

- SUBJECT:** Continuing the homestead exemption while rebuilding damaged homes
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 8 ayes — Oliveira, Otto, Bohac, Hilderbran, P. King, Paxton, Peña, Taylor
1 nay — C. Howard
2 absent — Hartnett, Villarreal
- WITNESSES:** For — (*Registered, but did not testify:* Daniel Gonzalez, Texas Association of Realtors; Cheryl Johnson, Sheryl Swift, Galveston County Tax Office; Jim Robinson, Texas Association of Appraisal Districts)
Against — None
- BACKGROUND:** Under Tax Code, sec. 11.13(j)(1), to qualify for the residential homestead tax exemption, a property must have a residential structure, consist of not more than 20 acres of land, and be the principal residence of the taxpayer making the application for the exemption.
- DIGEST:** **Continuation of the homestead exemption during rebuilding.** CSHB 770 would amend Tax Code, sec. 11.135, to allow a homestead exemption to continue on a property with a damaged home while a replacement home was built. If a home for which the property owner received a homestead exemption was rendered uninhabitable or unusable by casualty or by wind or water damage, the owner would be allowed to continue to receive the homestead exemption while rebuilding, if the owner had not established a different principle residence or homestead exemption and the property owner returned and occupied the rebuilt residence as principle residence.
- Requirements for rebuilding.** CSHB 770 would require the owner to begin active construction of the replacement home, or other physical preparation of the site on which the home would be located, within a year of the date the owner ceased to occupy the former home. This continuation of the homestead exemption could not last more than two years. The site of a replacement qualified residential structure would be considered to be under physical preparation if the owner engaged in architectural or engineering work, soil testing, land clearing activities, or site-

improvement work necessary for construction or had conducted an environmental or land use study relating to construction.

An improvement made to the property as part of the effort to build a replacement home that would otherwise be taxable as an improvement would not be treated as an improvement that would make the property and new structure ineligible for continuation of the homestead exemption as long as the improvement was a replacement structure for one that was rendered uninhabitable or unusable by casualty or by wind or water damage. The new structure would not be eligible for continuation of the homestead exemption if:

- the square footage of the replacement structure exceeded that of the replaced structure as that structure existed before the casualty or damage occurred; or
- the exterior of the replacement structure was of higher quality construction and composition than that of the replaced structure.

CSHB 770 would amend sec. 11.26 to direct that the limitation on school-tax increases stemming from a homestead exemption for a disabled person or a person 65 years of age or older would not expire if the owner of the structure qualified for an extension of a homestead exemption under this bill.

CSHB 770 would amend sec. 11.261 to direct that a limitation on county, municipal, or junior college district tax increases would not expire under the program.

To maintain the ten-percent appraisal cap, CSHB 770 would amend sec. 23.23(f) to direct that the appraised value that the property would have had in the preceding tax year if the casualty or damage had not occurred would be the appraised value of the property for that year. The replacement structure would be considered to be a new additional improvement if :

- the square footage of the replacement structure exceeded that of the replaced structure as that structure existed before the casualty or damage occurred; or
- the exterior of the replacement structure was of higher quality construction and composition than that of the replaced structure.

The comptroller would adopt rules and forms to implement the provisions of the bill.

Penalties. CSHB 770 would amend Tax Code, sec. 11.135 to create penalties for misuse of a continuation. If an owner continued a homestead exemption and sold the property before the construction of the replacement home was completed, an additional tax would be imposed, equal to the difference plus 7 percent interest 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 calculated from the dates on which the differences would have become due. A tax lien would attach to the property on the date a sale of the this property occurred. This lien would secure payment of the additional tax and interest imposed and any penalties incurred. The lien would exist in favor of all taxing units for which the additional tax was imposed.

