

1 **ENROLLED**

2 **Senate Bill No. 65**

3 (BY SENATORS TUCKER, MILLER, SYPOLT AND WILLIAMS)

4 \_\_\_\_\_  
5 [Passed April 12, 2013; in effect ninety days from passage.]  
6 \_\_\_\_\_

7  
8  
9  
10 AN ACT to amend and reenact §11-21-12 of the Code of West Virginia,  
11 1931, as amended; and to amend and reenact §20-7-1 of said  
12 code, all relating to pension benefits exempt from state  
13 income taxation; and including Division of Natural Resources  
14 police into the class of law-enforcement officers exempted.

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

16 That §11-21-12 of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted; and that §20-7-1 of said code be amended  
18 and reenacted, all to read as follows:

19 **CHAPTER 11. TAXATION.**

20 **ARTICLE 21. PERSONAL INCOME TAX.**

21 **§11-21-12. West Virginia adjusted gross income of resident**  
22 **individual.**

1           (a) *General.* - The West Virginia adjusted gross income of a  
2 resident individual means his or her federal adjusted gross income  
3 as defined in the laws of the United States for the taxable year  
4 with the modifications specified in this section.

5           (b) *Modifications increasing federal adjusted gross income.* -  
6 There shall be added to federal adjusted gross income unless  
7 already included therein the following items:

8           (1) Interest income on obligations of any state other than  
9 this state or of a political subdivision of any other state unless  
10 created by compact or agreement to which this state is a party;

11           (2) Interest or dividend income on obligations or securities  
12 of any authority, commission or instrumentality of the United  
13 States, which the laws of the United States exempt from federal  
14 income tax but not from state income taxes;

15           (3) Any deduction allowed when determining federal adjusted  
16 gross income for federal income tax purposes for the taxable year  
17 that is not allowed as a deduction under this article for the  
18 taxable year;

19           (4) Interest on indebtedness incurred or continued to purchase  
20 or carry obligations or securities the income from which is exempt  
21 from tax under this article, to the extent deductible in  
22 determining federal adjusted gross income;

23           (5) Interest on a depository institution tax-exempt savings

1 certificate which is allowed as an exclusion from federal gross  
2 income under Section 128 of the Internal Revenue Code, for the  
3 federal taxable year;

4 (6) The amount of a lump sum distribution for which the  
5 taxpayer has elected under Section 402(e) of the Internal Revenue  
6 Code of 1986, as amended, to be separately taxed for federal income  
7 tax purposes; and

8 (7) Amounts withdrawn from a medical savings account  
9 established by or for an individual under section twenty, article  
10 fifteen, chapter thirty-three of this code or section fifteen,  
11 article sixteen of said chapter that are used for a purpose other  
12 than payment of medical expenses, as defined in those sections.

13 (c) *Modifications reducing federal adjusted gross income.* -  
14 There shall be subtracted from federal adjusted gross income to the  
15 extent included therein:

16 (1) Interest income on obligations of the United States and  
17 its possessions to the extent includable in gross income for  
18 federal income tax purposes;

19 (2) Interest or dividend income on obligations or securities  
20 of any authority, commission or instrumentality of the United  
21 States or of the State of West Virginia to the extent includable in  
22 gross income for federal income tax purposes but exempt from state  
23 income taxes under the laws of the United States or of the State of

1 West Virginia, including federal interest or dividends paid to  
2 shareholders of a regulated investment company, under Section 852  
3 of the Internal Revenue Code for taxable years ending after June  
4 30, 1987;

5 (3) Any amount included in federal adjusted gross income for  
6 federal income tax purposes for the taxable year that is not  
7 included in federal adjusted gross income under this article for  
8 the taxable year;

9 (4) The amount of any refund or credit for overpayment of  
10 income taxes imposed by this state, or any other taxing  
11 jurisdiction, to the extent properly included in gross income for  
12 federal income tax purposes;

