

NATIONAL GUARD TECHNICIAN ACT OF 1968

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MR. STENNIS, from the Committee on Armed Services,
submitted the following

REPORT

[To accompany S. 3865]

The Committee on Armed Services, having had under consideration the question of legislation affecting the National Guard technicians, reports the following bill (S. 3865), the National Guard Technician Act of 1968, and recommends that it do pass.

PURPOSE OF LEGISLATION

In authorizing Federal employee status for the National Guard technicians, the purpose of this legislation is—

(a) To provide a retirement and fringe benefit program which will be both uniform and adequate;

(b) To recognize the military requirements and the State characteristics of the National Guard by providing for certain statutory administrative authority at the State level with respect to the technician program;

(c) To clarify the technician's legal status which in certain areas has been the subject of conflicting court decisions, especially on the matter of whether technicians are covered under the Federal Tort Claims Act regarding third party actions against the U.S. Government.

BASIC PROBLEM JUSTIFYING LEGISLATION

The technicians, now numbering about 42,000, are full-time civilian employees of the National Guard whose salaries are paid in full by the Federal Government and who must meet all the mental and physical standards as well as professional qualifications prescribed by the military departments. About 95 percent of the technicians are

required to hold concurrent National Guard membership as a condition for their civilian employment. The concept of the technician program is that the technicians will serve concurrently in three different ways: (a) Perform full-time civilian work in their units; (b) perform military training and duty in their units; and (c) be available to enter active Federal service at any time their units are called.

Despite uniformity with respect to salaries and required standards there has been no program, on a uniform national basis for a retirement and fringe benefits program for technicians. The technicians except for those in the District of Columbia, are considered State employees. About 16,000 or 40 percent are covered under Federal retirement systems which may be combined with the social security program. About 24,000 depend on social security alone for their civilian retirement coverage. It should be noted that a total of 92 percent of the technicians, however, are covered under social security which may be combined with State retirement programs.

The fringe benefit program of technicians, such as group health and group life insurance, is dependent solely on coverage which may vary from no coverage to whatever may be provided for other State employees.

In addition there is the matter of clarifying the precise legal status of the technicians to prevent conflicting court decisions regarding third party claims against the Government arising out of accidents within the scope of employment.

SUMMARY OF LEGISLATION

This bill implements the purpose by converting the technicians to Federal employee status with certain controls on administration and supervision which would as a matter of law remain at the State level. In effect, the technicians will become Federal employees receiving the salaries, fringe and retirement benefits, but with certain administrative control regarding employment supervision remaining with the adjutants general of the jurisdiction concerned under regulations prescribed by the Secretary concerned.

The principal features of this bill which are later discussed in detail may be summarized by item as follows:

(a) A broadened statutory scope of the technician employment program thereby eliminating the permanent provisions of law relating to "caretakers and clerks" which have been suspended by various appropriation acts.

(b) Conversion of National Guard technicians to a Federal employee status with the authority for requiring National Guard membership as a condition for civilian employment. About 95 percent of the technician force would be in this latter category. Federal status would be in the noncompetitive category for this group.

(c) Conversion of technician positions to classified or wage board Federal positions.

(d) Requirement for adjutants general to be the sole agent for employment and administration of technician program under regulations prescribed by the Secretary concerned.

(e) Provision for final level of appeal in adjutants general for all technicians for certain adverse personnel actions.

(f) Provision for termination of civilian employment upon loss of Guard membership, failure to meet military security standards, or separation for cause, with requirement of 30 days' notice by adjutants general prior to termination.

(g) Provision for nonapplication of veterans preference provisions for technicians because of the military nature of the National Guard program.

(h) Provision for compensatory time off in lieu of overtime and differential pay for technicians (other than those assigned to operational duties at air defense sites) which is the practice under the present program.

(i) Credit for past technician service for Federal employee purposes with respect to leave, Federal employee death and injury compensation, group health and life insurance, severance pay, tenure, and status.

(j) Credit for past technician service in full for civil service retirement eligibility purposes but with a limit of 55 percent for retirement computation purposes.

(k) Provision of election to remain under a State retirement system with the consent of the State in lieu of coming under Federal civil service system.

(l) Permissive authority to retain technician Reserve officers until age 60.

(m) Provision requiring technicians to be in the program either now or in the future in order to receive credit for past technician service.

(n) An effective date of Jan. 1, 1969 for legislation.

PRESENT TECHNICIAN EMPLOYMENT AND RETIREMENT PROGRAM

Legal status

Except for those in the District of Columbia National Guard, technicians are considered employees of the State. Their salaries, however, are paid from Federal funds based on comparable classified and blue-collar Federal rates.

By regulations about 95 percent of the technicians are required to be military members of the National Guard as a condition for their civilian technician employment.

Number of technicians as of January 1, 1968

There were 40,546 technicians employed throughout the various States on a full-time civilian basis with about 95 percent required to hold dual status in the National Guard as a condition for employment.

Of this total approximately 18,000 occupied positions comparable to the general schedule rates with about 22,000 holding so-called blue-collar positions and receiving pay under rates comparable to the Federal wage board schedules.

Salaries of technicians

For the technicians paid at comparable general schedule rates, the range is from the equivalent of GS-1 through GS-14. As of July 1, 1968, this range is from GS-1 (\$3,889 to \$5,057) to GS-14 (\$16,946 to \$22,031). The average salary for all technicians (male and female) as of January 1, 1968, was \$7,696.

With regard to special pays, overtime, differential and premium pay, none is authorized under the present system, only compensatory time off.

Federal employee compensation coverage and other benefits

All technicians are presently covered under the Federal Employees Compensation Act providing for injury and death benefits occurring within the scope of employment. (This coverage began in 1938 under a Labor Department ruling.)

A number of the technicians are also covered under various State plans for the purpose of health insurance, life insurance, and other fringe benefits.

PRESENT RETIREMENT PROGRAM

Social security coverage

The following factors should be noted regarding the social security coverage for the technicians.

(a) About 92 percent technicians are presently covered under social security (under a 1954 provision recognizing technicians as a separate group for State coverage).

(b) The technicians not covered under social security are all covered under some State retirement system.

(c) About 20,000 of the technicians have completed the 40 quarters of coverage and therefore have vested social security rights.

(d) Through fiscal year 1968 the Federal Government since 1955 has paid \$58,348,000 to the social security fund as the employer contribution for the present technicians.

Coverage under State retirement systems

The following aspects should be noted with respect to present coverage of technicians under State retirement systems.

(a) Since 1961 congressional legislation has authorized the use of Federal funds for the payment to State retirement systems as the employer share for technicians subject to a maximum of 6½ percent which also includes any amounts used as the employer share to the social security system. Many of these States couple the social security as a part of the State system.

(b) About 16,000, or 40 percent, of the technicians are presently covered under State retirement systems in 19 States and Puerto Rico.

(c) Federal contributions to the State retirement system exclusive of social security payments from fiscal year 1962 through 1968 total \$19,606,000 for the present technicians.

(d) All but 4,483 would necessarily lose their State coverage if they came under the Federal civil service system.

PRINCIPAL FEATURES OF BILL

BROADENED STATUTORY SCOPE OF THE TECHNICIAN EMPLOYMENT PROGRAM

EXISTING LAW

Existing permanent law (title 32, sec. 709) defines technicians as "caretakers and clerks" with their duties generally limited to the care of supplies and equipment of the National Guard. Various appropriation acts have suspended the permanent law limitations on the numbers and grades of technicians who may be employed.

