

House Bill 1257
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

CONFERENCE

SECTION __. (a) Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.135 to read as follows:
Sec. 11.135. CONTINUATION OF RESIDENCE HOMESTEAD EXEMPTION WHILE REPLACEMENT STRUCTURE IS CONSTRUCTED; SALE OF PROPERTY. (a) If a qualified residential structure for which the owner receives an exemption under Section 11.13 is rendered uninhabitable or unusable by a casualty or by wind or water damage, the owner may 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. To continue to receive the exemption, the owner must 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. The owner may not receive the exemption for that property under the circumstances described by this subsection for more than two years.
(b) For purposes of Subsection (a), the site of a replacement qualified residential structure is under

House Bill 1257
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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) 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) 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. The lien exists in favor of all taxing units for which the additional tax is imposed.

(e) A determination that a sale of property under the circumstances described by Subsection (c) has occurred is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the property as soon as possible after making the

House Bill 1257
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes plus interest as soon as practicable. 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) The sanctions provided by Subsection (c) do not apply if the sale is:

(1) for right-of-way; or

(2) to this state or a political subdivision of this state to be used for a public purpose.

(g) The comptroller shall adopt rules and forms to implement this section.

(b) Section 11.26, Tax Code, is amended by adding Subsections (n) and (o) to read as follows:

(n) Notwithstanding Subsection (c), 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) Notwithstanding Subsections (a), (a-3), and (b), an improvement to property that would otherwise constitute an improvement under Subsection (b) is not treated as an

House Bill 1257
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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. 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:

(1) the square footage of the replacement structure exceeds that of the replaced structure as that structure existed before the casualty or damage occurred; or

(2) the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure.

(c) Section 11.261, Tax Code, is amended by adding Subsections (l) and (m) to read as follows:

(l) Notwithstanding Subsection (d), 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) Notwithstanding Subsections (b) and (c), 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. For purposes of appraising the property

House Bill 1257
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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:

(1) the square footage of the replacement structure exceeds that of the replaced structure as that structure existed before the casualty or damage occurred; or

(2) the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure.

(d) Section 23.23(f), Tax Code, is amended to read as follows:

(f) Notwithstanding Subsections (a) and (e) 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 ~~[mold]~~ or water damage. 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 [last] year if the casualty or damage had not occurred [in which the property was appraised for taxation before the casualty or damage 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

House Bill 1257
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

~~that year as limited by Subsection (a) [last year in which the property was appraised for taxation for purposes of Subsection (a)(2)(A)]; and~~
(2) the replacement structure is considered to be a new improvement only if:
(A) the square footage of the replacement structure exceeds that of [to the extent it is a significant improvement over] the replaced structure as that structure existed before the casualty or damage occurred;
or
(B) the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure.
(e) This section applies only to ad valorem taxes imposed for a tax year beginning on or after the effective date of this Act.

SECTION 1. Section 31.032, Tax Code, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) This section applies only to:

(1) real property that:

(A) is;

(i) the residence homestead of the owner or consists of property that is used for residential purposes and that has fewer than five living units; or

(ii) owned or leased by a business entity that had not more than the amount calculated as provided by

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House Bill 1257
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

Subsection (h) in gross receipts in the entity's most recent federal tax year or state franchise tax annual period, according to the applicable federal income tax return or state franchise tax report of the entity;

(B) is located in a disaster area; and

(C) has been damaged as a direct result of the disaster;
[and]

(2) tangible personal property that is owned or leased by a business entity described by Subdivision (1)(A)(ii); and

(3) taxes that are imposed on the property by a taxing unit before the first anniversary of the disaster.

(h) For the 2009 tax year, the limit on gross receipts under Subsection (a)(1)(A)(ii) is \$5 million. For each subsequent tax year, the comptroller shall adjust the limit to reflect inflation by using the index that the comptroller considers to most accurately report changes in the purchasing power of the dollar for consumers in this state and shall publicize the adjusted limit. Each collector shall use the adjusted limit as calculated by the comptroller under this subsection to determine whether property is owned or leased by a business entity described by Subsection (a)(1)(A)(ii).

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect

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House Bill 1257
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

September 1, 2009.