13 (5) Annuities, retirement allowances, returns of contributions  
14 and any other benefit received under the West Virginia Public  
15 Employees Retirement System, the West Virginia State Teachers  
16 Retirement System and all forms of military retirement, including  
17 regular armed forces, reserve and National Guard, including any  
18 survivorship annuities derived therefrom, to the extent includable  
19 in gross income for federal income tax purposes: *Provided*, That  
20 notwithstanding any provisions in this code to the contrary this  
21 modification shall be limited to the first \$2,000 of benefits  
22 received under the West Virginia Public Employees Retirement  
23 System, the West Virginia State Teachers Retirement System and,

1 including any survivorship annuities derived therefrom, to the  
2 extent includable in gross income for federal income tax purposes  
3 for taxable years beginning after December 31, 1986; and the first  
4 \$2,000 of benefits received under any federal retirement system to  
5 which Title 4 U. S. C. §111 applies: *Provided, however,* That the  
6 total modification under this paragraph shall not exceed \$2,000 per  
7 person receiving retirement benefits and this limitation shall  
8 apply to all returns or amended returns filed after December 31,  
9 1988;

10 (6) Retirement income received in the form of pensions and  
11 annuities after December 31, 1979, under any West Virginia police,  
12 West Virginia Firemen's Retirement System or the West Virginia  
13 State Police Death, Disability and Retirement Fund, the West  
14 Virginia State Police Retirement System, the West Virginia Deputy  
15 Sheriff Retirement System or the West Virginia Public Employees  
16 Retirement System if paid to police officers retired from the  
17 Department of Natural Resources, including those formerly  
18 classified as conservation officers, including any survivorship  
19 annuities derived from any of these programs, to the extent  
20 includable in gross income for federal income tax purposes;

21 (7) (A) For taxable years beginning after December 31, 2000,  
22 and ending prior to January 1, 2003, an amount equal to two percent  
23 multiplied by the number of years of active duty in the armed

1 forces of the United States of America with the product thereof  
2 multiplied by the first \$30,000 of military retirement income,  
3 including retirement income from the regular armed forces, reserve  
4 and National Guard paid by the United States or by this state after  
5 December 31, 2000, including any survivorship annuities, to the  
6 extent included in gross income for federal income tax purposes for  
7 the taxable year.

8 (B) For taxable years beginning after December 31, 2002, the  
9 first \$20,000 of military retirement income, including retirement  
10 income from the regular armed forces, reserve and National Guard  
11 paid by the United States or by this state after December 31, 2002,  
12 including any survivorship annuities, to the extent included in  
13 gross income for federal income tax purposes for the taxable year.

14 (C) In the event that any of the provisions of this  
15 subdivision are found by a court of competent jurisdiction to  
16 violate either the Constitution of this state or of the United  
17 States, or is held to be extended to persons other than specified  
18 in this subdivision, this subdivision shall become null and void by  
19 operation of law.

20 (8) Federal adjusted gross income in the amount of \$8,000  
21 received from any source after December 31, 1986, by any person who  
22 has attained the age of sixty-five on or before the last day of the  
23 taxable year, or by any person certified by proper authority as

1 permanently and totally disabled, regardless of age, on or before  
2 the last day of the taxable year, to the extent includable in  
3 federal adjusted gross income for federal tax purposes: *Provided,*  
4 That if a person has a medical certification from a prior year and  
5 he or she is still permanently and totally disabled, a copy of the  
6 original certificate is acceptable as proof of disability. A copy  
7 of the form filed for the federal disability income tax exclusion  
8 is acceptable: *Provided, however, That:*

9 (i) Where the total modification under subdivisions (1), (2),  
10 (5), (6) and (7) of this subsection is \$8,000 per person or more,  
11 no deduction shall be allowed under this subdivision; and

12 (ii) Where the total modification under subdivisions (1), (2),  
13 (5), (6) and (7) of this subsection is less than \$8,000 per person,  
14 the total modification allowed under this subdivision for all gross  
15 income received by that person shall be limited to the difference  
16 between \$8,000 and the sum of modifications under subdivisions (1),  
17 (2), (5), (6) and (7) of this subsection;

18 (9) Federal adjusted gross income in the amount of \$8,000  
19 received from any source after December 31, 1986, by the surviving  
20 spouse of any person who had attained the age of sixty-five or who  
21 had been certified as permanently and totally disabled, to the  
22 extent includable in federal adjusted gross income for federal tax  
23 purposes: *Provided, That:*

