the National Guard Bureau (CNGB) and the Adjutants General of the 54 National Guards from States, territories, the Commonwealth of Puerto Rico, and the District of Columbia clarity and authorization in implementing the DST program.

The amendment and modification of 32 U.S.C. § 709 would further define that a function of NGB is to establish policies and programs for the employment and use of National Guard technicians under 32 U.S.C. § 709 as specified in 10 U.S.C. § 10503 and 10508 and the NGB Charter. While Adjutants General currently have the full spectrum of employment authorities regarding DST personnel, including appointing, employing, administering, detailing, assigning, and disciplining, the updated version of the Technician Act would clarify and harmonize CNGB's role and authorities consistent with later in time statutes like 10 U.S.C. § 10503 and 10508 and the NGB Charter. Further, the proposal would provide authority for DST personnel to support any Department of Defense (DoD) or Presidential requested operation undertaken by the DST's unit or Federal training and operations undertaken by a DST's unit.

Additionally, the amendment further defines that any act or mission by a DST, including use of force in defense of Federal property, shall be considered an act by an employee of the United States to ensure Federal Tort or other claims applications apply to these matters.

Historically, there has been confusion in the courts and in administrative actions, appeals, or claims regarding the jurisdiction over the military aspect of DST employment. This amendment clarifies that the jurisdiction of the courts and administrative agencies is limited to the nonmilitary aspects of DST employment. The amendment updates the statute to remove outdated references to Non-Dual Status Technicians, thus allowing the statute to focus on DSTs and the requirements of their military mission. The civilian aspects of technician employment focus solely on pay, benefits, and Federal Tort Claims Act coverage.

The proposal also establishes a difference in involuntary separation, not because of misconduct, wherein DSTs shall be granted consideration for available priority placement. This resolves the issue of the availability of priority placement for involuntary, non-disciplinary separation actions.

The amendment defines the discipline authority reserved to the Adjutant General or those actions which may be brought as an administrative action or claim. It expands the definition of "military pay status" to include State Active Duty.

The statute establishes the Adjutant General as the "head of Agency" for purposes of administrative actions, appeals, or claims. The amendment also limits or deconflicts civilian personnel statutes with military membership statutes. Further, the amendment disallows DSTs who are performing Active Guard and Reserve (AGR) duty (as that term is defined in 10 U.S.C. § 101(d)(6)) from using Federal civilian annual military leave, and civilian sick leave while in AGR duty status. This amendment clarifies ambiguity in the current military technician statute

that causes confusion on the ability to use civilian sick leave, and other approved civilian leave statuses while on AGR duty. The prohibition on the use of sick leave for DSTs performing AGR duty is based upon the AGRs military, not civilian, duty status. DSTs are entitled to use military time off procedures when sick or injured while employed as an AGR based on their military status. Using DST civilian sick leave while in AGR status is not appropriate, as the DST is not in a civilian employment status, and is receiving military benefits under their military status as a National Guard military member. Additionally, there has been a propensity for abuse of civilian sick leave, including using before or after holidays to receive full holiday pay.

The amendment provides CNGB authority to establish the duty hours.

Lastly, the proposed amendment would ensure Federal recognition requirements of DST personnel are the same as other National Guard members in the same grade, branch, position and type of unit or organization.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2025 President’s Budget that are impacted by this proposal.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
ARNG - CIVILIAN PAY & MILITARY TECHNICIAN PAY (LEAVE)	-16	-16	-16	-16	-16	Operation & Maintenance, Army National Guard	01 & 04	Various	Various
ANG - CIVILIAN PAY & MILITARY TECHNICIAN PAY (LEAVE)	-12	-12	-12	-12	-12	Operation & Maintenance, Air National Guard	01 & 04	Various	Various

Changes to Existing Law: This proposal would amend section 709 of title 32, United States Code, as follows:

32 U.S. Code § 709 - Technicians: employment, use, status

~~(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsections (b) and (c), persons may be employed as technicians in-~~

