

1 **H. B. 2764**

2
3 (By Delegates Pethtel, Givens, Canterbury,
4 Ennis, Duke, Guthrie and D. Poling)

5
6 [Introduced January 24, 2011; referred to the
7 Committee on Pensions and Retirement then Finance.]

8
9
10 A BILL to amend and reenact §8-22A-12 of the Code of West Virginia,
11 1931, as amended, relating to the West Virginia Municipal
12 Police Officers and Firefighters Retirement System, and
13 ensuring the continued qualification of the system under
14 federal tax laws by adopting an amendment to the system
15 required by Section 824 of the Pension Protection Act of 2006
16 (P.L. 109-280) permitting direct rollovers to Roth IRAs.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §8-22A-12 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted to read as follows:

20 **ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND**
21 **FIREFIGHTERS RETIREMENT SYSTEM.**

22 **§8-22A-12. Direct rollovers.**

23 Notwithstanding any provision of this article to the contrary
24 that would otherwise limit a distributee's election under this
25 plan, a distributee may elect, at the time and in the manner

1 prescribed by the board, to have any portion of an eligible
2 rollover distribution paid directly to an eligible retirement plan
3 specified by the distributee in a direct rollover. For purposes of
4 this section, the following definitions apply:

5 (1) "Eligible rollover distribution" means any distribution of
6 all or any portion of the balance to the credit of the distributee,
7 except that an eligible rollover distribution does not include any
8 of the following: (A) Any distribution that is one of a series of
9 substantially equal periodic payments not less frequently than
10 annually made for the life or life expectancy of the distributee or
11 the joint lives or the joint life expectancies of the distributee
12 and the distributee's designated beneficiary, or for a specified
13 period of ten years or more; (B) any distribution to the extent the
14 distribution is required under Section 401(a)(9) of the Internal
15 Revenue Code; and (C) any hardship distribution described in
16 Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. A portion
17 of a distribution shall not fail to be an eligible rollover
18 distribution merely because the portion consists of after-tax
19 employee contributions which are not includable in gross income.
20 However, this portion may be paid only to an individual retirement
21 account or annuity described in Section 408(a) or (b) of the
22 Internal Revenue Code, or to a qualified trust described in Section
23 401(a) or to an annuity contract described in Section 403(a) or
24 403(b) of the Internal Revenue Code that agrees to separately

1 account for amounts transferred (including interest or earnings
2 thereon), including separately accounting for the portion of the
3 distribution which is includable in gross income and the portion of
4 the distribution which is not includable, or to a Roth IRA
5 described in Section 408A of the Internal Revenue Code.

6 (2) "Eligible retirement plan" means an eligible plan under
7 Section 457(b) of the Internal Revenue Code which is maintained by
8 a state, political subdivision of a state, or any agency or
9 instrumentality of a state or political subdivision of a state and
10 which agrees to separately account for amounts transferred into the
11 plan from this plan, an individual retirement account described in
12 Section 408(a) of the Internal Revenue Code, an individual
13 retirement annuity described in Section 408(b) of the Internal
14 Revenue Code, an annuity plan described in Section 403(a) of the
15 Internal Revenue Code, an annuity contract described in Section
16 403(b) of the Internal Revenue Code, ~~or~~ a qualified plan described
17 in Section 401(a) of the Internal Revenue Code that accepts the
18 distributee's eligible rollover distribution, or a Roth IRA
19 described in Section 408A of the Internal Revenue Code: Provided,
20 That in the case of an eligible rollover distribution to a
21 designated beneficiary (other than a surviving spouse) as ~~such~~ the
22 term is defined in Section 402(c)(11) of the Internal Revenue Code,
23 an eligible retirement plan is limited to an individual retirement
24 account or individual retirement annuity which meets the conditions

1 of Section 402(c)(11) of the Internal Revenue Code.

2 (3) "Distributee" means an employee or former employee. In
3 addition, the employee's or former employee's surviving spouse and
4 the employee's or former employee's spouse or former spouse who is
5 the alternate payee under a qualified domestic relations order, as
6 defined in Section 414(p) of the Internal Revenue Code with respect
7 to governmental plans, are distributees with regard to the interest
8 of the spouse or former spouse. The term "distributee" also
9 includes a designated beneficiary (other than a surviving spouse)
10 as the term is defined in Section 402(c)(11) of the Internal
11 Revenue Code.

12 (4) "Direct rollover" means a payment by the plan to the
13 eligible retirement plan.

NOTE: The purpose of this bill is to amend the West Virginia Municipal Police Officers and Firefighters Retirement System (the "Plan") to ensure the plan's continued qualified status under federal tax law by making an amendment necessary to comply with Section 824 of the Pension Protection Act of 2006 (P.L. 109-280) ("PPA"). Section 824 of the PPA requires that the Plan permit eligible rollover distributions to a Roth IRA described in Section 408A of the Internal Revenue Code. This bill amends the direct rollover provision of the plan by adding Roth IRAs to the definition of "eligible retirement plan" and amending the definition of "eligible rollover distribution" to provide that distributions of after-tax amounts may be rolled over to a Roth IRA.

Srike-throughs indicate language that would be stricken from present law, and underscoring indicates new language that would be added.