

1 **ENROLLED**

2 **H. B. 2765**

3
4 (By Delegates Pethtel, Givens, Canterbury,
5 Ennis, Duke, Guthrie and D. Poling)
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8 [Passed March 8, 2011; in effect from passage.]
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10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §5-10D-10, relating
12 to the retirement plans administered by the West Virginia
13 Consolidated Public Retirement Board, and ensuring the
14 continued qualification of the plans under federal tax laws by
15 adopting provisions required by Sections 104(a) and 105(b) of
16 the Heroes Earnings Assistance and Relief Tax Act of 2008
17 (P.L. 110-245) requiring the plans to provide certain death
18 benefits to survivors of the plans' members or participants
19 who die while performing qualified military service and
20 governing the treatment of differential wage payments made to
21 the plans' members or participants.

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

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

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

26 **§5-10D-10. Death benefits for participants or members who die**

1 **while performing qualified military service;**
2 **treatment of differential wage payments.**

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

19 (b) Differential wage payments. For years beginning on or
20 after December 31, 2008, if a participant or member of any plan
21 administered by the board is receiving a differential wage payment
22 (as defined by Section 3401(h)(2) of the Internal Revenue Code),
23 then for purposes of applying the Internal Revenue Code to the
24 plan, all of the following shall apply: (i) The participant or

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

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