Technician duties presently extend beyond the concept of the permanent law regarding the maintenance of equipment and involve

such Guard functions as training, employment in State headquarters, air defense, military support of civil defense, and aircraft operations.

THE BILL

The bill eliminates all limitations on grades, numbers, and terminology and contains broad language authorizing the employment of technicians in two broad categories:

- (1) Administration and training of the National Guard.
- (2) Maintenance and repair of supplies of the National Guard or the Armed Forces.

NONCOMPETITIVE CIVIL SERVICE STATUS AND MEMBERSHIP IN THE NATIONAL GUARD AS A CONDITION FOR EMPLOYMENT

Unless the Secretaries make an exception, the bill provides that the technicians as a condition of civilian employment will be required to be members of the National Guard and hold a military grade required for that position. In addition, such civil service positions would be noncompetitive.

About 95 percent of the technicians would hold noncompetitive positions and would be required to be members of the Guard as a part of their civilian employment. About 5 percent, or 2,000, would be in a competitive Federal status and would constitute principally female employees, clerk-typists, and security guards.

The noncompetitive status is necessary for the technicians in view of (a) requirement for holding a concurrent military Guard status as a condition for employment and (b) the fact that civilian employment is terminated where the concurrent military status ceases to exist.

PERMANENT STATUTORY CEILING OF 42,500 ON THE NUMBER OF TECHNICIANS

In the bill the committee recommends a numerical ceiling in the form of permanent statutory authority which would limit to 42,500 the number of technicians who might be employed at any one time. The committee also considered, but did not adopt, a provision which would have provided for the number of technicians to be authorized on an annual basis.

The committee was of the firm opinion that a permanent statutory ceiling is desirable. The committee recognizes that the technician program is an essential element of the National Guard in connection with its training, administration, and equipment. In any employment program, however, there is always the tendency for expansion. There should always be a goal, or a numerical limit, within which personnel programs should be expected to operate. If firm plans are made to remain within the permanent ceiling greater economies and efficiency in terms of personnel should be accomplished. The committee would observe that in 1955, when the total strength of the National Guard was about 420,000, there were only 25,000 technicians. For fiscal year 1967, however, with a total Guard strength of approximately 500,000 the technicians' strength had risen to slightly over 40,000.

In the budget for fiscal year 1969, the end strength for June 30, 1969, is 42,173. The ceiling of 42,500, therefore, will not result in any hardship with respect to present technicians.

STATUTORY FEDERAL EMPLOYEE STATUS FOR TECHNICIANS ON THE EFFECTIVE DATE OF THE ACT

Basic provision.—Under the bill all technicians on the effective date of the Act and those to be employed in the future will become Federal employees as a matter of law. As hereafter explained in detail, technicians will receive Federal salary and certain fringe benefits together with Federal job designations. In addition, however, they will be subject to certain supervisory controls at the State level which would not apply in the case of the typical civil service employee.

Salaries and positions.—Under the bill all technician positions will be converted as a matter of law into comparable Federal general schedule or wage board positions. The technicians will receive Federal salaries based on the positions designated for them.

It might be observed that under present arrangements technicians are paid salaries from Federal funds comparable to GS grades, ranging from GS-1 through GS-14 which, as of July 1, 1968, encompassed a salary range of \$3,889 to \$22,031 with the average salary for all technicians as of January 1, 1968, being \$7,696.

Federal fringe benefits.—As Federal employees the technicians would be covered under the laws providing for the various fringe benefits for Federal employees including group, health and life insurance, leave, Federal employees death and injury compensation, severance pay, tenure and status.

Additionally, they will also receive coverage under the Federal Tort Claims Act with respect to accidents which might occur within the scope of their employment.

RECOGNITION OF PAST TECHNICIAN SERVICE

CREDIT FOR CERTAIN FEDERAL FRINGE BENEFIT PURPOSES

The bill provides that past technician service will be recognized in full for the purpose of computing length of service with respect to enumerated fringe benefits. The significance for this purpose is as follows:

Group health and life insurance.—A retired Federal employee, other than those retired for physical disability, must have completed 12 years of Federal service in order to be covered under the Federal group health and life insurance programs. Recognition of past service will enable the technician to combine his past State service with his future Federal service in order to be covered for these programs in a retired status without being required to complete at least 12 years of Federal service subsequent to the enactment of this bill.

Leave.—The Federal system provides for a sliding scale ranging from 10 to 26 days of leave annually based on length of Federal service. Since technicians presently have a leave arrangement similar to Federal employees, they will be permitted to carry over into their Federal status the annual or sick leave with which they were credited prior to the conversion of their positions to a Federal designation.

Severance pay.—Present provisions recognize length of service as well as basic salary in awarding these payments. Severance pay is authorized in instances where a Federal employee is involuntarily separated without cause from his Federal position due to a reduction in force or for other reasons. If no past technician service were to be recognized and the technician were to receive credit only for his

service after the effective date of this act, severance payments would be nominal for any technicians separated within the next few years. The committee was of the opinion therefore that recognition of past service for this purpose is justified.

FEDERAL COMPENSATION FOR INJURY AND DEATH

As a result of an administrative ruling, technicians in their State status have been covered under the Federal Employees Compensation Act for injury and death benefits since 1938. The recognition of past technician service for the purposes of this act is therefore more in the nature of a statutory clarification than the granting of a new right. In order to leave no doubt on the matter, however, the past service is recognized for this purpose.

As Federal employees, technicians would also receive coverage under the Federal Tort Claims Act with respect to accidents which might occur within the scope of their employment involving third party claims against the Federal Government.

TENURE

Recognition of past technician service for the purpose of tenure as a Federal employee will have very limited significance with respect to the technicians. About 95 percent of the technicians will be required to hold military National Guard membership as a concurrent condition for civilian technician employment. Moreover, they will be subject to a number of other supervisory controls at the State level as set forth in the bill. Tenure would be significant mainly in the event of a reduction in force or reorganization resulting in the separation of technicians from Federal employment. If there were two technicians equal in all respects (military grade, job classification, etc.) and the necessity arose for separating one of the technicians, tenure or length of service would be significant. The technician with the greatest length of service or tenure would be retained if all other circumstances were equal.

STATUS

Recognition of past technician service for the purpose of status is significant in the following manner.

For 95 percent of the technicians, who will be required to hold military membership in the Guard and who will be in the non-competitive category, past service is relevant for the purpose of completing the 1-year probationary period of Federal employment which is generally required prior to entering a career status.

For 5 percent of the technicians who will be in the competitive category, past service is significant not only for the 1-year probationary period but for credit in order to complete the 3-year period of career conditional employment prior to becoming a career employee.

RECOGNITION OF PAST TECHNICIAN SERVICE WITH RESPECT TO CIVIL SERVICE RETIREMENT

RECOGNITION OF PAST SERVICE IN FULL FOR CIVIL SERVICE RETIREMENT ELIGIBILITY AND CERTAIN OTHER PURPOSES

The bill recognizes past technician service in full for the purposes of retirement eligibility. For instance if a technician on the effective

date of the act has completed 20 years of past service, this period would be recognized for the purpose of years of service required for retirement eligibility. This period would count as 20 years toward the 30 years required for voluntary retirement at age 55. Moreover, the past technician service would be recognized for all the other elements relating to civil service retirement except for the creditable service as discussed below which will be limited to 55 percent. For instance, the technicians' past service will be recognized in full for the purpose of the high-5-year salary average should these past years be a part of the computation.

