

**H. B. 3014**

(By Delegates Caputo, Pethtel and Craig)  
[Introduced March 21, 2013; referred to the  
Committee on Pensions and Retirement then Finance.]

**FISCAL  
NOTE**

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

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

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

**CHAPTER 11. TAXATION.**

**ARTICLE 21. PERSONAL INCOME TAX.**

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

(a) *General.* -- The West Virginia adjusted gross income of a

1 resident individual means his or her federal adjusted gross income  
2 as defined in the laws of the United States for the taxable year  
3 with the modifications specified in this section.

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

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

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

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

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

22 (5) Interest on a depository institution tax-exempt savings  
23 certificate which is allowed as an exclusion from federal gross  
24 income under Section 128 of the Internal Revenue Code, for the

1 federal taxable year;

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

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

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

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

17       (2) Interest or dividend income on obligations or securities  
18 of any authority, commission or instrumentality of the United  
19 States or of the State of West Virginia to the extent includable in  
20 gross income for federal income tax purposes but exempt from state  
21 income taxes under the laws of the United States or of the State of  
22 West Virginia, including federal interest or dividends paid to  
23 shareholders of a regulated investment company, under Section 852  
24 of the Internal Revenue Code for taxable years ending after June

1 30, 1987;

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

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

10 (5) Annuities, retirement allowances, returns of contributions  
11 and any other benefit received under the West Virginia Public  
12 Employees Retirement System, the West Virginia State Teachers  
13 Retirement System and all forms of military retirement, including  
14 regular Armed Forces, Reserves and National Guard, including any  
15 survivorship annuities derived therefrom, to the extent includable  
16 in gross income for federal income tax purposes: *Provided*, That  
17 notwithstanding any provisions in this code to the contrary this  
18 modification shall be limited to the first \$2,000 of benefits  
19 received under the West Virginia Public Employees Retirement  
20 System, the West Virginia State Teachers Retirement System and,  
21 including any survivorship annuities derived therefrom, to the  
22 extent includable in gross income for federal income tax purposes  
23 for taxable years beginning after December 31, 1986; and the first  
24 \$2,000 of benefits received under any federal retirement system to

1 which Title 4 U.S.C. §111 applies: *Provided, however,* That the  
2 total modification under this paragraph shall not exceed \$2,000 per  
3 person receiving retirement benefits and this limitation shall  
4 apply to all returns or amended returns filed after December 31,  
5 1988;

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

17 (7) (A) For taxable years beginning after December 31, 2000,  
18 and ending prior to January 1, 2003, an amount equal to two percent  
19 multiplied by the number of years of active duty in the Armed  
20 Forces of the United States of America with the product thereof  
21 multiplied by the first \$30,000 of military retirement income,  
22 including retirement income from the regular Armed Forces, Reserves  
23 and National Guard paid by the United States or by this state after  
24 December 31, 2000, including any survivorship annuities, to the

1 extent included in gross income for federal income tax purposes for  
2 the taxable year.

3 (B) For taxable years beginning after December 31, 2002, the  
4 first \$20,000 of military retirement income, including retirement  
5 income from the regular Armed Forces, Reserves and National Guard  
6 paid by the United States or by this state after December 31, 2002,  
7 including any survivorship annuities, to the extent included in  
8 gross income for federal income tax purposes for the taxable year.

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

15 (8) Federal adjusted gross income in the amount of \$8,000  
16 received from any source after December 31, 1986, by any person who  
17 has attained the age of sixty-five on or before the last day of the  
18 taxable year, or by any person certified by proper authority as  
19 permanently and totally disabled, regardless of age, on or before  
20 the last day of the taxable year, to the extent includable in  
21 federal adjusted gross income for federal tax purposes: *Provided,*  
22 That if a person has a medical certification from a prior year and  
23 he or she is still permanently and totally disabled, a copy of the  
24 original certificate is acceptable as proof of disability. A copy

1 of the form filed for the federal disability income tax exclusion  
2 is acceptable: *Provided, however, That:*

