GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S **1**

SENATE BILL 1483

Short Title: Local Option Elderly Tax Relief. (Public)

Sponsors: Senators Hoyle; Albertson, Carter, Cooper, Kerr, and Perdue.

Referred to: Judiciary I.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA, IF APPROVED BY THE VOTERS IN THE 2000 GENERAL ELECTION, TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO PROVIDE PROPERTY TAX DEFERRAL AS AN ALTERNATIVE FORM OF PROPERTY TAX RELIEF FOR THE ELDERLY AND DISABLED.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Article V of the North Carolina Constitution is amended by adding a new subsection to read:

"(8) Property tax homestead deferral. – The General Assembly may, notwithstanding subsection (2) of this section, enact a general law uniformly applicable throughout the State authorizing each county to allow elderly and disabled individuals in that county whose income is below a maximum amount and who satisfy other conditions to choose to defer ad valorem taxes on their residence instead of claiming an exclusion of part of the value of the residence enacted by the General Assembly."

Section 2. G.S. 105-277.1 reads as rewritten:

"§ 105-277.1. Property classified for taxation at reduced valuation.

(a) Exclusion. – The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by a qualifying owner is excluded from taxation. ~~A~~ For the purposes of this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than fifteen thousand dollars ($15,000).

(3) Is a North Carolina resident.

(a1) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(b) Definitions. ~~– When used in this section, the following definitions shall apply:~~ The following definitions apply in G.S. 105-277.1 through G.S. 105-277.1B:

(1) Code. – The Internal Revenue Code, as defined in G.S. 105-228.90.

(1a) Income. – Adjusted gross income, as defined in section 62 of the Code, plus all other moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names.

(1b) Owner. – A person who holds legal or equitable title, whether individually, as a tenant by the entirety, a joint tenant, or a tenant in common, or as the holder of a life estate or an estate for the life of another. A manufactured home jointly owned by husband and wife is considered property held by the entirety.

(2) Repealed by Session Laws 1993, c. 360, s. 1.

(2a) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 20.

(3) Permanent residence. – A person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.

(3a) Property tax relief. – The exclusion provided by this section or the deferral provided by G.S. 105-277.1B.

(4) Totally and permanently disabled. – A person is totally and permanently disabled if the person has a physical or mental impairment that substantially precludes him or her from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout his or her life.

(b1) Election. – If a qualified owner elects property tax deferral under G.S. 105-277.1B, the owner is not entitled to the exclusion provided by this section. When property is owned by two or more individuals who qualify for exclusion under this section, an election under G.S. 105-277.1B must be made by all owners to become effective.

(c) Application. – An application for ~~the exclusion provided by this section~~ property tax relief should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through April 15 preceding the tax year for which the ~~exclusion~~ relief is claimed. When property is owned by two or more persons other than husband and wife and one or more of them qualifies for this exclusion, each owner ~~shall~~ must apply separately for his or her proportionate share of the exclusion.

An application form provided by a county for deferral under G.S. 105-277.1B must state the conditions under which deferred taxes and interest become due and payable and must also state that interest will accrue on the amount deferred and that this amount constitutes a lien. Each applicant who elects property tax deferral under G.S. 105-277.1B must furnish a list of the amounts of all liens on the property for which deferral is sought and the holders of these liens.

(1) Elderly Applicants. – Persons 65 years of age or older may apply for ~~this exclusion~~ property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1.

(2) Disabled Applicants. – Persons who are totally and permanently disabled may apply for ~~this exclusion~~ property tax relief by (i) entering the appropriate information on a form made available by the assessor under G.S. 105-282.1 and (ii) furnishing acceptable proof of their disability. The proof shall be in the form of a certificate from a physician licensed to practice medicine in North Carolina or from a governmental agency authorized to determine qualification for disability benefits. After a disabled applicant has qualified for this classification, he or she ~~shall not be~~ is not required to furnish an additional certificate unless the applicant's disability is reduced to the extent that the applicant could no longer be certified for the ~~taxation at reduced valuation.~~ property tax relief.

(d) Multiple Ownership. – A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of ~~this exclusion~~ property tax relief notwithstanding that only one of them meets the age or disability requirements of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife and one or more of the owners qualifies for this exclusion, each qualifying owner is entitled to the full amount of the exclusion not to exceed his or her proportionate share of the valuation of the ~~property.~~ property, unless all of the owners qualify for and have elected property tax deferral under G.S. 105-277.1B. No part of an exclusion available to one co-owner may be claimed by any other co-owner and in no event may the total exclusion allowed for a permanent residence exceed the exclusion amount provided in this section."

Section 3. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section, G.S. 105-277.1B, to read:

"**§ 105-277.1B. Local option deferral of residential tax increases for qualified owners.**

(a) Local Option. – The board of commissioners of a county may, by resolution, allow qualified owners in the county the option of electing to defer taxes as provided in this section. A resolution adopted under this subsection must apply uniformly within the county. The board of commissioners of a county may, by resolution, repeal a resolution adopted under this subsection allowing optional tax deferral under this section. A resolution allowing or repealing optional tax deferral under this section must become effective no earlier than for the taxable year beginning July 1 following adoption of the resolution.

(b) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. For the purposes of this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than fifty thousand dollars ($50,000).

(3) Is a resident of a county that has adopted a resolution under subsection (a) of this section allowing optional property tax deferral.

