

DEPARTMENT OF TAXATION

2014 Fiscal Impact Statement

1. **Patron** J. Randall Minchew

3. **Committee** Senate Finance

4. **Title** Real Property Tax; Exemption or Deferrals
for Elderly and Disabled

2. **Bill Number** HB 1000

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would specify that the local real property tax relief available for real property owned solely by taxpayers aged 65 or older or permanently disabled, or held jointly with other taxpayers, extends to real property that is i) held by the eligible person alone, with his spouse as tenant(s) for life or joint lives, or held in conjunction with one or more other people as tenants for life or joint lives; ii) held in a revocable inter vivos trust over which the eligible person, the eligible person and his spouse, or the eligible person with one or more other joint owners holds the power of revocation, or iii) held in an irrevocable trust under which an eligible person alone, with his spouse, or with other joint owners, possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support.

The bill would also provide that in computing the annual income to determine eligibility for real property tax relief, the income of owners' relatives that live in the dwelling and provide bona fide caregiving services would be excluded. In addition, the bill would clarify that nonrelatives living in the dwelling, who provide bona fide caregiving services to the owner are not included in the income calculation, regardless of whether or not the nonrelative is compensated.

Under current law, localities are authorized to provide real property tax relief in the form of exemptions, deferrals, or a combination for real estate owned and occupied as the sole dwelling of anyone at least 65 years of age, or permanently and totally disabled. Localities also may provide real property tax relief programs for dwellings jointly held by two or more individuals, not all of whom are at least 65 or permanently and totally disabled, if the dwelling is occupied as the sole dwelling by all such joint owners. In addition, localities may establish income or financial worth limitations for purposes of granting property tax relief to eligible homeowners.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. Fiscal implications:

To the extent that this bill expands the pool of real property for which a locality with a local real property tax relief program must provide tax relief, the bill would result in a revenue decrease in that locality. This bill would have no impact on state revenues.

9. Specific agency or political subdivisions affected:

All localities

10. Technical amendment necessary: No.

11. Other comments:

Current Law

The *Constitution of Virginia* grants the General Assembly the authority to allow localities to exempt from local property tax real property designed for continuous habitation, owned by, and occupied as the sole dwelling of persons not less than 65 years of age, or persons permanently and totally disabled. Under the *Constitution*, the General Assembly has the authority to restrict or condition this exemption, but may not expand it.

Pursuant to this constitutional authority, Virginia law authorizes localities to adopt exemption and deferral programs for the elderly or handicapped to provide tax relief for persons sixty-five years of age or older and for those who are permanently and totally disabled, as explained below. The governing body of any locality may elect to adopt an exemption program, a deferral program, a combination of both, or none of the above. Localities that provide such programs may exempt or defer the real property taxes of the qualifying dwelling and the land, not exceeding ten acres, upon which it is situated.

Eligible Taxpayers and Property

In order to be granted real property tax relief, qualifying property must be owned by and occupied as the sole dwelling of a person who is at least 65 years of age, or, if the local ordinance provides, any person with a permanent disability. Dwellings jointly held by spouses, with no other joint owners, qualify if either spouse is 65 or over or permanently and totally disabled.

Dwellings jointly held by two or more individuals qualify, even if all the owners are not at least 65 or permanently and totally disabled, provided the dwelling is occupied as the sole dwelling by all such joint owners. In this scenario, the tax exemption or deferral is prorated using a formula that takes into account the percentage of ownership interest in the dwelling held by those joint owners who are at least age 65 or have a permanent disability.

Financial Worth and Income Limitations

Prior to 2010, the *Code of Virginia* specified the net financial worth and income limitations an elderly or disabled individual had to meet in order to qualify for exemption or deferral from real property taxes. Some localities were statutorily granted authority to increase their income limits to certain specified amounts.

On November 2, 2010, voters approved a constitutional amendment to Article X, § 6 of the *Constitution of Virginia*, authorizing the General Assembly to permit localities to establish their own income or financial worth limitations for purposes of granting property tax relief for homeowners who are 65 years of age or older or permanently and totally disabled. The General Assembly subsequently enacted legislation, effective for tax years beginning on or after January 1, 2011 authorizing local governing bodies to establish by ordinance their own net financial worth or annual income limitations as a condition of eligibility for any exemption or deferral of real property tax. For those localities that establish annual income limitations, the law now provides that annual income must be computed by adding together the total income received during the preceding calendar year, without regard to whether a tax return is actually filed, by 1) owners of the dwelling who use it as their principal residence, (2) owners' relatives who live in the dwelling, and (3) nonrelatives of the owner who live in the dwelling except bona fide tenants or bona fide paid caregivers of the owner. The law limits income to those sources of gross income that are subject to tax under federal income tax laws, regulations, rules or policies.

In addition to the statutory restrictions on income, localities may exclude at their discretion additional sources of income for purposes of the annual income limitation.

Proposal

This bill would specify that the real property tax relief available for real property owned solely by taxpayers aged 65 or older or permanently and totally disabled, or held jointly with other taxpayers, extends to real property that is i) held by the eligible person alone, with his spouse as tenant(s) for life or joint lives, or held in conjunction with one or more other people as tenants for life or joint lives; ii) held in a revocable inter vivos trust over which the eligible person, the eligible person and his spouse, or the eligible person with one or more other joint owners holds the power of revocation, or iii) held in an irrevocable trust under which an eligible person alone, with his spouse, or with other joint owners, possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support.

It is unclear whether the property held in trust under this bill is "owned" by the elderly or handicapped taxpayer, as required by the *Constitution of Virginia*.

The bill would also provide that in computing the annual income to determine eligibility for real property tax relief, the income of owners' relatives who live in the dwelling and provide bona fide caregiving services would be excluded. In addition, the bill would clarify that nonrelatives living in the dwelling of the owner, who provide bona fide caregiving services to the owner will not be included in the income calculation, regardless of whether or not the nonrelative is compensated.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 02/10/2014 KP
DLAS File Name: HB1000FE161