

1 **H. B. 2765**

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

5  
6 (By Request of the Consolidated Public Retirement  
7 Board)  
8 [Introduced January 24, 2011; referred to the  
9 Committee on Pensions and Retirement then Finance.]  
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11 A BILL to amend the Code of West Virginia, 1931, as amended, by  
12 adding thereto a new section, designated §5-10D-10, relating  
13 to the retirement plans administered by the West Virginia  
14 Consolidated Public Retirement Board, and ensuring the  
15 continued qualification of the plans under federal tax laws by  
16 adopting provisions required by Sections 104(a) and 105(b) of  
17 the Heroes Earnings Assistance and Relief Tax Act of 2008  
18 (P.L. 110-245) requiring the plans to provide certain death  
19 benefits to survivors of the plans' members or participants  
20 who die while performing qualified military service and  
21 governing the treatment of differential wage payments made to  
22 the plans' members or participants.

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

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

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

27 **§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.

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.