~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 18, 2016

**H. 5119**

Introduced by Reps. Goldfinch, Putnam, Clemmons, Quinn, Fry, H.A. Crawford, Johnson, Burns, Collins, Merrill, Yow, Hamilton, McCoy, Jordan, Robinson‑Simpson, Finlay, Kennedy, Spires, Ballentine, Bannister, Bedingfield, R.L. Brown, Delleney, Dillard, Duckworth, Felder, Funderburk, Gambrell, Hardee, Henderson, Hill, Lowe, Lucas, D.C. Moss, Nanney, Pitts, Ryhal, Sandifer, G.R. Smith, J.E. Smith, Stringer, Toole, Williams and Willis

S. Printed 5/18/16--S.

Read the first time April 28, 2016.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (H. 5119) to amend Section 12‑6‑1140, as amended, Code of Laws of South Carolina, 1976, relating to deductions from individual taxable income, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by adding an appropriately numbered SECTION to read:

/ SECTION \_\_\_. A. Section 12-6-1170 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( )(1) Notwithstanding any other provision of this section, if a taxpayer claims a deduction pursuant to Section 12‑6‑1171, then the deduction allowed by this section must be reduced by the amount the taxpayer deducts pursuant to Section 12‑6‑1171; however, this subsection does not apply if the deduction claimed pursuant to Section 12‑6‑1171 is claimed by a surviving spouse.

(2) In the case of married taxpayers who file a joint federal income tax return, the reduction required by item (1) applies to each individual separately, so that the reduction only applies to the amount the individual claiming the deduction pursuant to Section 12‑6‑1171 otherwise could have claimed pursuant to this section if the individual had not filed a joint return.”

B. Article 9, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑1171. (A)(1) An individual taxpayer who has military retirement income, each year may deduct an amount of his South Carolina earned income from South Carolina taxable income equal to the amount of military retirement income, not to exceed seventeen thousand five hundred dollars. In the case of married taxpayers who file a joint federal income tax return, the deduction allowed by this section shall be calculated separately as though they had not filed a joint return, so that each individual’s deduction is based on the same individual’s retirement income and earned income. For purposes of this item, ‘South Carolina earned income’ has the same meaning as provided in Section 12-6-3330.

(2) Notwithstanding item (1), beginning in the year in which an individual taxpayer reaches age sixty‑five, an individual taxpayer who has military retirement income may deduct up to thirty thousand dollars of military retirement income that is included in South Carolina taxable income.

(B) The term ‘retirement income’, as used in this section, means the total of all otherwise taxable income not subject to a penalty for premature distribution received by the taxpayer or the taxpayer’s surviving spouse in a taxable year from a qualified military retirement plan. For purposes of a surviving spouse, ‘retirement income’ also includes a retirement benefit plan and dependent indemnity compensation related to the deceased spouse’s military service.

(C) A surviving spouse receiving military retirement income that is attributable to the deceased spouse shall apply this deduction in the same manner that the deduction applied to the deceased spouse. If the surviving spouse also has another retirement income, an additional retirement exclusion is allowed.

(D) The department may require the taxpayer to provide information necessary for proper administration of this subsection.”

C. This SECTION takes effect upon approval by the Governor and first applies to tax years beginning after 2015. /

Renumber sections to conform.

Amend title to conform.

HUGH K. LEATHERMAN, SR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would decrease general fund individual income tax revenue by $2,100 in FY 2016-17.

**Explanation of Fiscal Impact**

**State Revenue**

This bill amends various sections relating to the South Carolina State Guard. The following is an analysis of the bill by section.

**Section 1.** This section allows a member of the State Guard to claim a $3,000 deduction from South Carolina taxable income when the member completes a minimum of 192 hours of training or drill a year. Current law requires the member complete a minimum of 16 hours each month, equating to 192 hours a year. State Guard officials indicate that training and drill are currently averaging 240 hours per year. In tax year 2014, 233 State Guard members were eligible for the $3,000 deduction. We estimate that simplifying the training and drill requirement to 192 hours a year will increase the number of State Guard members receiving the deduction by 20 per year. These 20 additional members with the $3,000 deduction at an average tax rate of 3.5 percent results in an estimated $2,100 reduction in tax liability for these State Guard taxpayers. The average tax rates used in this analysis are based on a re-calculation of the income tax for each return after the proposed deduction is applied. This method takes into account the large number of returns that have zero taxable income, returns that are reduced to zero taxable income by the deduction, and returns that do not benefit from the full amount of the proposed deduction.

**Sections 2.** This section adds South Carolina State Guard judge advocates to the list of legal assistance attorneys who may provide premobilization legal assistance and counseling to national guard personnel, immediate family members, and dependents.

**Section 3.** This section adds South Carolina State Guard judge advocates to the list of personnel that are exempt from personal liability for alleged negligent or wrongful acts when providing legal assistance.

**Sections 4 and 5.** These sections provide the Governor more flexibility in calling the State Guard into state duty when the National Guard is otherwise tasked with duties that cause the State to be without sufficient military resources. The State Guard may be ordered into service for a breach, natural or manmade disaster, or local emergency when the lives and property of the state’s citizens are threatened.