~~(1) the organizing, administering, instructing, or training of the National Guard;~~

~~(2) the maintenance and repair of supplies issued to the National Guard or the armed forces; and~~

~~(3) the performance of the following additional duties to the extent that the performance of those duties does not interfere with the performance of the duties described by paragraphs (1) and (2):~~

~~(A) Support of operations or missions undertaken by the technician's unit at the request of the President or the Secretary of Defense.~~

~~(B) Support of Federal training operations or Federal training missions assigned in whole or in part to the technician's unit.~~

~~(C) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of~~

~~(i) active-duty members of the armed forces;~~

~~(ii) members of foreign military forces (under the same authorities and restrictions applicable to active-duty members providing such instruction or training);~~

~~(iii) Department of Defense contractor personnel; or~~

~~(iv) Department of Defense civilian employees.~~

~~(b) Except as authorized in subsection (c), a person employed under subsection (a) must meet each of the following requirements:~~

~~(1) Be a military technician (dual status) as defined in section 10216(a) of title 10.~~

~~(2) Be a member of the National Guard.~~

~~(3) Hold the military grade specified by the Secretary concerned for that position.~~

~~(4) While performing duties as a military technician (dual status), wear the uniform appropriate for the member's grade and component of the armed forces.~~

~~(c)(1) A person may be employed under subsection (a) as a non-dual status technician (as defined by section 10217 of title 10) if the technician position occupied by the person has been designated by the Secretary concerned to be filled only by a non-dual status technician.~~

~~(2) The total number of non-dual status technicians in the National Guard is specified in section 10217(c)(2) of title 10.~~

~~(d) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title to employ and administer the technicians authorized by this section.~~

~~(e) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed in that position is required under subsection (b) to be a member of the National Guard.~~

~~(f) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned-~~

~~(1) a person employed under subsection (a) who is a military technician (dual status) and otherwise subject to the requirements of subsection (b) who-~~

~~(A) is separated from the National Guard or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated from military technician (dual status) employment by the adjutant general of the jurisdiction concerned; and~~

~~(B) fails to meet the military security standards established by the Secretary concerned for a member of a reserve component under his jurisdiction may be separated from employment as a military technician (dual status) and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;~~

~~(2) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;~~

~~(3) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;~~

~~(4) a right of appeal which may exist with respect to paragraph (1), (2), or (3) shall not extend beyond the adjutant general of the jurisdiction concerned when the appeal concerns activity occurring while the member is in a military pay status, or concerns fitness for duty in the reserve components;~~

~~(5) with respect to an appeal concerning any activity not covered by paragraph (4), the provisions of sections 7511, 7512, and 7513 of title 5, and section 717 of the Civil Rights Act of 1991 1 (42 U.S.C. 2000e-16) shall apply; and~~

~~(6) a technician shall be notified in writing of the termination of his employment as a technician and, unless the technician is serving under a temporary appointment, is serving in a trial or probationary period, or has voluntarily ceased to be a member of the National Guard when such membership is a condition of employment, such notification shall be given at least 30 days before the termination date of such employment.~~

~~(g)(1) Except as provided in subsection (f), sections 2108, 3502, 7511, and 7512 of title 5 do not apply to a person employed under this section.~~

~~(2) In addition to the sections referred to in paragraph (1), section 6323(a)(1) of title 5 also does not apply to a person employed under this section who is performing active Guard and Reserve duty (as that term is defined in section 101(d)(6) of title 10).~~

~~(h) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.~~

~~(i) The Secretary concerned may not prescribe for purposes of eligibility for Federal recognition under section 301 of this title a qualification applicable to technicians employed under subsection (a) that is not applicable pursuant to that section to the other members of the National Guard in the same grade, branch, position, and type of unit or organization involved.~~

~~(j) In this section:~~

~~(1) The term "military pay status" means a period of service where the amount of pay payable to a technician for that service is based on rates of military pay provided for under title 37.~~