1 (i) Where the total modification under subdivisions (1), (2),  
2 (5), (6), (7) and (8) of this subsection is \$8,000 or more, no  
3 deduction shall be allowed under this subdivision; and

4 (ii) Where the total modification under subdivisions (1), (2),  
5 (5), (6), (7) and (8) of this subsection is less than \$8,000 per  
6 person, the total modification allowed under this subdivision for  
7 all gross income received by that person shall be limited to the  
8 difference between \$8,000 and the sum of subdivisions (1), (2),  
9 (5), (6), (7) and (8) of this subsection;

10 (10) Contributions from any source to a medical savings  
11 account established by or for the individual pursuant to section  
12 twenty, article fifteen, chapter thirty-three of this code or  
13 section fifteen, article sixteen of said chapter, plus interest  
14 earned on the account, to the extent includable in federal adjusted  
15 gross income for federal tax purposes: *Provided*, That the amount  
16 subtracted pursuant to this subdivision for any one taxable year  
17 may not exceed \$2,000 plus interest earned on the account. For  
18 married individuals filing a joint return, the maximum deduction is  
19 computed separately for each individual;

20 (11) For the 2006 taxable year only, severance wages received  
21 by a taxpayer from an employer as the result of the taxpayer's  
22 permanent termination from employment through a reduction in force  
23 and through no fault of the employee, not to exceed \$30,000. For



1 purposes of this subdivision:

2 (i) The term "severance wages" means any monetary compensation  
3 paid by the employer in the taxable year as a result of permanent  
4 termination from employment in excess of regular annual wages or  
5 regular annual salary;

6 (ii) The term "reduction in force" means a net reduction in  
7 the number of employees employed by the employer in West Virginia,  
8 determined based on total West Virginia employment of the  
9 employer's controlled group;

10 (iii) The term "controlled group" means one or more chains of  
11 corporations connected through stock ownership with a common parent  
12 corporation if stock possessing at least fifty percent of the  
13 voting power of all classes of stock of each of the corporations is  
14 owned directly or indirectly by one or more of the corporations and  
15 the common parent owns directly stock possessing at least fifty  
16 percent of the voting power of all classes of stock of at least one  
17 of the other corporations;

18 (iv) The term "corporation" means any corporation, joint-stock  
19 company or association and any business conducted by a trustee or  
20 trustees wherein interest or ownership is evidenced by a  
21 certificate of interest or ownership or similar written instrument;  
22 and

23 (12) Any other income which this state is prohibited from

1 taxing under the laws of the United States.

2 (d) *Modification for West Virginia fiduciary adjustment.* -  
3 There shall be added to or subtracted from federal adjusted gross  
4 income, as the case may be, the taxpayer's share, as beneficiary of  
5 an estate or trust, of the West Virginia fiduciary adjustment  
6 determined under section nineteen of this article.

7 (e) *Partners and S corporation shareholders.* - The amounts of  
8 modifications required to be made under this section by a partner  
9 or an S corporation shareholder, which relate to items of income,  
10 gain, loss or deduction of a partnership or an S corporation, shall  
11 be determined under section seventeen of this article.

12 (f) *Husband and wife.* - If husband and wife determine their  
13 federal income tax on a joint return but determine their West  
14 Virginia income taxes separately, they shall determine their West  
15 Virginia adjusted gross incomes separately as if their federal  
16 adjusted gross incomes had been determined separately.

17 (g) *Effective date.* - (1) Changes in the language of this  
18 section enacted in the year 2000 shall apply to taxable years  
19 beginning after December 31, 2000.

20 (2) Changes in the language of this section enacted in the  
21 year 2002 shall apply to taxable years beginning after December 31,  
22 2002.

23 (3) Changes in the language of this section enacted in the

1 year 2013 shall apply to taxable years beginning after December 31,  
2 2013.

3 **CHAPTER 20. NATURAL RESOURCES.**

4 **ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.**

5 **§20-7-1. Chief natural resources police officer; natural resources**  
6 **police officers; special and emergency natural**  
7 **resources police officers; subsistence allowance;**  
8 **expenses.**

9 (a) The division's law-enforcement policies, practices and  
10 programs are under the immediate supervision and direction of the  
11 division law-enforcement officer selected by the director and  
12 designated as chief natural resources police officer as provided in  
13 section thirteen, article one of this chapter.