Moreover, past active military service will be recognized in full for all civil service retirement purposes. This latter credit is recognized under existing law which would not be amended by this bill.

In other words, the committee would emphasize that the full recognition would be extended for past technician service for the purpose of title eligibility, and average salary computation. Moreover, the existing law with respect to unpaid deposits is not affected except to reduce the amount of required unpaid deposit to conform to the 55 percent credit formula.

RECOGNITION OF PAST TECHNICIAN SERVICE TO THE EXTENT OF 55 PERCENT FOR CIVIL SERVICE RETIREMENT COMPUTATION

The bill in effect provides that each year or fraction thereof of past technician service will be recognized to the extent of 55 percent as creditable service for retirement computation purposes. The 55 percent provision would operate in the following manner. Under existing provisions creditable service for civil service retirement is based on the high-5-year average salary with the years of creditable service computed at the rate of 1.5 percent for the first 5 years, 1.75 percent for the second 5 years, and 2 percent for each year thereafter. On the basis of full credit for 20 years of service, a total percentage multiplier of 36.25 percent would result. This sum is based on 7.5 percent for the first 5 years at the rate of 1.5 percent for each year, 8.75 percent at the rate of 1.75 percent for the second 5 years, and 20 percent at the rate of 2 percent for each year after the first 10 years.

Under the 55-percent formula a technician with 20 years of past service would receive a retirement multiplier of 19.94 percent. This sum would result by applying 55 percent to each past technician year or fraction thereof. As an example, for the first 5 years based on the 1.5-percent formula, there would be a total percentage of 4.13 percent for the next 5 years, a sum of 4.81 percent and for the next 10 years based on 2 percent for each year, a sum of 11 percent.

Alternatively, the percentage of 19.94 could be obtained by taking 55 percent of 36.25.

DISCUSSION OF PAST SERVICE CREDIT FOR RETIREMENT COMPUTATION PURPOSES

The committee had a wide range of choices in considering the degree to which past technician service (which is considered State service except for the District of Columbia) should be creditable for future civil service retirement. It could have recommended no credit for past service on the premise that the technicians were similar to any other non-Federal employee and as such would accrue retirement credit

only from the period in which he was a statutory Federal employee covered under the civil service retirement system. The other extreme would have been to recognize past technician service to the extent of 100 percent for civil service retirement purposes. The committee, after long and careful examination of all aspects of this matter, has unanimously concluded that the 55-percent credit represents a fair, equitable, and generous treatment of this matter.

AMOUNTS ALREADY CONTRIBUTED BY THE FEDERAL GOVERNMENT AS THE EMPLOYER'S SHARE ON BEHALF OF TECHNICIANS TO RETIREMENT SYSTEMS

The committee would observe that since fiscal year 1955 the Federal Government has contributed as the employers' share \$58,348,000 to the social security fund and \$19,606,000 to State retirement funds (fiscal years 1962 through 1968) totaling \$77,954,000. If these same technicians had been under the civil service retirement system during this same period of time the Federal Government would have contributed to the civil service retirement fund as the employers' share \$142,805,000. In terms of past Government investment, therefore, it could be stated that the Federal Government has already contributed 54.59 percent (\$77,954,000 out of \$142,805,000) of the amount that would have been contributed to the civil service fund during this period. This contribution would leave a remainder of only 45.41 percent.

Rather than limiting the contribution under this concept to approximately 45 percent, however, the committee is recommending that 55 percent of the past technician service be creditable.

GENERAL FAIRNESS OF 55 PERCENT FORMULA

In determining the appropriate percentage for crediting past technician service, the committee had a dual obligation. There is the duty to exercise restraint in terms of causing additional financial obligations on the part of the U.S. Government, in view of the problems of financial soundness with which the Federal Government is being confronted. At the same time there is the necessity for recognizing the need of an adequate retirement and fringe benefit program for the National Guard technicians. The committee realizes that there is no formula for achieving exact justice for every individual technician in view of the many complexities and the different retirement systems under which the program now operates. At the same time the committee is of the firm opinion that the recommended legislation provides for a generous and equitable retirement and fringe benefit program for the technicians within the 55-percent formula. In support of this conclusion, the committee would cite the following:

(a) Approximately 20,000 of the technicians have already acquired a vested interest in future social security payments since they have completed the 40 quarters or 10 years of coverage as a result of their technician employment. Others may complete the 40 quarters and add to their social security credits through the annual Reserve training duty as Federal civilian employees. It should be observed that Federal employees are not covered under social security as a result of their Federal employment.

(b) Approximately 4,450 of the technicians have acquired a vested interest in a future annuity under one of the State retirement systems based on past service.

(c) All of the technicians will become eligible for Reserve retired pay at age 60 if they complete the required 20 years of satisfactory Reserve service. All reservists whether or not they are Federal employees are eligible for this pay upon meeting the requirement. Since the Reserve retired pay program, however, is in effect part of the employment program for technicians, the Reserve retired pay matter should not be ignored.

EFFECT OF PAST TECHNICIAN SERVICE ON CIVIL SERVICE RETIREMENT FUND LIABILITY

If the average retirement age of 60 is assumed which is the oldest age for technician employment, the past service cost to the civil service retirement fund would be \$279,300,000 if an appropriation were immediately made to the civil service retirement fund. If no immediate appropriation is made and the amount is paid out as the persons retire, the total cost to the civil service fund for past service at age 60 will be \$750,050,000. If age 55 is assumed to be the average age at retirement, these amounts would be \$372,400,000 and \$1,000,066,000 respectively. Charts I and II of this report set forth in detail the cost aspects of both the 55-percent formula together with the cost of extending full credit for past service.

EXTENT OF PAST TECHNICIAN SERVICE

As of January 1, 1968, of the 40,558 technicians the length of civilian technician service ranged from less than 1 year to over 30 years. The following percentages might be noted:

11.08 percent (4,496) had completed 18 or more years.

47.38 percent (19,212) had completed 10 or more years.

68 percent (27,575) had completed 5 or more years.

If prior active military service which would also be creditable for civil service retirement purposes is included, these percentages would be as follows:

21.3 percent (8,640) had completed 18 or more years.

57.41 percent (21,891) had completed 10 or more years.

79 percent (32,054) had completed 5 or more years.

Chart VII and chart VIII set forth the extent of past service.

REQUIREMENT TO CONTRIBUTE 1 YEAR TO CIVIL SERVICE RETIREMENT FUND

Normally, in order to be eligible for civil service retired pay, technicians coming under the bill would be required to contribute 6½ percent of their pay over a period of 1 year. After the 1-year period technicians, if otherwise eligible, could be retired under civil service based on the retroactive credit for past technician service plus the 1 year of contributory service.

The 1-year contribution required, however, would not apply to civil service death benefits and to those retiring for physical disability. In these two instances payments could be made immediately without regard to the 1-year rule. A person entering Federal employment is generally required to contribute for a period of 5 years before acquiring a vested interest and certain other retirement rights. The past service credit under the bill, however, would result in only requiring the technician to contribute the 1 year if his past service is sufficient to meet the required periods of service.

