

## STATEMENT OF PURPOSE

### RS20000

This bill contains IRS compliance amendments as follows:

1. Sections 1 and 2 of the bill implement changes required by the Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008, which provides additional tax and pension benefits to individuals who are absent from work due to duty in the military.

a. HEART requires that if a member dies while performing qualified service, the plan must treat him as having died during employment in the plan. The current statute requires the member "be killed". It is not clear that being killed is the same as dying. Therefore, Section 1 amends the definition of military service to make clear that if a member dies while performing qualified service, he is treated as if he died during employment in the plan. The HEART Act provides that this requirement is effective January 1, 2007. Thus, Section 1 has a retroactive effective date of January 1, 2007.

b. Under the HEART Act, a member performing qualified military service who is receiving differential wage payments from his employer is deemed an employee under the plan. As currently drafted, PERSI statutes leave some question on this point. The change to the definition of employee will make it clear that this person is an employee as defined. The change to the definition of salary provides that while the member in active service is an employee, his differential wages are not considered salary and neither employer nor employee contributions are required. Without this change, employer and employee contributions would be required on differential wage payments. These HEART Act amendments have an effective date requirement of July 1, 2009. Thus, Section 2 has a retroactive effective date of July 1, 2009.

2. Section 3 of the bill implements changes required by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA requires that an employer provide employment rights to persons on U.S. military service leave equal (or better) to employees on leave for other reasons.

a. Under USERRA, an employee away on U.S. military service leave cannot be treated worse than an employee away on other leave. As currently drafted, the definition of disability is discriminatory against members active in the U.S. armed forces because it prohibits such persons from being eligible for disability retirement. The change to the definition of disability will provide that a member who incurs a disability resulting from service in the United States armed forces is eligible for disability retirement. The change to the definition of military service makes the definition of military service consistent with the changed definition of disabled by recognizing that a member in active service could become a disability retiree. The changes in Section 3 will be effective July 1, 2011.

## FISCAL NOTE

The potential impact of the amendments to the General Fund and retirement system funds is considered negligible. While the revision could result in a PERSI member disabled while in the military obtaining disability retirement, which could cause a small increase in costs to the fund, the actuary has estimated that the incidence would not be enough to affect the actuarial valuation. If a very significant number of PERSI members were disabled in military service, the cost could increase.



**Contact:**

**Name:** Don Drum  
**Office:** Public Employee Retirement System  
**Phone:** (208) 287-9271