Bill Analysis

Peter A. Cooper *Legislative Service Commission*

H.B. 70

123rd General Assembly
(As Introduced)

Reps. Schuler, Thomas, Olman, Cates, O'Brien, Tiberi, Britton, Boyd, Hood, Mead, Opfer, Young, Schuck, Maier, Bateman, Ford, Haines, Jacobson, James, Vesper, Mottley, Roberts, Bender, Perz, Pringle, Van Vyven, Evans, Jolivette, Myers

BILL SUMMARY

- Permits elderly and disabled homeowners who are eligible for the homestead exemption to defer payment of property taxes.
- Provides a state subsidy to local governments to compensate them for deferred taxes, and reimburses the state out of eventual payments of deferred taxes.

CONTENT AND OPERATION

Generally, the bill would allow persons qualifying for the homestead exemption to defer paying property taxes on their residences until they die, no longer live in the residence, fail to qualify for the homestead exemption, or choose to stop deferring taxes. Interest would accrue on deferred taxes until the taxes are paid. Local taxing authorities would receive a subsidy from the state to compensate them for the revenue loss, and the state would be reimbursed as deferred taxes are eventually repaid.

Eligibility; application

(secs. 323.153, 323.16, and 323.161; Section 3)

Any person who qualifies for the existing homestead exemption for aged and disabled homeowners would be eligible to defer paying their entire tax bill: the person's annual income could not exceed $20,800 (as calculated for homestead exemption purposes), and the person would have to be either permanently and totally disabled (as certified by a physician), 65 years of age or older, or 60 years of age or older and the surviving spouse of a decedent who received the homestead exemption at the time of death. The deferral option also would be available for manufactured homes and mobile homes that are taxed as real property.

Eligible homeowners would have to apply for the deferral by submitting an application form to the county auditor.

The deferral of taxes, once applied for and received, would not be automatically continued each year: eligible homeowners would have to reapply for the deferral each year. For this purpose, county auditors would have to mail an application each year to each person who qualifies for the homestead exemption or who has previously deferred taxes.

Application forms would be substantially similar to the application forms for the homestead exemption, but would have to include a statement indicating that interest will accrue on taxes that are deferred, and that taxes that are deferred, together with interest and other charges, could become a lien against the homestead and thereby reduce the owner's equity in the homestead upon termination of the deferral. (Provisions governing the accrual of interest and other charges, as well as the termination of deferrals, are explained below.) Applicants would have to sign a statement acknowledging that they have read and understood the terms of the deferral; the signature and acknowledgment would have to be witnessed by another person, who also would have to sign the application.

Applicants who are found to have made false statements on an application or to have failed to notify the county auditor of changes in eligibility status would be guilty of a misdemeanor of the fourth degree (identical to the penalty for analogous violations under the homestead exemption law).

Termination of deferral

(secs. 323.163 and 323.164)

The deferral of taxes would be terminated at the end of the year in which any of the following events occurs:

(1) The homeowner dies;

(2) The homeowner ceases to own and occupy the residence as a qualifying homestead (e.g., the owner moves or transfers title);

(3) The homeowner's income exceeds $20,800 (the maximum qualifying income for the homestead exemption as it may change from time to time);

(4) The cumulative amount of taxes that the homeowner has deferred (including accrued interest) exceeds 80% of the residence's appraised market value (as shown on the current tax list).

(5) The homeowner terminates the deferral by filing a written notice with the county auditor.

Recoupment charge

(secs. 323.162, 323.163, 323.164, and 5703.471)

When a deferral is terminated because of (1) or (2), the taxes that were deferred, along with interest that accrued while payment of those taxes was deferred, would be collected through the levy of a recoupment charge. The recoupment charge would be added to the next tax list prepared by the auditor, and would become payable when taxes on that tax list are due. If the deferred taxes are not paid when due, the same penalties and late interest charges would apply as apply to current unpaid taxes. The recoupment charge would constitute a lien against the residence until the charge was paid.

