

BILL ANALYSIS

Senate Research Center
81R33456 SMH-D

C.S.H.B. 770
By: Howard, Donna et al. (Jackson, Mike)
Finance
5/25/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

For the purpose of establishing eligibility for a property tax exemption under Section 11.13, Tax Code, current law defines a residence homestead to include both a structure and a piece of land. Therefore, if the structure is destroyed by a natural disaster or other event not within the homeowner's control, the property no longer qualifies for a homestead exemption.

C.S.H.B. 770 relates to the ad valorem taxation of a residence homestead that is rendered uninhabitable or unusable by a casualty or by wind or water damage.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Section 11.135, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 11, Tax Code, by adding Section 11.135, as follows:

Sec. 11.135. CONTINUATION OF RESIDENCE HOMESTEAD EXEMPTION WHILE REPLACEMENT STRUCTURE IS CONSTRUCTED; SALE OF PROPERTY.

(a) Authorizes the owner, if a qualified residential structure for which the owner receives an exemption under Section 11.13 (Residence Homestead) is rendered uninhabitable or unusable by a casualty or by wind or water damage, to continue to receive the exemption for the structure and the land and improvements used in the residential occupancy of the structure while the owner constructs a replacement qualified residential structure on the land if the owner does not establish a different principal residence for which the owner receives an exemption under Section 11.13 during that period and intends to return and occupy the structure as the owner's principal residence. Requires the owner, to continue to receive the exemption, to begin active construction of the replacement qualified residential structure or other physical preparation of the site on which the structure is to be located not later than the first anniversary of the date the owner ceases to occupy the former qualified residential structure as the owner's principal residence. Prohibits the owner from receiving the exemption for that property under the circumstances described by this subsection for more than two years.

(b) Provides that for purposes of Subsection (a), the site of a replacement qualified residential structure is under physical preparation if the owner has engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the structure or has conducted an environmental or land use study relating to the construction of the structure.

(c) Provides that if an owner receives an exemption for property under Section 11.13 under the circumstances described by Subsection (a) and sells the property before the owner completes construction of a replacement qualified residential structure on the property, an additional tax is imposed on the property equal to the difference between the taxes imposed on the property for each of the years in which the owner received the exemption and the tax that would have been imposed had the owner not received the exemption in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(d) Provides that a tax lien attaches to property on the date a sale under the circumstances described by Subsection (c) occurs to secure payment of the additional tax and interest imposed by that subsection and any penalties incurred. Provides that the lien exists in favor of all taxing units for which the additional tax is imposed.

(e) Provides that a determination that a sale of property under the circumstances described by Subsection (c) has occurred is made by the chief appraiser. Requires the chief appraiser to deliver a notice of the determination to the owner of the property as soon as possible after making the determination and to include in the notice an explanation of the owner's right to protest the determination. Requires the assessor for each taxing unit, if the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, to prepare and deliver a bill for the additional taxes plus interest as soon as practicable. Provides that the taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the property.

(f) Provides that the sanctions provided by Subsection (c) do not apply if the sale is for right-of-way or to this state or a political subdivision of this state to be used for a public purpose.

(g) Requires the comptroller of public accounts to adopt rules and forms to implement this section.

SECTION 2. Amends Section 11.26, Tax Code, by adding Subsections (n) and (o), as follows:

(n) Provides that, notwithstanding Subsection (c) (relating to the expiration date of the limitation on tax increases required by this section), the limitation on tax increases required by this section does not expire if the owner of the structure qualifies for an exemption under Section 11.13 under the circumstances described by Section 11.135(a).

(o) Provides that, notwithstanding Subsections (a) (relating to the requirement of tax officials to appraise the property to which this section applies), (a-3) (relating to a limitation on tax increases), and (b) (relating to authorizing a school district to increase the tax on the homestead under certain conditions), an improvement to property that would otherwise constitute an improvement under Subsection (b) is not treated as an improvement under that subsection if the improvement is a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by wind or water damage. Provides that, for purposes of appraising the property in the tax year in which the structure would have constituted an improvement under Subsection (b), the replacement structure is considered to be an improvement under that subsection only if the square footage of the replacement structure exceeds that of the replaced structure as that structure existed before the casualty or damage occurred or the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure.

SECTION 3. Amends Section 11.261, Tax Code, by adding Subsections (l) and (m), as follows:

(l) Provides that, notwithstanding Subsection (d) (relating to a limitation on certain tax increases expiring under certain conditions), a limitation on county, municipal, or junior college district tax increases provided by this section does not expire if the owner of the structure qualifies for an exemption under Section 11.13 under the circumstances described by Section 11.135(a).

(m) Provides that, notwithstanding Subsections (b) (relating to the requirement of the tax officials to appraise a certain property) and (c) (relating to authorizing certain entities to increase taxes if an individual makes improvements to the homestead), an improvement to property that would otherwise constitute an improvement under Subsection (c) is not treated as an improvement under that subsection if the improvement is a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by

wind or water damage. Provides that, for purposes of appraising the property in the tax year in which the structure would have constituted an improvement under Subsection (c), the replacement structure is considered to be an improvement under that subsection only if the square footage of the replacement structure exceeds that of the replaced structure as that structure existed before the casualty or damage occurred or the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure.

SECTION 4. Amends Section 23.23(f), Tax Code, as follows:

(f) Provides that notwithstanding Subsections (a) (relating to prohibiting the appraised value of a homestead from exceeding a certain amount) and (e) (relating to the definition of "new improvement") and except as provided by Subdivision (2), an improvement to property that would otherwise constitute a new improvement is not treated as a new improvement if the improvement is a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by wind or water damage, rather than by mold or water damage. Provides that for purposes of appraising the property under Subsection (a) in the tax year in which the structure would have constituted a new improvement:

(1) the appraised value the property would have had in the preceding tax year if the casualty or damage had not occurred is considered to be the appraised value of the property for that year, regardless of whether that appraised value exceeds the actual appraised value of the property for that year as limited by Subsection (a), rather than the last year in which the property was appraised for taxation before the casualty or damage occurred is considered to be the last year in which the property was appraised for taxation for purposes of Subsection (a)(2)(A) (relating to 10 percent of the appraised value of the property for a certain time); and

(2) the replacement structure is considered to be new improvement only if the square footage of the replacement structure exceeds that of, rather than to the extent it is a significant improvement over, the replaced structure as that structure existed before the casualty or damage occurred or the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: January 1, 2010.