REQUIREMENT TO BE A PRESENT OR FUTURE TECHNICIAN AS A REQUIREMENT FOR RECEIVING CREDIT FOR PAST TECHNICIAN SERVICE

The bill provides that in order to receive credit for past technician service for civil service retirement and other purposes, a person must be a technician either on the effective date of the act or at some future date. The basic purpose of the legislation is to provide an incentive for participation in the technician program. To omit this requirement would credit persons who might have served for some years in the technician program in the past but who would never be a technician either on or after the effective date of the act.

Explicit language is contained in the bill in order to make certain that this requirement would not apply to members of the District of Columbia National Guard who have been covered under the civil service retirement program.

DISCUSSION OF THE OPERATION OF THE CIVIL SERVICE RETIREMENT SYSTEM FOR TECHNICIANS

Preliminary comment

It can be anticipated that the civil service retirement system will operate in the same manner with respect to technicians as with other Government employees except for certain factors discussed below which might cause the technicians to be retired under the so-called involuntary separation provisions of the Civil Service Retirement Act.

Use of voluntary civil service provisions (age 55 with 30 years; age 60 with 20 years)

The voluntary retirement provisions would apply to technicians as Federal employees in the normal manner.

Under existing law Federal employees may apply for voluntary civil service retirement under the following criteria: At age 55 with 30 years of service and at age 60 with 20 years of service, both without annuity reduction. Technicians would therefore be eligible to apply for voluntary retirement under the above provisions based on any completed technician service past or future and active military service which would be recognized for civil service retirement purposes.

Another civil service provision which might be noted but may be little utilized by the technicians will be deferred annuity provision under which civil service retirement is possible at age 62 after having completed only 5 years of previous service.

Involuntary civil service retirement based on separation from job

A. Existing law:

An immediate civil service annuity is presently authorized where there is an involuntary separation of the employee without cause where the employee has completed 25 years of service (without regard to age) or has reached age 50 and completed 20 years of service. Generally, the use of this provision for civil service employees is limited to instances where Federal jobs are abolished. For each year a person is under 55 when retired, civil service annuities are reduced by 2 percent.

B. Discussion of use of involuntary provision:

The normal use of the involuntary separation provision with respect to civil service employees occurs as result of the reorganization or a reduction in force where the employee is separated from his job through no fault of his own. It would be anticipated that these instances might occur in the technician program.

The added factor is added to the potential use of the involuntary separation provision with respect to the technician program, however, since about 95 percent of the technicians will be required to hold an active military status in the National Guard as a concurrent condition for civilian technician employment. If a technician loses his military Guard membership and is therefore involuntarily separated from his job he may be eligible for civil service retired pay if he meets the length of service or age criteria.

The committee would make the following comments with respect to any involuntary retirement through the operation of the military personnel laws. Normally, under the Reserve Officer Personnel Act a lieutenant colonel or colonel is eliminated from an active status at about ages 53 and 55 respectively, since they will have completed 28 and 30 years of Reserve service. Reserve officers who are technicians under normal circumstances would therefore lose their active National Guard membership and consequently be separated from their civilian technician job because of the requirement for a dual status. Such persons would therefore be retired within immediate civil service annuity under the involuntary separation process if they had completed 25 years of service or had reached age 50 and completed 20 years of service.

The bill, however, contains a provision which will permit the Secretaries of the Army and the Air Force on a permissive basis to retain Reserve officers who are technicians in an active military status until age 60, notwithstanding the operation of the Reserve personnel laws which would eliminate them because of promotion passover or length of service. The committee made this provision permissive with the result that all Reserve technician officers could remain until age 60. It is the intention of the committee, that where the officer is fully qualified to hold his military position and properly performing his technician job, he should be retained in his technician employment.

Enlisted technicians

Under present regulations technicians holding enlisted grades are permitted to enlist in the Guard up to age 60. The committee has been informally advised that the National Guard intends to continue this policy, with the result that enlisted members should not be involuntarily retired through separation of job due to military promotion or elimination factors. In other words, so long as an enlisted technician properly performs his job there should be no grounds for his involuntary retirement. Among the specific grounds that would not be any basis for involuntary retirement would be the voluntary resignation from a military status on the part of either a commissioned or enlisted technician, thereby causing disqualification for further civilian employment, failure on the part of the enlisted technician to reenlist in the Guard, or failure on the part of the National Guard to accept his reenlistment application if properly qualified, or the discharge from enlistment for failure to meet military standards.

Involuntary retirement because of failure to meet military physical standards

Generally, standards for retirement for physical disability under the civil service laws require disabilities to a greater extent than the minimum standards required for disability retirement under the military laws. Civil service provisions generally require total disability for physical retirement. One element of the required concurrent military Guard status for civilian employment is the meeting of military physical standards. It can be anticipated that instances will occur where technicians would not be eligible for physical disability civil service retirement but would at the same time fail to meet the military physical standards.

If an employee fails to meet military physical standards even though he would be physically qualified for continued civil service employment, he will be eligible for civil service retirement under the involuntary, separation provisions if he has completed 25 years of service or is age 50 and completed 20 years of service.

If, however, the employee has not met any of the foregoing age and length-of-service requirements, he would not be retired for physical disability under the Civil Service Act but would be separated from service with civilian severance pay.

The following might be such instances—failure to permit reenlistment for medical reasons, or removal of Reserve officer technician from active status because of failure to pass military medical exam.

POLICY ON UNPAID DEPOSITS

Under existing laws pertaining to civil service retirement creditable service must be matched with a contribution by the individual. If the contribution is not paid existing law provides for an annuity penalty under which there would be deducted from the person's retired pay an amount equal to 10 percent of the unpaid deposit plus accrued interest.

As an example, if the unpaid deposit plus interest owed by the employee was \$2,000, his annuity would be reduced by \$200 per year. Where the employee repays the deposit, the amount repayable would be the required deduction for each year in the past with interest compounded at the rate of 4 percent through 1947 and 3 percent since that time.

The Civil Service Commission has advised informally that from an actuarial standpoint the 10-percent system is sufficient to offset the nonpayment of contributions for the system as a whole. Whether an employee should repay the deposit or accept the penalty would depend on the facts in each case.

Under the bill a special provision has been inserted which would permit reduced required deposits to conform to the 55-percent credit formula. In other words, unpaid deposits would be computed on the basis of 55 percent of what would have been owed for 100 percent credit. Set forth below is chart III which shows the effect of unpaid deposits under varying circumstances. It should be emphasized that most of the technicians will complete varying degrees of service in the future under which full credit will be received as Federal employees with full deposits made as required by law. The chart therefore does not represent typical cases with respect to unpaid deposits.

ELECTION TO REMAIN UNDER STATE RETIREMENT SYSTEMS

The bill contains a provision under which technicians with the consent of the State concerned may elect to remain under the State retirement system under which they are now covered. Such election, which must be made by the effective date of the act, would be in lieu of their participation in the Federal civil service retirement system, even though such technicians would remain Federal employees for other purposes.

For such persons the Federal Government would continue to pay the employer's share to the State in an amount not to exceed the contribution of the Federal Government's employer contribution to the civil service retirement fund.

It should be emphasized that an election to remain in a State system would be final. Furthermore, technicians who remain in a State system would not be covered after retirement for any of the fringe benefits such as health and life insurance which are available to persons retired under the Federal civil service system. Any benefits of this nature would depend on coverage under the State retirement system.

