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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2011

—●—  
**ENROLLED**

**House Bill No. 2765**

(By Delegates Pethtel, Givens, Canterbury,  
Ennis, Duke, Guthrie and D. Poling)  
[By Request of the Consolidated Public Retirement Board]

—●—  
Passed March 8, 2011

In Effect From Passage

HB 2765

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## **H. B. 2765**

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

[Passed March 8, 2011; in effect from passage.]

AN ACT 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 any  
20 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 described  
32 in Section 414(u)(1)(C) of the Internal Revenue Code by  
33 reason of any contribution or benefit which is based on the  
34 differential wage payment.

35 (c) Nondiscrimination. Subsection (b)(iii) applies only if  
36 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.

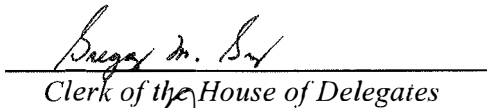
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman, House Committee

  
Chairman, Senate Committee

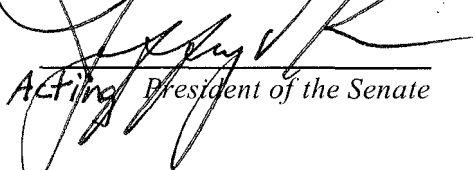
Originating in the House.

To take effect from passage.

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

  
Acting President of the Senate

The within is approved this the 18th  
day of March, 2011.

  
Governor

PRESENTED TO THE GOVERNOR

MAR 16 2011

Time 2:55 pm