~~(2) The term "fitness for duty in the reserve components" refers only to military-unique service requirements that attend to military service generally, including service in the reserve components or service on active duty.~~

§709. Military Technicians (dual status): employment, use, status

(a) Under regulations prescribed in accordance with section 10503(9) of title 10, persons may be appointed, employed, administered, detailed, assigned, and disciplined by the adjutants general as military technicians (dual status) in—

(1) the organizing, administering, instructing, or training of Army National Guard or Air National Guard units or personnel to meet Federal readiness standards set by the Secretary of the Army or the Secretary of the Air Force;

(2) the maintenance and repair of supplies issued to the National Guard or the armed forces; and

(3) the performance of the following additional duties to the extent that the performance of those duties does not interfere with the performance of the duties described by paragraphs (1) and (2):

(A) Support of any operation or mission undertaken by the technician's unit at the request of the President or the Secretary of Defense.

(B) Support of Federal training operations or Federal training missions assigned in whole or in part to the technician's unit.

(C) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(i) active-duty members of the armed forces;

(ii) members of foreign military forces (under the same authorities and restrictions applicable to active-duty members providing such instruction or training);

(iii) Department of Defense contractor personnel; or

(iv) Department of Defense civilian employees.

(b) A person employed under this section must meet each of the following requirements:

(1) Be a military technician (dual status) as defined in section 10216(a) of title 10.

(2) Be a member of the Service component of the National Guard of the State, Commonwealth, Territory, or District in which the person is serving as a military technician (dual status).

(3) Hold the military grade specified by the Chief of the National Guard Bureau for the military technician (dual status) position.

(4) While performing duties as a military technician (dual status) wear the military uniform appropriate for the member's grade and component of the armed forces, conform to military grooming standards, display proper military customs and courtesies, and refrain from conduct that is prejudicial to the efficiency of the service or military good order and discipline.

(c) The Chief of the National Guard Bureau shall designate the adjutants general referred to in section 314 of this title to employ and administer the technicians authorized by this section.

(d) A military technician (dual status) employed under this subsection is an employee of the Department of Defense and an employee of the United States. Notwithstanding paragraphs (2) and (4) of section 101(c) of title 10, any act or omission by a military technician (dual-status) performing duty under this subsection or any member performing duties under sections 502 and 503 of this title, including the use of force in defense of Federal property taken pursuant to

regulations prescribed by the Chief, National Guard Bureau, shall be considered an act by an employee of the United States Government under section 2671 of title 28.

(e) Notwithstanding any other provision of law:

(1) A military technician (dual status) who is separated from the National Guard or ceases to hold the military grade specified for that position shall be promptly removed from technician employment by the adjutant general of the jurisdiction concerned. A technician who is involuntarily separated from technician employment under this paragraph, not as a result of misconduct or personal failure to maintain military fitness for duty standards and is certified in writing by the adjutant general as not pending investigation nor awaiting action for misconduct, shall, at the election of the technician concerned, be granted priority placement under Federal law.

(2) A military technician (dual status) who fails to meet the military security standards established for a member of a reserve component may be removed from employment as a technician and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned.

(3) A military technician (dual status) may, at any time, be separated from technician employment for cause by the adjutant general of the jurisdiction concerned. For cause includes conduct, committed at any time, that is prejudicial to the efficiency of the service or military good order and discipline.

(4)(A) When designated by the Chief of the National Guard Bureau, the adjutant general of the jurisdiction concerned exercises the authority of the Department of Defense under title 5 for the purposes of personnel actions, discipline, and conditions of employment pertaining to a military technician (dual status), including any action brought under such title based on such personnel actions, discipline, or conditions of employment.

(B) No appeal, complaint, grievance, claim, or action arising under the provisions of sections 2108, 2302, 3502, 7511, 7512, and 7513 of title 5; section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634); the Rehabilitation Act of 1973 (29 U.S.C. 701-7961); or any other provision of law, shall extend beyond the adjutant general concerned related to activity occurring while the member is in a military pay status or to actions, including separations, based upon laws or regulations relating to military membership as a member of the National Guard of the jurisdiction concerned or relating to service as a reserve of the Army or Air Force, or pertaining to actions undertaken under paragraph (1) or (2).