3 (i) Where the total modification under subdivisions (1), (2),  
4 (5), (6) and (7) of this subsection is \$8,000 per person or more,  
5 no deduction shall be allowed under this subdivision; and

6 (ii) Where the total modification under subdivisions (1), (2),  
7 (5), (6) and (7) of this subsection is less than \$8,000 per person,  
8 the total modification allowed under this subdivision for all gross  
9 income received by that person shall be limited to the difference  
10 between \$8,000 and the sum of modifications under subdivisions (1),  
11 (2), (5), (6) and (7) of this subsection;

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

18 (i) Where the total modification under subdivisions (1), (2),  
19 (5), (6), (7) and (8) of this subsection is \$8,000 or more, no  
20 deduction shall be allowed under this subdivision; and

21 (ii) Where the total modification under subdivisions (1), (2),  
22 (5), (6), (7) and (8) of this subsection is less than \$8,000 per  
23 person, the total modification allowed under this subdivision for  
24 all gross income received by that person shall be limited to the

1 difference between \$8,000 and the sum of subdivisions (1), (2),  
2 (5), (6), (7) and (8) of this subsection;

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

13       (11) For the 2006 taxable year only, severance wages received  
14 by a taxpayer from an employer as the result of the taxpayer's  
15 permanent termination from employment through a reduction in force  
16 and through no fault of the employee, not to exceed \$30,000. For  
17 purposes of this subdivision:

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

22       (ii) The term "reduction in force" means a net reduction in  
23 the number of employees employed by the employer in West Virginia,  
24 determined based on total West Virginia employment of the



1 employer's controlled group;

2 (iii) The term "controlled group" means one or more chains of  
3 corporations connected through stock ownership with a common parent  
4 corporation if stock possessing at least fifty percent of the  
5 voting power of all classes of stock of each of the corporations is  
6 owned directly or indirectly by one or more of the corporations and  
7 the common parent owns directly stock possessing at least fifty  
8 percent of the voting power of all classes of stock of at least one  
9 of the other corporations;

10 (iv) The term "corporation" means any corporation, joint-stock  
11 company or association and any business conducted by a trustee or  
12 trustees wherein interest or ownership is evidenced by a  
13 certificate of interest or ownership or similar written instrument;  
14 and

15 (12) Any other income which this state is prohibited from  
16 taxing under the laws of the United States.

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

22 (e) *Partners and S corporation shareholders.* -- The amounts of  
23 modifications required to be made under this section by a partner  
24 or an S corporation shareholder, which relate to items of income,

1 gain, loss or deduction of a partnership or an S corporation, shall  
2 be determined under section seventeen of this article.

3 (f) *Husband and wife.* -- If husband and wife determine their  
4 federal income tax on a joint return but determine their West  
5 Virginia income taxes separately, they shall determine their West  
6 Virginia adjusted gross incomes separately as if their federal  
7 adjusted gross incomes had been determined separately.

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

11 (2) Changes in the language of this section enacted in the  
12 year 2002 shall apply to taxable years beginning after December 31,  
13 2002.

14 (3) Changes in the language of this section enacted in the  
15 year 2013 shall apply to taxable years beginning after December 31,  
16 2013.

17 **CHAPTER 20. NATURAL RESOURCES.**

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

19 **§20-7-1. Chief natural resources police officer; natural resources**  
20 **police officers; special and emergency natural**  
21 **resources police officers; subsistence allowance;**  
22 **expenses.**

23 (a) The division's law-enforcement policies, practices and

1 programs are under the immediate supervision and direction of the  
2 division law-enforcement officer selected by the director and  
3 designated as chief natural resources police officer as provided in  
4 section thirteen, article one of this chapter.

5 (b) Under the supervision of the director, the chief natural  
6 resources police officer shall organize, develop and maintain  
7 law-enforcement practices, means and methods geared, timed and  
8 adjustable to seasonal, emergency and other needs and requirements  
9 of the division's comprehensive natural resources program. All  
10 division personnel detailed and assigned to law-enforcement duties  
11 and services under this section shall be known and designated as  
12 natural resources police officers and are under the immediate  
13 supervision and direction of the chief natural resources police  
14 officer except as otherwise provided. All natural resources police  
15 officers shall be trained, equipped and conditioned for duty and  
16 services wherever and whenever required by division law-enforcement  
17 needs.

