

**DEPARTMENT OF TAXATION
2024 Fiscal Impact Statement**

1. **Patron** Mark J. Peake
3. **Committee** Senate Finance and Appropriation
4. **Title** Individual Income Tax Subtraction; State Police Retirement Benefits

2. **Bill Number** SB 662
House of Origin:
 Introduced
 Substitute
 Engrossed
- Second House:**
 In Committee
 Substitute
 Enrolled

5. Summary/Purpose:

This bill would establish an individual income tax subtraction for up to \$10,000 of State Police retirement benefits for Virginia State Police officers who are 55 years old or older.

This bill would be effective for taxable years beginning on and after January 1, 2024.

6. **Budget amendment necessary:** Yes.
 Item(s): Page 1, Revenue Estimates

7. **Fiscal Impact Estimates are:** Preliminary (See Line 8.)

7b. Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2025	(\$1,030,000)	GF
2026	(\$710,000)	GF
2027	(\$730,000)	GF
2028	(\$750,000)	GF
2029	(\$770,000)	GF
2030	(\$800,000)	GF

8. Fiscal implications:

Administrative Costs

The Department of Taxation (“the Department”) considers implementation of this bill as routine and does not require additional funding.

Revenue Impact

The bill would have an estimated negative General Fund revenue impact of \$1,030,000 in FY 2025, \$710,000 in FY 2026, \$730,000 in FY 2027, \$750,000 in FY 2028, \$770,000 in FY 2029 and \$800,000 in FY 2030.

If the amendments as proposed on Line 10 are adopted and this bill were to apply to similarly situated federal employees, such amendments would result in additional unknown negative revenue impact.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

Because this bill applies only to Virginia State Police and it does not apply to federal employees performing substantially similar work, this subtraction could be interpreted as violating federal law. Federal law authorizes states to tax the income of federal employees "if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation." In a series of cases from the late 1980s and early 1990s, the U.S. Supreme Court interpreted federal law to prohibit states from exempting the retirement benefits of state employees from their state income tax, when they tax similarly-situated federal employees. To address this issue, the Department recommends the following amendments:

Line 229 after "32."
Insert a.

Line 239
Insert: b. For taxable years beginning on and after January 1, 2024, up to \$10,000 of federal law-enforcement retirement benefits. The subtraction allowed by this subdivision shall be allowed only for federal law-enforcement officers who rendered service that was substantially similar to the service rendered by Virginia State Police officers. Such federal law-enforcement officers must be at least 55 years of age and receive such benefits as a result of employment by the federal government for the provision of federal law-enforcement services. No subtraction shall be allowed pursuant to this subdivision if a credit, exemption, subtraction, or deduction is claimed for the same income pursuant to any other provision of Virginia or federal law. For purposes of this subdivision, "federal law-enforcement retirement benefits" means those benefits received by a federal law-enforcement officer that are substantially similar to "state police retirement benefits" defined in subdivision a.

Line 239,
Insert: 2. The General Assembly of Virginia finds that providing financial relief to retired Virginia State Police is essential to the Commonwealth. Accordingly, the provisions of this act limiting this individual income tax subtraction to retired Virginia State Police are integral to the purpose of this act. If any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that provision shall not be deemed severable.

The Department believes that the intent of Lines 232-234 is to prevent double-dipping of this subtraction and other tax preferences. If this is the intent, the following technical amendment is suggested:

Line 234, after “pursuant to”
Strike: this subdivision or

Because of the broadness of the term “retirement benefits” this subtraction could be interpreted to apply to distributions from defined contribution plans. If the intent is to limit this subtraction to amounts received from a state police officer’s pension only, the Department suggests the following clarifying technical amendment:

Line 239, insert “Retirement benefits” means any amounts received from a state police officer’s pension plan.

11. Other comments:

Virginia’s Individual Income Tax Modifications

Federal Adjusted Gross Income

Virginia’s Individual Income Tax substantially conforms to federal income tax law by using federal adjusted gross income (“FAGI”) as the starting point for computing Virginia income taxes. Virginia law then provides various modifications to FAGI that must be taken into account that figure in determining Virginia taxable income.

Virginia Adjusted Gross Income

When completing a Virginia individual income tax return, a taxpayer starts with the amount of FAGI reported on his federal return. A taxpayer then calculates Virginia adjusted gross income by making two types of adjustments: (1) “additions” which increase the amount of income taxable by Virginia and (2) “subtractions” which reduce such amount. These adjustments are made only to the extent that they have not already been included or excluded from FAGI.

Virginia Taxable Income

The taxpayer calculates his Virginia taxable income by making another type of modification referred to as “deductions,” which further reduce the amount of income taxable by Virginia. These modifications are made regardless of federal treatment unless specifically stated otherwise in the provision.

Please find below an illustration of how taxable income is computed for federal and Virginia income tax purposes and how they interrelate:

Federal Income Tax	Virginia Income Tax
+Wages and Other Income	=Federal Adjusted Gross Income ("FAGI")
+Federal Adjustments	+Virginia Additions (only if not included in FAGI)
-Federal Adjustments	-Virginia Subtractions (only if not excluded from FAGI)
=Federal Adjusted Gross Income ("FAGI")	=Virginia Adjusted Gross Income ("VAGI")
-Federal Standard Deduction or Itemized Deductions	-Virginia Standard Deduction or Federal Itemized Deductions (depends on federal election)
-QBI Deduction	-Deduction for Virginia Exemptions
	-Virginia Deductions (regardless of federal treatment)
=Federal Taxable Income	=Virginia Taxable Income

Because this bill would establish a new Virginia subtraction, the amount allowed under this bill could be taken whether the taxpayer chooses to take the Virginia standard deduction or itemized their deductions.

Proposed Legislation

This bill would establish an individual income tax subtraction for up to \$10,000 of State Police retirement benefits for Virginia State Police officers who 55 years old or older.

"State police retirement benefits" would be defined as any (i) retirement income received by a member of the State Police Officers' Retirement System who is at least 55 years of age for rendering duties as a Virginia State Police officer and (ii) benefits paid to the surviving spouse of such member of the State Police Officers' Retirement System whose death occurred in the line of duty.

No subtraction would be allowed if a credit, exemption, subtraction, or deduction is claimed for the same income pursuant to any other provision of Virginia or federal law.

This bill would be effective for taxable years beginning on and after January 1, 2024.

Similar Legislation:

Senate Bill 61 and House Bill 1292 would establish an individual income tax subtraction for certain firefighters receiving retirement income for professional firefighting services.

Senate Bill 10 and House Bill 1407 would expand the individual income tax subtraction for "military benefits" to include retirement income for service in the U.S. uniformed services.

House Bill 518 would establish an individual income tax subtraction for certain individuals receiving Foreign Service retirement income.

House Bill 651 would remove the age requirement for Taxable Year 2023 from the individual income tax subtraction for “military benefits.”

cc : Secretary of Finance

Date: 1/26/2024 SJH
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