



1 follows:

2 **ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**

3 **§5-10D-10. Death benefits for participants or members who die**  
4 **while performing qualified military service;**  
5 **treatment of differential wage payments.**

6 (a) Death benefits. In the case of a death occurring on or  
7 after January 1, 2007, if a participant or member of any plan  
8 administered by the board dies while performing qualified military  
9 service (as defined in Section 414(u) of the Internal Revenue  
10 Code), the survivors of the participant or member are entitled to  
11 any additional benefits (other than benefit accruals relating to  
12 the period of qualified military service) provided under the plan  
13 as if the participant or member had resumed and then terminated  
14 employment on account of death, to the extent required by Section  
15 401(a)(37) of the Internal Revenue Code: *Provided*, That the death  
16 of the participant or member shall not be considered to be by  
17 reason of injury, illness or disease resulting from an occupational  
18 risk or hazard inherent in or peculiar to the service required of  
19 the participant or member, or as having occurred in the performance  
20 of his or her duties as a member, or as a result of any service-  
21 related illness or injury.

22 (b) Differential wage payments. For years beginning on or  
23 after December 31, 2008, if a participant or member of any plan  
24 administered by the board is receiving a differential wage payment

1 (as defined by Section 3401(h) (2) of the Internal Revenue Code),  
2 then for purposes of applying the Internal Revenue Code to the  
3 plan, all of the following shall apply: (i) The participant or  
4 member shall be treated as an employee of the employer making the  
5 payment; and (ii) the differential wage payment shall be treated as  
6 compensation of the participant or member for purposes of applying  
7 the Internal Revenue Code (but not for purposes of determining  
8 contributions and benefits under the plan, unless the plan terms  
9 explicitly so provide); (iii) the plan shall not be treated as  
10 failing to meet the requirements of any provision described in  
11 Section 414(u) (1) (C) of the Internal Revenue Code by reason of any  
12 contribution or benefit which is based on the differential wage  
13 payment.

14 (c) Nondiscrimination. Subsection (b) (iii) applies only if  
15 all employees of the employer performing service in the uniformed  
16 services described in Section 3401(h) (2) (A) of the Internal Revenue  
17 Code are entitled to receive differential wage payments (as defined  
18 in Section 3401(h) (2) of the Internal Revenue Code) on reasonably  
19 equivalent terms and, if eligible to participate in a retirement  
20 plan maintained by the employer, to make contributions based on the  
21 payments on reasonably equivalent terms.

The purpose of this Bill is to ensure the continued qualified status under federal tax law of the plans administered by the West Virginia Consolidated Public Retirement Board, by adding provisions necessary to comply with Sections 104(a) and 105(b) of the Heroes Earnings Assistance and Relief Tax Act of 2008 (P.L. 110-245, the

"HEART Act"). Section 104(a) of the HEART Act requires the plans to provide death benefits under the plans to the survivors of plan participants or members who die while performing qualified military service. The HEART Act requires the plans to treat these individuals as having died while actively employed and participating in the plan, notwithstanding the fact that the individuals were not actively employed and participating in the plan by virtue of the absence from work to perform qualified military service.

Section 105(b) of the HEART Act governs the plans' treatment of differential wage payments and individuals receiving the payments for purposes of the Internal Revenue Code's limitations on the maximum benefit payable to a participant or member of a plan qualified under federal tax law. Section 105(b) of the HEART Act also governs the plans' treatment of individuals performing service in the uniformed services while on active duty for more than 30 days for purposes of making contributions to and receiving distributions from the plans.

§5-10D-10 is new; therefore, underscoring and strike-throughs have been omitted.