If the deferral is terminated because of (3), (4), or (5), the recoupment charge would not have to be paid until the homeowner dies or stops owning the residence as a qualifying homestead. However, the homeowner would have to resume paying taxes on a current basis until the homeowner once again qualifies for deferral.

The recoupment charge consists of three components in addition to the taxes that have been deferred: interest accruing to those taxes during the deferral period, a "recovery charge" to recover uncollectible deferrals, and a charge to cover administrative expenses. Each of these is explained below.

Interest on deferred taxes

Interest would accrue on taxes that have been deferred. The interest would accrue from January 1 of the year following the year deferral is elected through the last day of the month in which the deferred taxes must be paid. The interest would accrue at a rate, to be determined each year by the Treasurer of State, equal to the average rate of return on the state's investment portfolio. The Treasurer of State would have to certify the rate to the Director of Budget and Management and to the Tax Commissioner; the Tax Commissioner would have to keep a record of the rates, and make it available to county auditors upon request. County auditors would have to use the rates to compute the interest that has accrued to taxes that have been deferred.

Recovery charge

A recovery charge would be included in each recoupment charge in order to recover uncollectible recoupment charges. The Tax Commissioner would have to compute the recovery charge annually by determining the percentage of all recoupment charges that have become uncollectible during the previous calendar year; this percentage would be added to all recoupment charges levied in the following calendar year.

Administrative charge

A charge equal to 2% of the amount of taxes a homeowner has deferred would be included in the homeowner's recoupment charge to cover expenses incurred by county auditors and county treasurers in administering tax deferrals. Two per cent of all taxes deferred would be paid from the state General Revenue Fund to each county's general fund to cover the county auditor's and county treasurer's administrative expenses. The state General Revenue Fund would be reimbursed for this payment with the 2% charge paid by homeowners upon termination of their deferral.

Continuation of deferral for qualifying surviving spouses

(sec. 323.163(B))

If a qualifying homeowner dies and the title to the homestead passes to a surviving spouse who otherwise qualifies for deferral, the surviving spouse could continue to defer paying taxes until one of the events enumerated previously occurs with respect to the surviving spouse. Payment of the taxes that were deferred before passage of title also could be deferred until a terminating event occurs with respect to the surviving spouse. If the surviving spouse does not qualify for the deferral, the taxes that were deferred before passage of title could continue to be deferred at the option of the surviving spouse, but taxes accruing after passage of title would have to be paid until the surviving spouse qualifies for deferral on his or her own behalf.

If the surviving spouse's interest in a homestead's title is contingent (e.g., while the decedent's estate is settled), taxes that were deferred by the decedent, as well as taxes accruing after the decedent's death, may continue to be deferred until the surviving spouse's interest in the residence is determined. (The executor or administrator of the estate could apply for a continuation of the deferral until the survivor's interest is determined.) If title to the residence does not pass to the surviving spouse, the deferral would be deemed to be terminated at the death of the decedent, and the taxes deferred since the year following the year the decedent died would have to be collected. The county auditor would have to correct the tax lists accordingly.

Notice of terminating event to county auditor

(sec. 323.163(C))

If the title to a residence upon which taxes have been deferred passes to another person, either by the owner's conveyance, by operation of law, or by a previously executed legal instrument, the owner (or the responsible executor, administrator, guardian, or trustee) intending to convey the title or having knowledge of its passage would have to notify the county auditor. Likewise, if it is determined that a once contingent interest in the residence has not passed to the surviving spouse, the responsible executor or administrator would have to notify the county auditor.

Upon being notified of the passage of the title (or otherwise becoming aware of its passage), the county auditor would have to demand that the person conveying the residence pay the auditor the amount of the deferred taxes, plus any accrued interest and other changes. (The same demand could be made of the responsible executor, administrator, guardian, trustee, or of any person who is known to be scheduled to disburse money in connection with the closing of a sale of the residence.) If that person does not pay the amount demanded, that amount would stand as a lien against the residence in the hands of the new owner until the amount is paid, and the person upon whom the demand was made would be personally liable for that amount. (If the person conveying the residence has made the affirmations noted below under "***Affirmations when residence is conveyed***," the county auditor would not have to make the demand for payment.)