PRELIMINARY COMMENT ON EMPLOYMENT AND ADMINISTRATION OF TECHNICIANS BY ADJUTANTS GENERAL

The bill places certain authority for the supervision and administration of the technician program at the level of the adjutants general of the States concerned. In discussing these specific provisions which are outlined in detail below, the committee would make the following observations:

(a) Under the U.S. Constitution and the many laws pertaining to the National Guard, the Federal Government supports the National Guard in terms of funds, equipment, and training procedures which require that the members of the Guard must meet Federal standards with respect to mental, physical, and professional qualifications. Until the National Guard is called into active Federal service, however, it is a State military organization, subject to the sole command and control of the Governor concerned.

(b) All members of the National Guard including 95 percent of the technicians hold a dual military status in the form of a State military rank and a Federal Reserve rank, both of which correspond. All members of the National Guard take a dual oath, one to their Governor, and one to the President of the United States.

The technicians as full-time civilian employees are an essential element with respect to the training and the maintenance of equipment for the National Guard.

(c) The technicians, however, numbering about 42,000, constitute only about 8 percent of the total drill paid strengths of approximately 500,000 members of the National Guard. In order that there be some degree of supervision and control at the State level of all National Guardsmen, including technicians in their dual status, the Committee feels it is essential that the controls enumerated be provided as a matter of law. Otherwise there would be varying rules and regulations applying to guardsmen who were technicians as compared

to the remaining personnel who are also a part of the National Guard program.

(d) The committee would also observe that most of the supervisory provisions set forth in the bill are by implication contained in the provision requiring military Guard membership as a condition for civilian employment. This requirement was contained in the legislation as passed by the House. In order to remove any statutory ambiguity the lines of authority with respect to administration and control are explicitly set forth as a part of the legislation.

SUPERVISORY AUTHORITY OF THE ADJUTANTS GENERAL REQUIREMENT FOR EMPLOYMENT AND ADMINISTRATION OF TECHNICIANS BY THE ADJUTANTS GENERAL

The bill provides that the Secretaries concerned under the regulation will designate the adjutants general of the various States to employ and administer the technicians. This is the current arrangement although not required by law.

This requirement is intended to achieve two purposes: (a) recognize the State character of the Guard and (b) meet the requirement of giving the adjutants general (who are State officers) the statutory function of employing Federal employees.

AUTHORITY FOR SEPARATION OF TECHNICIANS FROM CIVILIAN EMPLOYMENT BY ADJUTANTS GENERAL IN INSTANCES INVOLVING LOSS OF REQUIRED MILITARY MEMBERSHIP, FAILURE TO MEET MILITARY SECURITY STANDARDS, AND SEPARATION FOR CAUSE

The bill provides that notwithstanding any other provision of law and other regulations of the Secretary concerned, the Adjutant General of the jurisdiction concerned may separate technicians from their civilian employment where (a) the technician is employed in a position requiring military Guard membership and is separated from that membership or ceases to hold the required specified military grade; (b) the technician who is employed in a position requiring military Guard membership fails to meet the military security standards prescribed by the Secretaries for the respective Reserve components; and (c) there are grounds for separation for cause in the case of any technician.

JURISDICTION OF ADJUTANTS GENERAL REGARDING REDUCTIONS IN FORCE AND CERTAIN ADVERSE ACTIONS

The bill provides that the Adjutants General shall accomplish any actions involving reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation. This authority would be subject to secretarial regulations.

This proposed statutory authority conforms to the present arrangement of meeting these problems in the technician program.

RIGHT OF APPEAL

The bill provides that any right of appeal which may exist with respect to the actions enumerated above shall not extend beyond the adjutant general of the jurisdiction concerned.

REQUIREMENT FOR NOTIFICATION IN WRITING

The bill provides that a technician, upon any termination of his employment, shall be notified in writing at least 30 days prior to any termination.

OTHER PROVISIONS**PREMIUM PAY FOR TECHNICIANS EMPLOYED AT AIR DEFENSE SITES**

The bill authorizes the Secretary concerned, in the case of technicians assigned to perform operational duties at air defense sites, to prescribe the hours of those duties, fix the rates of basic compensation, and authorize additional compensation not to exceed 12 percent of such part of the rate of basic pay as does not exceed the minimum rate of basic pay for GS-10 of the General Schedule.

There are approximately 5,100 technicians affected by this provision. About 4,500 are on duty 62 hours a week as a part of their normal employment; 350 are normally on duty about 50 hours a week. The Department of Defense has indicated that those on duty for 62 hours will be authorized annual premium pay in the amount of 12 percent of basic compensation and those on duty for 50 hours annual premium pay at 8 percent.

AUTHORITY OF THE SECRETARY TO PRESCRIBE THE HOURS OF WORK WITH AUTHORITY FOR COMPENSATORY TIME OFF

The bill provides that the Secretary concerned may prescribe the hours of duty for all technicians (other than those employed at air defense sites where separate authority will apply) and directs the Secretary to grant compensatory time off to a technician from a regularly scheduled tour of duty in an amount equal to the amount of time spent in irregular or overtime work in lieu of being paid for that work. This authority will continue the existing practice regarding hours of work and compensatory time off. It is the firm view of the committee that the irregular hours of work to which technicians are subjected on frequent occasions make it impractical, both from the standpoint of the Government and the individual, to be limited to the normal provisions regarding a straight 40-hour week with overtime or differential pay for additional hours of work. The frequent irregular hours are inherent in the technician job and position.

NONAPPLICATION OF VETERANS' PREFERENCE PROVISIONS FOR TECHNICIANS

The so-called veterans' preference provisions contained in title 5, United States Code, are not presently applicable to technicians since they are State employees. The bill, in containing a provision making the veterans' reference provisions not applicable to technicians, will continue the existing practice on this matter.

The committee is of the view that the application of the veterans' preference provisions would pose a number of problems which could make the National Guard program less efficient and less responsive to its mission as a military and State organization. There is the problem generally of applying the concept of veterans' preference to an organization organized and operated along military lines. About 95 percent of the technicians will hold a dual status, that is, be required to hold a military grade as a condition for their civilian Federal job. The complications arising out of the application of the veterans' preference

provisions both with respect to employment and retention would make efficient administration of the program difficult.

With respect to initial employment there could well be an instance where a person with veterans' preference would have priority in employment for the civilian job but would be less qualified to hold the military rank required for the position as compared to another applicant.

Another example might occur with respect to a reduction in force. Any such action in the technicians program would probably be caused by the deactivation of a National Guard unit caused by a reorganization. If the situation were to result where persons with veterans' preference in the unit being deactivated were in a position to "bump" persons in another unit not being deactivated, the efficiency of the remaining unit could well be impaired in terms of the requirement for specified military grades.

MATTER OF UNCOMMITTED FUNDS IN STATE RETIREMENT SYSTEMS CONTRIBUTED BY FEDERAL GOVERNMENT

Since 1961 legislation enacted by the Congress has authorized the use of Federal funds for the payment to State retirement systems as the employer's share for contributions, subject to a maximum of 6½ percent, which also includes any amounts used as the employer's share to the social security system. About 16,000, or 40 percent, of the technicians are presently covered under State retirement systems in 19 States and Puerto Rico.

For fiscal years 1962 through 1968, Federal funds in the form of contributions to State retirement systems totaled \$19,606,000 for the persons who were technicians as of January 1, 1968. For all technicians, including those on board January 1, 1968, as well as those who were in the program during these fiscal years but no longer on board at this latter date, the Federal contributions totaled \$22,456,000.