A determination that a sale of property violated the obligation to reconstruct would be made by the chief appraiser. The chief appraiser would deliver a notice of the determination to the owner of the property as soon as possible after making the determination and would include an explanation of the owner's right to protest the determination. If the owner did not file a timely protest or if the final determination of the protest was that the additional taxes were due, the assessor for each taxing unit would prepare and deliver a bill for the additional taxes plus interest as soon as practicable. The taxes and interest would be due and would become delinquent and incur penalties and interest in the same manner as other delinquent property taxes if not timely paid. These sanctions would not apply if the sale was compelled by right-of-way or eminent domain.

The bill would take effect January 1, 2010. It only would apply to property taxes imposed for tax year 2010 and subsequent tax years.

**SUPPORTERS
SAY:**

CSHB 770 would address a gap in current law regarding the property-tax protections provided by the homestead exemption. In order for a property owner to qualify for the homestead exemption, the statute requires both real property and a residence upon it. Those who lose that residence to a natural disaster like a hurricane or flood are at risk of losing their homestead exemption, even if the intent is to rebuild and keep the property as primary residence. Reapplying for the homestead at a later date is not an adequate solution because the owner would lose valuable homestead

protections such as the ten-percent appraisal cap and the school-tax freeze for the disabled and those 65 years of age or older. CSHB 770 would allow taxpayers to keep homestead exemptions while rebuilding and working to piece their lives back together.

CSHB 770 contains requirements that would ensure that people would not take advantage of the program. Taxpayers only would be able to receive the homestead exemption for two years. During that time, they would have to build a replacement structure that was substantially similar to the prior one. The new structure could not exceed the old one in square footage, and the exterior of the replacement structure could not be of higher quality construction or composition than that of the old structure. The bill would not be a tax vehicle to build a more valuable home.

CSHB 770 also would discourage persons from taking advantage of the homestead extension by selling a property before the completion of the replacement building. In such cases, the taxpayer would be liable for an additional tax equal to the difference between the taxes imposed on the property for each of the years in which the owner received the exemption, plus 7-percent annual interest. A tax lien also would attach to the property to ensure payment. These provisions would deter property owners from taking advantage of a tax break while they build a new structure and then selling it for a profit. These penalties would not apply to a property owner who was forced to sell because of right-of-way or eminent domain.

CSHB 770 would help property owners rebuild homesteads. Even though a homeowner whose property is annually reappraised would receive a lower tax bill because the value of the residence was reduced, that person might still lose the homestead protections of an appraisal cap and a freeze on school taxes if disabled or 65 years of age or older. Loss of these valuable protections could result in dramatically higher taxes. Even if a county only reappraises every other year, appraisal districts quickly detect new construction and appraise accordingly. Awareness of new construction could result in a finding that the property was no longer principle residence and a resulting loss of a homestead exemption. CSHB 770 would provide much more meaningful and reliable relief to homeowners who have suffered the loss of their homes to a natural disaster.

CSHB 770 would not interfere with Tax Code, sec. 23.02, which allows a taxing unit to authorize a reappraisal of property within a natural disaster

area. Under CSHB 770, a homeowner still would receive homestead protections even though the value of the exemption would be recalculated to reflect the reappraised value of the property.

OPPONENTS
SAY:

CSHB 770 is unnecessary. Homeowners are protected already by existing law that allows appraisers to reappraise properties in a disaster area, which results in proper tax reductions for those who have suffered catastrophic loss.

The point of the homestead exemption is to protect property that is a primary residence. While it is tragic that a person may have lost a house due to a natural disaster, if the person moves off the property it no longer is a primary residence. In addition, the person should already have been compensated by insurance and direct governmental aid, such as FEMA funds. Further, a person can always reapply for a homestead exemption once the home is rebuilt.

OTHER
OPPONENTS
SAY:

CSHB 770 should toll the two-year rebuilding window for those homeowners who cannot yet start rebuilding because they are waiting on reimbursement from FEMA or another governmental entity. The bill should start the two-year window on receipt of funds enabling the rebuilding process.

NOTES:

Among other changes, the committee substitute differs from the bill as filed by replacing the list of eligible causes of damage by mold damage with wind damage. It also would add language that a replacement structure would not be considered to be an improvement 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.