

# H. B. 2765

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(BY DELEGATES PETHTEL, GIVENS, CANTERBURY,  
ENNIS, DUKE, GUTHRIE AND D. POLING)  
[BY REQUEST OF THE CONSOLIDATED PUBLIC RETIREMENT BOARD]

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

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-10, relating to the retirement plans administered by the West Virginia Consolidated Public Retirement Board, and ensuring the continued qualification of the plans under federal tax laws by adopting provisions required by Sections 104(a) and 105(b) of the Heroes Earnings Assistance and Relief Tax Act of 2008 (P.L. 110-245) requiring the plans to provide certain death benefits to survivors of the plans' members or participants who die while performing qualified military service and governing

the treatment of differential wage payments made to the plans' members or participants.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section §5-10D-10, to read as follows:

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

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

1        (a) Death benefits. In the case of a death occurring on or  
2        after January 1, 2007, if a participant or member of any plan  
3        administered by the board dies while performing qualified  
4        military service (as defined in Section 414(u) of the Internal  
5        Revenue Code), the survivors of the participant or member  
6        are entitled to any additional benefits (other than benefit  
7        accruals relating to the period of qualified military service)  
8        provided under the plan as if the participant or member had  
9        resumed and then terminated employment on account of  
10       death, to the extent required by Section 401(a)(37) of the

11 Internal Revenue Code: *Provided*, That the death of the  
12 participant or member shall not be considered to be by reason  
13 of injury, illness or disease resulting from an occupational  
14 risk or hazard inherent in or peculiar to the service required  
15 of the participant or member, or as having occurred in the  
16 performance of his or her duties as a member, or as a result  
17 of any service-related illness or injury.

18 (b) Differential wage payments. For years beginning on  
19 or after December 31, 2008, if a participant or member of  
20 any plan administered by the board is receiving a differential  
21 wage payment (as defined by Section 3401(h)(2) of the  
22 Internal Revenue Code), then for purposes of applying the  
23 Internal Revenue Code to the plan, all of the following shall  
24 apply: (i) The participant or member shall be treated as an  
25 employee of the employer making the payment; and (ii) the  
26 differential wage payment shall be treated as compensation  
27 of the participant or member for purposes of applying the  
28 Internal Revenue Code (but not for purposes of determining  
29 contributions and benefits under the plan, unless the plan

30 terms explicitly so provide); (iii) the plan shall not be treated  
31 as failing to meet the requirements of any provision  
32 described in Section 414(u)(1)(C) of the Internal Revenue  
33 Code by reason of any contribution or benefit which is based  
34 on the differential wage payment.

35 (c) Nondiscrimination. Subsection (b)(iii) applies only  
36 if all employees of the employer performing service in the  
37 uniformed services described in Section 3401(h)(2)(A) of the  
38 Internal Revenue Code are entitled to receive differential  
39 wage payments (as defined in Section 3401(h)(2) of the  
40 Internal Revenue Code) on reasonably equivalent terms and,  
41 if eligible to participate in a retirement plan maintained by  
42 the employer, to make contributions based on the payments  
43 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, it has been completely underscored.