Prepayment of deferred taxes at homeowner's option

(sec. 323.156)

A homeowner who has elected to defer payment of tax increases would have the option of paying all or a portion of taxes that have been deferred. The interest that has accrued to the deferred taxes, along with the other charges, could be collected with the prepayment, added to the homeowner's next tax bill, or added to any deferred taxes that remain outstanding, at the homeowner's discretion. The county treasurer would have to give a receipt to the person prepaying the deferred taxes.

State subsidy to local taxing districts

(secs. 135.90, 323.156, and 323.165)

The state would compensate taxing districts for the reductions in revenue resulting from homeowners deferring payment of tax increases. Semiannually, the county treasurer would have to certify to the Tax Commissioner the amount of taxes that have been deferred, and the Tax Commissioner would have to arrange for payment of that amount to the county treasurer, who would apportion the payment among the various taxing districts.

The compensation provided to taxing districts would be paid from a Tax Deferral Fund (to be created by the bill). The Tax Deferral Fund would consist of recoupment charges that have been paid and prepayments made by homeowners who have chosen to pay before termination. If at any time the amount in the Tax Deferral Fund is not enough to cover the reimbursements to taxing districts, the Treasurer of State must cover the deficiency by paying the deficiency from state funds available for investment. The Treasurer of State's coverage would be represented by a note, prepared and offered by the Director of Budget and Management, that promises to pay the Treasurer of State for the coverage. The note would bear interest at the average rate of return on the state's investment portfolio for as long as it is outstanding. The note's maturity would be determined by the Director on the basis of the Director's estimate of the future flow of recoupment charges into the Tax Deferral Fund; however, the Director could call the note at any time before the stated maturity.

Although the bill requires the Treasurer of State to cover any deficiency in the Tax Deferral Fund, the Treasurer of State could not deposit more than 3% of the state's investment portfolio in the Tax Deferral Fund.

The notes would not represent security interests in the residences of homeowners who have deferred taxes. In other words, if the state should default on the notes, the homeowners' residences would not be subject to any recovery proceedings.

Affirmations when residence is conveyed

(sec. 319.202)

The bill would require certain affirmations to be made when any residence is sold or otherwise transferred. If these affirmations are not made, the county auditor would be prohibited from endorsing the transfer, and the county recorder would not be required to accept the deed of transfer for recording. The affirmations are intended to require sellers and purchasers to explicitly acknowledge to the county auditor and to one another whether taxes have been deferred on the residence and, if so, whether the seller has paid the deferred taxes or the recoupment charge before selling the residence. Similar affirmations are required under current law to indicate whether sellers and purchasers have acknowledged and accounted for favorable tax treatment under the homestead exemption or the current agricultural use valuation.

The affirmation would have to be in the form of a statement affirming either of the following:

(1) That the purchaser has asked the seller (or the seller's representative) whether, to the best of the seller's knowledge, taxes have been deferred on the residence and whether the deferred taxes have been recouped, and the seller (or representative) indicated either that taxes were not deferred or that taxes were deferred but have been paid;

(2) That, to the best of the seller's knowledge, taxes have been deferred but have not been paid, that the residence is therefore subject to the recoupment charge, and that the seller and purchaser have accounted for the outstanding recoupment charge to their mutual satisfaction.

Administration; rules

Generally, county auditors would have to administer the tax deferral law by providing application forms, accepting completed applications and determining eligibility, computing the amount of taxes that may be deferred, and determining recoupment charges.

The Tax Commissioner would have to adopt administrative rules governing the tax deferral program, and prescribe application forms.

Effective date

The bill would apply to tax years 1999 and thereafter (i.e., taxes payable in early 2000 and thereafter could be deferred). On or before September 30, 1999, county auditors would have to mail tax deferral applications to each person currently receiving the homestead exemption to allow them the opportunity to apply for the tax deferral for tax year 1999.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 97

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