The bill will remove the overwhelming portion of the technicians from the State retirement systems by providing for Federal employee status for all new technicians to be employed and by providing for civil service retirement for those presently employed except for those who elect to remain under a State retirement system with the consent of the State concerned.

It is the desire of the committee that the Department of Defense negotiate with the various States where such Federal contributions have been made with a view toward determining the portion of the Federal contributions which is uncommitted to pay for technician retirement and which otherwise will constitute Federal windfalls to the retirement systems of these States. It is recognized that actuarial commitments of these funds will have been made in the following instances: (a) where claims have been or are being paid; (b) to the extent that some 4,400 technicians with a vested interest to a future State annuity remain eligible; and (c) to the extent that technicians elect to remain in the State retirement system in lieu of coming under the Federal civil service system.

It would appear that a substantial portion of the funds which have been paid on behalf of some 16,000 individuals would be uncommitted and therefore available for return to the Federal Government. The committee as a part of this report is hereby requesting the Depart-

ment of Defense to first determine, with the cooperation of the States, the portion of these funds which are uncommitted with a view to thereafter determining the most equitable means of either a return of the money to the Federal Government or an offset from Federal funds which might otherwise be made available to the States.

ALTERNATIVES EXAMINED BY THE COMMITTEE

The committee in 1967 conducted extensive hearings on title II of H.R. 2. This title, in converting the technicians to Federal employee status would, among other things, have granted complete credit for past service for all civil service retirement purposes, and in addition most of the civil service procedures would have become operative with respect to the technician program. The committee in reexamining the House-passed provision also examined other alternatives in an effort to make certain that legislation would be formulated which would best serve the objective of providing both for an adequate technician retirement system and at the same time recognize the National Guard as a military and State organization. Several alternatives are discussed below.

1. *Greater participation under State retirement systems*

At the present time technicians as State employees are covered under the retirement systems of 19 States and the Commonwealth of Puerto Rico. Since 1961 legislation has authorized the use of Federal funds for the payment to State systems as the employers' share for technician subject to a maximum of 6½ percent which also includes any amounts used as the employers' share to the Social Security System. For the present technicians from fiscal year 1962 through fiscal year 1968, a total of \$19,606,000 has been used for this purpose.

One alternative which was examined was the possibility of a greater Federal contribution to the State retirement system as a means of encouraging a greater number of States to permit technicians to participate in their State systems. The committee on February 16, 1968 submitted to the Governors of the 50 States and the Commonwealth of Puerto Rico an extensive questionnaire for the purpose of examining this alternative and to seek further information on the operation of the State retirement systems as it related to the National Guard technicians. The States were very cooperative in providing the requested information. This approach, however, presented a sufficient number of problems to preclude it as a practical alternative. These problems include (a) the fact that some States were uncertain as to whether the technicians would be taken in even with a contribution that might go as high as 11½ percent; (b) in some States an increase to 11½ percent would be insufficient; (c) some States could not credit past technician or past active military service; (d) the fact that the States cannot be compelled as a matter of Federal law to incorporate the technicians in their State systems along with the above factors preclude any uniform approach to the technician retirement.

2. *State militia approach in lieu of Federal employee status*

Another approach which was examined is what might be termed a militia status for the technicians. Instead of becoming Federal employees as a matter of law the militia approach would have provided for technicians required to have military Guard membership, to be

ordered to State military duty (militia status), to be paid salaries based on Federal civil service or wage board rates but for fringe benefit purposes to receive all such benefits including disability retirement that are authorized for career military members (those on active duty for more than 30 days).

Under this concept retirement would have been based on the basic pay of the technician's military rank computed under a point system formula which recognized civilian technician duty including both the 5-day workweek and Reserve training to the extent of 87 percent of active military service. For physical disability under the percentage system, the technician would receive the same benefits as active military personnel. Voluntary retirement would have been authorized at age 50 for enlisted technicians and age 55 for officers upon the completion of approximately 25 years of technician service, with involuntary retirement occurring at earlier ages through the operation of the personnel laws.

After careful examination the committee did not adopt this approach for two basic reasons. First, a system would have been established under which the amount of a person's retired pay would be computed under a system unrelated to his civilian compensation. There is a wide range in salaries for technicians having the same military grade. A number of inequities would arise if retired pay were to be based on a system which gives no direct recognition to a person's civilian compensation. The second basic reason related to cost since the militia approach would involve considerably more cost to the Government as compared to the version recommended by the committee.

COMMITTEE OBSERVATIONS

Although the subjects discussed below are not dealt with in explicit language in the bill, the committee would make the following observations regarding them.

Use of Reserve general officers in the technician program

The committee observed during the course of the hearings on the technician program that there were 37 National Guard general officers who are technicians, or slightly more than one-third of the total of 101 in an active status. The committee is not suggesting any change in the promotion policy which would affect those technicians now holding general officer rank. It is the opinion of the committee, however, that with respect to the technician program as implemented in the future, there should be no general officers in the National Guard who are technicians unless they are assigned to a tactical combat unit organized to serve as such. In other words general officers should not be employed as technicians unless they are assigned to such units organized as such and are employed as a technician for that express purpose. Such technicians would be commanders only on the assumption that they would be called into active service in the event the unit which they command is ordered to active duty.

It should not be inferred from the foregoing that it is the committee position that general officers assigned to such units should necessarily be technicians. The committee is concerned that the nontechnician officer be appropriately recognized in terms of assignments as a part of the National Guard program.

As a general rule joint regulations of the National Guard Bureau would specify the appropriate military position and grade to which technicians employed in the various positions would be assigned. For instance, in the case of technician positions authorized for the Army or Air National Guard State headquarters, the maximum grade for officers employed would be that of colonel.

The Department of Defense has indicated its informal agreement to such a change in policy.

Requirement for mobilization position to be in unit in which the technician is working as a civilian

The concept of the full-time civilian technician program is that his civilian work will be performed in the same unit in which he holds a mobilization assignment. In other words, the technician would perform his civilian work, his training duty, and be mobilized to active duty in the same unit.

While the foregoing is the general practice the committee did learn in some instances technicians hold military assignments in units different from the units in which they are employed. It is the view of the committee, therefore, that technicians who are required to be military members of the National Guard should occupy a military position which is compatible with their civilian technician position.

The Department of Defense has indicated its informal concurrence with this view.

SECTIONAL ANALYSIS

SECTION 1. TITLE OF THE BILL

This section provides that the act may be cited as "the National Guard Technician Act of 1968."

SECTION 2. NEW AUTHORITY AND PROVISIONS FOR THE TECHNICIAN PROGRAM

Section 2 replaces existing law with respect to the authority for the technician program and as enumerated below, provides for new statutory authority along with certain other provisions which will apply to the bill.

NEW AUTHORITY FOR THE EMPLOYMENT OF TECHNICIANS

The proposed language of subsection 709(a) provides authority under which, pursuant to secretarial regulations, technicians may be employed in the administration and training of the National Guard and the maintenance and repair of supplies issued to the National Guard or the Armed Forces. One result of this provision is to eliminate existing law defining technicians as "caretakers and clerks." In addition, this language repeals existing limitations on grades, numbers, and terminology, all of which have been suspended under various appropriations acts for a number of years.