(C) With respect to any appeal, complaint, grievance, claim, or action concerning any activity not covered by subparagraph (B), the provisions of sections 7511, 7512, and 7513 of title 5, and section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) shall apply.

(5) A technician shall be notified in writing of the termination of the technician's employment as a technician and, unless the technician is serving under a temporary appointment, is serving in a trial or probationary period, or has voluntarily ceased to be a member of the National Guard when such membership is a condition of employment, such notification shall be given at least 30 days before the termination date of such employment.

(6) Any administratively imposed civilian hiring controls or restrictions, including personnel ceilings, hiring freezes, administrative furloughs, grade restrictions, or reductions shall not apply to military technicians (dual status) unless such hiring controls are determined by the Chief of the National Guard Bureau to be a direct result of a reduction in military force structure. For the purposes of a furlough due to a lapse in appropriations, technicians shall be treated as uniformed members of the armed forces.

(f) Section 1076d(a)(2) of title 10 does not apply to a person employed under this section.

(g) A person employed under this section who is performing Active Guard and Reserve duty (as that term is defined in section 101(d)(6) of title 10) may not use civilian employee leave under section 6307 or 6323(a)(1) of title 5 during such duty.

(h) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Chief of the National Guard Bureau shall establish the hours of duties for military technicians (dual status). Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(i) The Chief of the National Guard Bureau may not prescribe for purposes of eligibility for Federal recognition under section 301 of this title a qualification applicable to technicians employed under subsection (a) that is not applicable pursuant to that section to the other members of the National Guard in the same grade, branch, position, and type of unit or organization involved.

(j) Notwithstanding the provisions of section 14506, 14507, or 14508 of title 10, the Chief of the National Guard Bureau may, at the request of the adjutant general of the jurisdiction concerned, and with the officer's consent, retain on the reserve active-status list an officer in the grade of major, lieutenant colonel, colonel, or brigadier general who is a reserve officer of the Army or Air Force and who, as a condition of continued employment as a National Guard military technician (dual status) is required to maintain membership in a Selected Reserve unit or organization.

(k) In this section:

(1) The term 'military pay status' means a period of military service under titles 10, 32, or State Active Duty, with respect to which the amount of pay payable to a technician for that service is based on rates of military pay provided for under title 37 or state law.

(2) The term 'fitness for duty in the reserve components' refers only to military-unique requirements that attend to requirements for military service as a member of the Army National Guard or Air National Guard or as a reserve of the Army or Air Force or service on active duty, that are established by the Secretary of the Army or the Secretary of the Air Force and that pertain to requirements of law or policy relating to military membership as a member of the National Guard of the jurisdiction concerned.

(l) For purposes of any administrative complaint, grievance, claim, action, or appeal arising under subsection (e)(4)(C):

(1) The adjutant general of the jurisdiction concerned shall be considered the head of the agency and the National Guard of the jurisdiction concerned shall be considered the employing agency of the individual and the sole defendant or respondent in any administrative action.

(2) The National Guard of the jurisdiction concerned shall defend any administrative appeal, complaint, grievance, claim, or action, and shall promptly implement all aspects of any final administrative or judicial order, judgment, or decision that does not involve or concern any military aspect of the performance of technician duties under this section.

(3) In any civil action or proceeding brought in any court arising from an action under this section, the United States shall be the sole defendant or respondent.

(4) The Attorney General of the United States shall defend the United States in actions arising under this section.

(5) Any settlement, judgment, or costs arising from an action described in paragraph (1), (2), or (3) shall be paid from appropriated funds allocated to the National Guard of the jurisdiction concerned.

(m) Nothing in this section shall reduce, limit, or eliminate, in any manner, any right or benefit, including any procedural right, provided by chapter 43 of title 38.