**Section 6.** This amendment to Section 25-3-140 permits members of the State Guard, when ordered to active duty, to receive a daily stipend or a per diem for reasonable expenses, or both, if approved by the Adjutant General. We expect that sections two through six of this bill will not have any expenditure or revenue effect on the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 12‑6‑1140, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEDUCTIONS FROM INDIVIDUAL TAXABLE INCOME, SO AS TO REQUIRE A MEMBER OF THE STATE GUARD TO COMPLETE A MINIMUM OF ONE HUNDRED NINETY‑TWO HOURS OF TRAINING OR DRILL EACH YEAR IN ORDER TO QUALIFY FOR THE DEDUCTION; TO AMEND SECTION 25‑1‑635, AS AMENDED, RELATING TO LEGAL ASSISTANCE SERVICES FOR GUARD MEMBERS AND IMMEDIATE FAMILY MEMBERS, SO AS TO AUTHORIZE SOUTH CAROLINA STATE GUARD JUDGE ADVOCATES TO PROVIDE THESE SERVICES AND TO INCLUDE THEM WITHIN THE PERSONAL LIABILITY EXEMPTION; TO AMEND SECTIONS 25‑3‑20 AND 25‑3‑130, BOTH RELATING TO THE GOVERNOR’S AUTHORITY TO CALL THE STATE GUARD INTO DUTY, SO AS TO CLARIFY THE CIRCUMSTANCES AUTHORIZING THE GOVERNOR TO CALL THE STATE GUARD INTO DUTY AND TO PROVIDE THAT CIRCUMSTANCES INVOLVING A NATURAL OR MANMADE DISASTER, EMERGENCY, OR EMERGENCY PREPAREDNESS MAY WARRANT CALLING THE STATE GUARD INTO SERVICE; AND TO AMEND SECTION 25‑3‑140, RELATING TO PAY OF STATE GUARD MEMBERS ON ACTIVE DUTY, SO AS TO PROVIDE THAT STATE GUARD MEMBERS MAY RECEIVE A DAILY STIPEND OR PER DIEM PAY FOR REASONABLE EXPENSES, OR BOTH, IF APPROVED BY THE ADJUTANT GENERAL.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12‑6‑1140(10)(c)(iv) of the 1976 Code is amended to read:

“(iv) In the case of a member of the State Guard and in lieu of minimum points determining eligibility, this deduction is allowed only if the State Guard member completes a minimum of ~~sixteen~~ one hundred ninety‑two hours of training or drill ~~each month, equating to one hundred ninety‑two hours~~ a year, and the member’s commanding officer certifies in writing to the member that the member met these requirements.”

SECTION 2. Section 25‑1‑635(A) of the 1976 Code is amended to read:

“(A) For purposes of enhancing the readiness of national guard personnel for mobilization or call up for state or federal service, legal assistance attorneys, which may include South Carolina State Guard judge advocates, and judge advocates of the South Carolina National Guard who provide premobilization legal assistance and counseling to national guard personnel may also provide legal assistance and counseling to the immediate family members and dependents of members of the South Carolina National Guard when, in the opinion of the legal assistance, attorney or judge advocate, the legal assistant and counseling provided enhances the overall mobilization readiness of a member of the national guard who has an obligation to provide for his family and dependents in his absence in the event of his mobilization.”

SECTION 3. Section 25‑1‑635(I) of the 1976 Code, as last amended by Act 46 of 2011, is further amended to read:

“(I) Services provided in the legal assistance program are considered an official function of the national guard and must be provided at no cost to eligible personnel. Legal assistance attorneys, national guard personnel, South Carolina State Guard judge advocates, and civilian employees acting within the scope of their official duties, are exempt from personal liability for alleged negligent or wrongful acts, omissions for service, or advice rendered pursuant to the legal assistance program, so long as the attorneys, personnel, or employees neither requested nor received a fee or compensation other than their regular compensation for legal services provided to persons eligible for assistance under this section.”

SECTION 4. Section 25‑3‑20 of the 1976 Code is amended to read:

“Section 25‑3‑20. Whenever ~~any~~ a part of the national guard of this State is ordered into federal service or is otherwise tasked with duties that cause ~~so as to cause~~ the State to be, in the opinion of the Governor, without proper defense or sufficient military resources, the Governor may call the South Carolina State Guard into state duty.”

SECTION 5. Section 25‑3‑130 of the 1976 Code is amended to read:

“Section 25‑3‑130. The Governor may, in case of insurrection, invasion, tumult, riot, breach of the peace or imminent danger ~~thereof~~ of a breach, a natural or manmade disaster or local emergency whenever the lives and property of the state’s citizens are threatened, emergency preparedness, or to enforce the laws of this State, order into service any part of the South Carolina State Guard that ~~he may deem~~ the Governor deems necessary. When the South Carolina State Guard is on active service, the commanding officer and his subordinates ~~shall~~ must be~~, and they are hereby,~~ invested with all the authority of~~,~~ sheriffs and deputy sheriffs in enforcing the laws of this State.”

SECTION 6. Section 25‑3‑140 of the 1976 Code is amended to read:

“Section 25‑3‑140. When members of the South Carolina State Guard are ordered to active duty by the Governor or by ~~his~~ the Governor’s authority, they ~~shall~~ may receive ~~the pay as specified for officers and enlisted men of the national guard~~ a daily stipend or a per diem for reasonable expenses, or both, if approved by the Adjutant General, when called out for ~~such~~ that service.”

SECTION 7. This act takes effect upon approval by the Governor.

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