REQUIREMENT FOR A TECHNICIAN TO BE A MEMBER OF THE NATIONAL GUARD AND HOLD SPECIFIED GRADE UNLESS AN EXCEPTION IS MADE BY THE SECRETARY

The proposed language for 709(b) provides that except as prescribed by the Secretary concerned, a technician while employed will be a military member of the National Guard and hold the military grade specified by the Secretary for that position. This language will convert to a statutory requirement what has long been the practice and

procedure—that of requiring civilian caretakers and clerks, now termed technicians, to be members of the National Guard.

REQUIREMENT THAT THE SECRETARY SHALL DESIGNATE THE ADJUTANTS GENERAL TO EMPLOY AND ADMINISTER THE TECHNICIANS

This provision will provide by statute what is the current practice by regulation with respect to the employment and administration of technicians.

PROVISION THAT TECHNICIANS WILL BE EMPLOYEES OF THE U.S. GOVERNMENT WITH AUTHORITY FOR DESIGNATING TECHNICIAN POSITIONS IN THE NONCOMPETITIVE CATEGORY

Subsection 709(d) would provide that technicians who are to be employed will be employees of the United States. In addition, if a technician is required to hold military membership in the National Guard as a concurrent condition for civilian employment, his position will be outside the Federal competitive service. About 95 percent of the technicians would be in this category.

AUTHORITY FOR SEPARATION OF TECHNICIANS FROM CIVILIAN JOB BY ADJUTANT GENERAL IN INSTANCES INVOLVING LOSS OF REQUIRED MILITARY MEMBERSHIP, FAILURE TO MEET MILITARY SECURITY STANDARDS, AND SEPARATION FOR CAUSE

New subsection 709(e) provides that, notwithstanding any other provision of law and under the regulations of the Secretary concerned, the adjutant general of the jurisdiction concerned may separate technicians from their civilian employment where (a) the technician is employed in a position requiring military Guard membership and is separated from that membership or ceases to hold the required specified military grade; (b) the technician who is employed in a position requiring military Guard membership fails to meet the military security standards prescribed by the Secretaries for the respective Reserve component; (c) there are grounds for separation for cause in the case of any technician.

In addition, this subsection provides that the adjutant general of the jurisdiction concerned shall accomplish any actions involving reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation.

RIGHT OF APPEAL

Under subsection 709(e)(5) a right of appeal which may exist with respect to the actions described above shall not extend beyond the adjutant general of the jurisdiction concerned.

REQUIREMENT FOR NOTIFICATION IN WRITING

Subsection 709(e)(6) provides that a technician shall be notified in writing at least 30 days prior to any termination of his employment.

NONAPPLICATION OF VETERANS' PREFERENCE PROVISIONS FOR TECHNICIANS

The so-called veterans' preference provisions contained in title 5, United States Code, are not presently applicable to technicians since they are State employees. The bill (709(f)) in containing a provision making the veterans' preference provisions not applicable to technicians, will continue the existing practice on this matter.

The committee is of the view that the application of the veterans' preference provisions would pose a number of problems which could make the National Guard program less efficient and less responsive to its mission as a military and State organization. There is the problem generally of applying the concept of veterans' preference to an organization organized and operated along military lines. About 95 percent of the technicians will hold a dual status, that is, be required to hold a military grade as a condition for their civilian Federal job. The complications arising out of the application of the veterans' preference provisions both with respect to employment and retention would make efficient administration of the program difficult.

With respect to initial employment there could well be an instance where a person with veterans' preference would have priority in employment for the civilian job but would be less qualified to hold the military rank required for the position as compared to another applicant.

Another example might occur with respect to a reduction in force. Any such action in the technicians program would probably be caused by the deactivation of a National Guard unit caused by a reorganization. If the situation were to result where persons with veterans' preference in the unit being deactivated were in a position to "bump" persons in another unit not being deactivated, the efficiency of the remaining unit could well be impaired in terms of the requirement for specified military grades.

PREMIUM PAY FOR TECHNICIANS EMPLOYED AT AIR DEFENSE SITES

Subsection 709(g)(1) authorizes the Secretary concerned, in the case of technicians assigned to perform operational duties at air defense sites, to prescribe the hours of those duties, fix the rates of basic compensation, and authorize additional compensation not to exceed 12 percent of such part of the rate of basic pay as does not exceed the minimum rate of basic pay for GS-10 of the General Schedule.

There are approximately 5,100 technicians affected by this provision. About 4,500 are on duty 62 hours a week as a part of their normal employment; 350 are normally on duty about 50 hours a week. The Department of Defense has indicated that those on duty for 62 hours will be authorized annual premium pay in the amount of 12 percent of basic compensation and those on duty for 50 hours annual premium pay of 8 percent.

AUTHORITY OF THE SECRETARY TO PRESCRIBE THE HOURS OF WORK WITH THE AUTHORITY FOR COMPENSATORY TIME OFF

Subsection 709(g)(2) provides that the Secretary concerned may prescribe the hours of duty for all technicians (other than those employed at air defense sites where separate authority will apply) and directs the Secretary to grant compensatory time off to a technician from a regularly scheduled tour of duty in an amount equal to the amount of time spent in irregular or overtime work in lieu of being paid for that work. This authority will continue the existing practice regarding hours of work and compensatory time off. It is the firm view of the committee that the irregular hours of work to which technicians are subjected on frequent occasions make it impractical, both from the standpoint of the Government and the individual, to be limited to the normal provisions regarding a straight 40-hour week with overtime or

differential pay for additional hours of work. The frequent irregular hours are inherent in the technician job and position.

PERMANENT STATUTORY CEILING OF 42,500 ON THE NUMBER OF TECHNICIANS WHO MAY BE EMPLOYED AT ANY ONE TIME

Subsection 709(h) provides that the number of technicians who may be employed may not exceed 42,500. In effect the committee is adopting a numerical ceiling in the form of permanent statutory authority. The committee considered but did not adopt a provision which would have provided for the number of technicians to be authorized on an annual basis.

The committee was of the opinion that a permanent statutory ceiling was desirable for the following reasons. While it is recognized that the technician program is an essential element of the National Guard in connection with its administration training, and equipment, it should be the objective of all personnel programs to remain within specified numerical limits with regard to the number of its employees. There is always a tendency toward expansion in any program. If plans are made with the permanent ceiling in mind, it should permit greater economies in terms of personnel.

SECTION 3. SAVINGS PROVISIONS FOR APPROVED CLAIMS

Section 3(a) provides for a savings provision for any claim accrued under section 715 of title 32, United States Code, prior to the amendment to that section as provided in this act and permits such a claim, if otherwise allowable, to be settled and paid under that section as it existed on the day before the enactment of this act.

CONVERSION OF TECHNICIANS ON THE EFFECTIVE DATE OF THE ACT TO FEDERAL EMPLOYEE STATUS AND POSITIONS

Section 3(b) in effect provides that the positions of the technicians employed on the day before the effective date of the act and the persons holding those positions shall, as the case may be, be considered to be positions in, and employees of the U.S. Government. As discussed in detail in other parts of this report this provision is the authority under which existing technicians become Federal employees. This subsection also provides that positions will be outside the competitive service where the persons employed therein must hold military Guard membership as condition for their civilian employment.

CREDIT FOR PAST TECHNICIAN SERVICE FOR CERTAIN PURPOSES

Section 3(c) credits past technicians service performed before the effective date of this act in the determination of length of service for the purpose of leave, Federal death and disability compensation, group life and health insurance, severance pay, tenure, and status. However, such service would only be creditable to a technician who performed service as a technician on or after the effective date of this act.