(c) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of classification under this section because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(d) Deferral. – If a county has adopted a resolution under subsection (a) of this section allowing optional tax deferral, a qualified owner may elect to defer payment of all or part of any future increases in the amount of tax levied on the permanent residence to the extent permissible under subsection (f) unless (i) the property is subject to a lien that, pursuant to a federal law, rule, or regulation, prohibits deferral of taxes or (ii) the amount of outstanding liens on the property exceeds eighty percent (80%) of the assessed value of the property. The amount of the tax increase that may be deferred each year is the amount by which the tax due on the residence for that year exceeds the amount of tax that was due on the residence for the year preceding the owner's application for deferral under this section. The amount of taxes deferred shall accrue interest at the rate specified in G.S. 105-241.1(i) for assessments from the date the tax is otherwise due until payment. The amount of deferred taxes and accrued interest constitute a lien on the property, which attaches at the time prescribed in G.S. 105-355 and has the priority established in G.S. 105-356.

The definitions in G.S. 105-277.1(b) and the provisions of G.S. 105-277.1(b1) through (d) apply in this section.

(e) Notification of Additional Liens. – The owner of tax-deferred property must notify the assessor of the amount and holder of any new lien against the property arising after application for deferral has been made, within 60 days after the creation of the new lien.

(f) Transfer or Disqualification of Property. – Payment of taxes deferred under G.S. 105-277.1 may be deferred until the death of the owner or until the property is transferred, at which time the full amount of deferred taxes and interest becomes due and must be paid within nine months after the date of death or transfer, unless the property is transferred to the former owner's spouse and the spouse is 65 years of age or older and occupies the property as his or her permanent residence, in which case the spouse may elect to continue deferring payment of the tax.

Except as provided in subsection (c) of this section, in any year in which the owner of tax-deferred property no longer occupies the property as his or her permanent residence, no tax levied on the property for that year may be deferred and the full tax for that year is due on the date established in G.S. 105-360. If the owner of tax-deferred property fails to occupy the property as his or her permanent residence for three successive years, the full amount of deferred taxes and interest becomes due that third year and is due and payable at the same time the tax levied on the property in that year is otherwise due. In any year in which the total amount of deferred taxes, interest, and other unsatisfied liens on the property exceeds eighty percent (80%) of the assessed value of the property, the assessor shall notify the owner that the portion of deferred taxes and interest that exceeds the eighty percent (80%) limit is due and must be paid within 60 days after receipt of the notice. Failure to pay any amount due under this subsection causes the total amount of deferred taxes and interest to become due and payable at the same time the tax levied on the property in the year in which the failure occurs is otherwise due.

(g) Annual Notification to Property Owner. – On or before September 1 of each year, the assessor must notify each property owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(h) Prepayment. – All or part of the deferred taxes and accrued interest may be paid to the tax collector at any time. Any partial payment shall be applied first to accrued interest. A property owner to whom a tax deferral has previously been granted may revoke the application for deferral at any time by notifying the assessor in writing; however, an owner may not elect to pay taxes upon the property at a reduced value under G.S. 105-277.1 unless all of the deferred taxes and accrued interest have been paid to the tax collector.

(i) Payment by Trustee or Mortgagee. – A mortgagee or trustee that elects to pay any tax deferred by the owner of property subject to the mortgage or deed of trust does not acquire a right to foreclose as a result. This section does not deny or prohibit a mortgagee or trustee the right to foreclose on the applicable mortgage or note and deed of trust that is otherwise in default.

(j) Clauses Preventing Application for Deferral Void. – Except for requirements dictated by federal law, rule, or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from electing to defer taxes on property under this section is void.

(k) Construction. – This section does not prevent the collection of personal property taxes that become a lien against tax-deferred property."

Section 4. G.S. 105-282.1(a)(3) reads as rewritten:

"(3) After an owner of property entitled to exemption under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or ~~105-278.8 or~~ 105-278.8; exclusion under G.S. 105-275(3), (7), (8), (12), (17) through (19), ~~(21)~~ (21), or (39), G.S. 105-277.1, or G.S. ~~105-278~~ 105-278; or deferral under G.S. 105-277.1B has applied for ~~exemption or exclusion and the exemption or exclusion~~ exemption, exclusion, or deferral and the application has been approved, the owner is not required to file an application in subsequent years ~~except in the following circumstances:~~ unless one of the following events has occurred:

a. New or additional property ~~is~~ has been acquired or improvements ~~are~~ have been added or removed, necessitating a change in the valuation of the ~~property; or~~ property.

b. There ~~is~~ has been a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion.

c. The owner no longer qualifies for the deferral."

Section 5. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election to be held in November 2000. The election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment authorizing the General Assembly to allow counties to provide that low-income and middle-income elderly and disabled individuals may elect to defer property tax increases on their residences in certain circumstances instead of claiming the property tax homestead exemption for part of the value of their residence allowed under current law."

Section 6. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 7. Sections 2, 3, and 4 of this act become effective only if the constitutional amendment proposed by Section 1 of this act is approved as provided in Sections 5 and 6 of this act. If the constitutional amendment is approved, Sections 2, 3, and 4 of this act become effective when the State Board of Elections certifies the amendment to the Secretary of State. The remainder of this act is effective when it becomes law.