14 (b) Under the supervision of the director, the chief natural  
15 resources police officer shall organize, develop and maintain  
16 law-enforcement practices, means and methods geared, timed and  
17 adjustable to seasonal, emergency and other needs and requirements  
18 of the division's comprehensive natural resources program. All  
19 division personnel detailed and assigned to law-enforcement duties  
20 and services under this section shall be known and designated as  
21 natural resources police officers and are under the immediate  
22 supervision and direction of the chief natural resources police

1 officer except as otherwise provided. All natural resources police  
2 officers shall be trained, equipped and conditioned for duty and  
3 services wherever and whenever required by division law-enforcement  
4 needs.

5 (c) The chief natural resources police officer, acting under  
6 supervision of the director, is authorized to select and appoint  
7 emergency natural resources police officers for a limited period  
8 for effective enforcement of the provisions of this chapter when  
9 considered necessary because of emergency or other unusual  
10 circumstances. The emergency natural resources police officers  
11 shall be selected from qualified civil service personnel of the  
12 division, except in emergency situations and circumstances when the  
13 director may designate officers, without regard to civil service  
14 requirements and qualifications, to meet law-enforcement needs.  
15 Emergency natural resources police officers shall exercise all  
16 powers and duties prescribed in section four of this article for  
17 full-time salaried natural resources police officers except the  
18 provisions of subdivision (8) of said section.

19 (d) The chief natural resources police officer, acting under  
20 supervision of the director, is also authorized to select and  
21 appoint as special natural resources police officers any full-time  
22 civil service employee who is assigned to, and has direct  
23 responsibility for management of, an area owned, leased or under

1 the control of the division and who has satisfactorily completed a  
2 course of training established and administered by the chief  
3 natural resources police officer, when the action is considered  
4 necessary because of law-enforcement needs. The powers and duties  
5 of a special natural resources police officer, appointed under this  
6 provision, is the same within his or her assigned area as  
7 prescribed for full-time salaried natural resources police  
8 officers. The jurisdiction of the person appointed as a special  
9 natural resources police officer, under this provision, shall be  
10 limited to the division area or areas to which he or she is  
11 assigned and directly manages.

12 (e) The Director of the Division of Forestry is authorized to  
13 appoint and revoke Division of Forestry special natural resources  
14 police officers who are full-time civil service personnel who have  
15 satisfactorily completed a course of training as required by the  
16 Director of the Division of Forestry. The jurisdiction, powers and  
17 duties of Division of Forestry special natural resources police  
18 officers are set forth by the Director of the Division of Forestry  
19 pursuant to article three of this chapter, and articles one-a and  
20 one-b, chapter nineteen of this code.

21 (f) The chief natural resources police officer, with the  
22 approval of the director, has the power and authority to revoke any  
23 appointment of an emergency natural resources police officer or of

1 a special natural resources police officer at any time.

2 (g) Natural resources police officers are subject to seasonal  
3 or other assignment and detail to duty whenever and wherever  
4 required by the functions, services and needs of the division.

5 (h) The chief natural resources police officer shall designate  
6 the area of primary residence of each natural resources police  
7 officer, including himself or herself. Since the area of business  
8 activity of the division is actually anywhere within the  
9 territorial confines of the State of West Virginia, actual expenses  
10 incurred shall be paid whenever the duties are performed outside  
11 the area of primary assignment and still within the state.

12 (i) Natural resources police officers shall receive, in  
13 addition to their base pay salary, a minimum monthly subsistence  
14 allowance for their required telephone service, dry cleaning or  
15 required uniforms and meal expenses while performing their regular  
16 duties in their area of primary assignment in the amount of \$130  
17 each month. This subsistence allowance does not apply to special  
18 or emergency natural resources police officers appointed under this  
19 section.

20 (j) After June 30, 2010, all those full-time law-enforcement  
21 officers employed by the Division of Natural Resources as  
22 conservation officers shall be titled and known as natural  
23 resources police officers. Wherever used in this code the term

1 "conservation officer", or its plural, means "natural resources  
2 police officer", or its plural, respectively.