PREVENTION OF LOSS OF ACCRUED ANNUAL AND SICK LEAVE

Section 3(d) prevents the loss of accrued annual leave and sick leave which the technician has standing to his credit at the time his position is converted.

SECTION 4. AUTHORITY OF THE ADJUTANT GENERAL TO EMPLOY TECHNICIANS

Amends section 2105(a) of title 5, United States Code, codified under the title of "Government Organization and Employees," to

provide that a person employed as a technician under section 709 of title 32, United States Code, by the adjutant general of the jurisdiction concerned, is an employee of the United States.

SECTION 5. CREDITING OF PAST TECHNICIAN SERVICE FOR CIVIL SERVICE RETIREMENT PURPOSES

Section 5 contains the various provisions under which, as explained below, past technician service will be creditable for civil service retirement purposes.

CREDITING OF PAST TECHNICIAN SERVICE FOR RETIREMENT ELIGIBILITY AND OTHER PURPOSES

Section 5(a) in effect recognizes past technician service for the purpose of eligibility for civil service retirement. In substance, the effect of this provision is to recognize past technician service in full for civil service retirement eligibility purposes and other factors relating to retirement, except that the computation for retired pay, which is explained below, will be limited to a 55-percent formula. This credit would apply only to persons who are technicians on or after the effective date of this act. There is a savings clause in order to make certain that this provision will not deprive technicians of the District of Columbia National Guard of rights already accrued as participants in the civil service retirement system.

CHANGE IN UNPAID DEPOSIT PROVISIONS TO CONFORM WITH THE BILL

Section 5(b) in effect provides that technicians will be required to pay only 55 percent of the deposits computed under the normal formula in order to conform with the 55-percent provisions relating to computation for past service.

RECOGNITION OF PAST TECHNICIAN SERVICE TO THE EXTENT OF 55 PERCENT FOR CIVIL SERVICE RETIREMENT COMPUTATION

Section 5(c) of the bill in effect provides that for each year or fraction thereof of past technician service, recognition will be given to the extent of 55 percent as creditable service for retirement computation purposes. This provision is discussed in detail elsewhere in this report under the same heading. The 55-percent formula, in technical terms, provides that 45 percent of each year of past technician service shall be disregarded in computing the annuity.

SECTION 6. ELECTION TO REMAIN UNDER STATE RETIREMENT SYSTEM

Section 6(a) provides for an election between the date of the enactment of this legislation and its effective date (the first day of the first pay period that begins on or after January 1, 1969) by technicians who were covered by a State retirement program as to whether they will remain under that program. The consent of the State would also be required if an affirmative election is made. This would protect the equity of technicians with long periods of covered State service. Those who do not so elect, together with technicians not covered by a State program, and all persons employed in the future as National Guard technicians will be covered by the Civil Service Retirement Act.

Section 6(b) permits members of the National Guard on active Federal duty on the effective date of this act, who were ordered to active Federal service subsequent to January 1, 1968, from a technician position or a person who entered on active Federal duty from a tech-

nician position for the purpose of performing a statutory tour in the National Guard Bureau or other headquarters or agencies bearing a responsibility for National Guard matters, to make the same election if reemployed within 60 days of their release from that active Federal service and 30 days after such reemployment.

AUTHORITY FOR CONTINUATION OF FEDERAL CONTRIBUTIONS FOR THOSE WHO ELECT TO REMAIN IN STATE SYSTEMS

Section 6(e) continues the authority contained in current law (32 U.S.C. 709(f)) for a Federal contribution to the retirement system of any State or the Commonwealth of Puerto Rico which covers its National Guard technicians under its retirement program, reduced by the Government's contribution toward the employer's social security tax in those jurisdictions which cover their employees under that program as well. Instead of imposing a permanent 6 1/2 percent ceiling on the total authorized contribution as under current law, this section would authorize a corresponding increase in the maximum in the event the Government's contribution under 5 U.S.C. 8334 is increased. Provides further, that a person who retires under a retirement system of a State or the Commonwealth of Puerto Rico, shall not, after such retirement, be eligible for any rights, benefits, or privileges to which retired civilian employees of the United States may be entitled.

SECTION 7. AUTHORITY TO CONTINUE SOCIAL SECURITY PAYMENTS FOR THOSE WHO ELECT TO REMAIN UNDER STATE SYSTEMS

This section amends section 218(b)(5) of the Social Security Act, as amended (42 U.S.C. 418(b)(5)), to include technicians who have elected to remain covered by a State retirement system. Since section 5 of the act would cover all other technicians under the Civil Service Retirement Act, this category would be denied concurrent coverage under the Social Security Act by reason of the provisions of section 210(a)(6) of the latter act, as amended (42 U.S.C. 410(a)(6)).

SECTION 8. PROVISIONS RELATING TO CONVERSION OF TECHNICIAN POSITIONS TO GENERAL SCHEDULE AND WAGE BOARD POSITIONS OF THE UNITED STATES

Subsection (a) provides for fixing the compensation of technicians whose pay immediately prior to the conversion was (1) lower than the minimum rate for his new grade, (2) equal to a rate of the appropriate grade, (3) between two rates of the appropriate grade, or (4) in excess of the maximum rate of the appropriate grade.

(b) Provides that the conversion from National Guard technicians to Federal pay scales shall not be considered to be transfers or promotions within the meaning of section 5334(b) of title 5, United States Code.

(c) Provides for crediting a technician with a salary increase if it has been earned but not credited before the conversion.

(d) Would, on the date of conversion, credit the length of service of a technician in his grade and step since his last salary increase toward his first in-grade increase thereafter.

(e) Would prevent a salary increase resulting from the conversion of a position from being considered as a step increase.

SECTION 9. AUTHORITY FOR THE RETENTION OF NATIONAL GUARD OFFICERS WHO ARE TECHNICIANS UNTIL AGE 60

(1) Restates existing authority which permits the Secretary of the Army to retain in an active status until age 60 any Army National Guard officer who is assigned to a headquarters or headquarters detachment of a State, territory, the Commonwealth of Puerto Rico, or the District of Columbia. Provides, further, that any Army National Guard officer, who is employed as a technician in a position in which membership in the Army National Guard is required as a condition of employment, may be retained in an active status until age 60.

(2) Provides that the Secretary of the Air Force may retain in an active status until age 60 any Air National Guard officer who is employed as a technician in a position in which membership in the Air National Guard is required as a condition of employment.

SECTION 10. REQUIREMENT FOR UNIFORM REGULATIONS AS APPROVED BY THE SECRETARY OF DEFENSE

Requires that the regulations prescribed by the Secretary of the Army and the Secretary of the Air Force under this act be approved by the Secretary of Defense and that they shall, so far as practicable, be uniform.

SECTION 11. EFFECTIVE DATE OF JANUARY 1, 1969

Provides that the effective date of this act shall be January 1, 1969, and that no deductions or withholding from salaries which result therefrom shall be initiated before the first day of the first pay period that begins on or after January 1, 1969.

The committee adopted January 1, 1969, as the effective date in view of the administrative details required in converting over 42,000 technicians to Federal employee status. Among other things this task involves the conversion of all job descriptions to Federal classified or wage board positions. This date was recommended by the Department of Defense.