18 (c) The chief natural resources police officer, acting under  
19 supervision of the director, is authorized to select and appoint  
20 emergency natural resources police officers for a limited period  
21 for effective enforcement of the provisions of this chapter when  
22 considered necessary because of emergency or other unusual  
23 circumstances. The emergency natural resources police officers  
24 shall be selected from qualified civil service personnel of the

1 division, except in emergency situations and circumstances when the  
2 director may designate officers, without regard to civil service  
3 requirements and qualifications, to meet law-enforcement needs.  
4 Emergency natural resources police officers shall exercise all  
5 powers and duties prescribed in section four of this article for  
6 full-time salaried natural resources police officers except the  
7 provisions of subdivision (8) of said section.

8       (d) The chief natural resources police officer, acting under  
9 supervision of the director, is also authorized to select and  
10 appoint as special natural resources police officers any full-time  
11 civil service employee who is assigned to, and has direct  
12 responsibility for management of, an area owned, leased or under  
13 the control of the division and who has satisfactorily completed a  
14 course of training established and administered by the chief  
15 natural resources police officer, when the action is considered  
16 necessary because of law-enforcement needs. The powers and duties  
17 of a special natural resources police officer, appointed under this  
18 provision, is the same within his or her assigned area as  
19 prescribed for full-time salaried natural resources police  
20 officers. The jurisdiction of the person appointed as a special  
21 natural resources police officer, under this provision, shall be  
22 limited to the division area or areas to which he or she is  
23 assigned and directly manages.

24       (e) The Director of the Division of Forestry is authorized to

1 appoint and revoke Division of Forestry special natural resources  
2 police officers who are full-time civil service personnel who have  
3 satisfactorily completed a course of training as required by the  
4 Director of the Division of Forestry. The jurisdiction, powers and  
5 duties of Division of Forestry special natural resources police  
6 officers are set forth by the Director of the Division of Forestry  
7 pursuant to article three of this chapter, and articles one-a and  
8 one-b, chapter nineteen of this code.

9 (f) The chief natural resources police officer, with the  
10 approval of the director, has the power and authority to revoke any  
11 appointment of an emergency natural resources police officer or of  
12 a special natural resources police officer at any time.

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

16 (h) The chief natural resources police officer shall designate  
17 the area of primary residence of each natural resources police  
18 officer, including himself or herself. Since the area of business  
19 activity of the division is actually anywhere within the  
20 territorial confines of the State of West Virginia, actual expenses  
21 incurred shall be paid whenever the duties are performed outside  
22 the area of primary assignment and still within the state.

23 (i) Natural resources police officers shall receive, in  
24 addition to their base pay salary, a minimum monthly subsistence

1 allowance for their required telephone service, dry cleaning or  
2 required uniforms, and meal expenses while performing their regular  
3 duties in their area of primary assignment in the amount of \$130  
4 each month. This subsistence allowance does not apply to special  
5 or emergency natural resources police officers appointed under this  
6 section.

7 (j) After June 30, 2010, all those full time law-enforcement  
8 officers employed by the Division of Natural Resources as  
9 conservation officers shall be titled and known as natural  
10 resources police officers. Wherever used in this code the term  
11 "conservation officer," or its plural, means "natural resources  
12 police officer," or its plural, respectively.

13 ~~(k) Notwithstanding any provision of this code to the~~  
14 ~~contrary, the provisions of subdivision six, subsection c, section~~  
15 ~~twelve, article twenty-one, chapter eleven of this code are~~  
16 ~~inapplicable to pensions of natural resources police officers paid~~  
17 ~~through the Public Employees Retirement System.~~

NOTE: The purpose of this bill is to treat natural resources police like all other law enforcement and exempt their pension benefits from state income tax.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.