Property Tax Process Post-Senate Bill 2 (2019) – Explanatory Q&A

Prepared by TML Staff
Questions? Contact Bill Longley, Legislative Counsel, at bill@tml.org
Last Updated July 14, 2021

Senate Bill 2, also known as the Texas Property Tax Reform and Transparency Act of 2019, was passed by the Texas Legislature in 2019. At its most fundamental level, S.B. 2 reforms the system of property taxation in three primary ways: (1) lowering the tax rate a taxing unit can adopt without voter approval and requiring a mandatory election to go above the lowered rate; (2) making numerous changes to the procedure by which a city adopts a tax rate; and (3) making several changes to the property tax appraisal process.

When does S.B. 2 go into effect?

The vast majority of the bill, including the new tax rate calculations, took effect on January 1, 2020. A few other provisions, including those related to the use of comptroller forms in calculating the tax rate and injunctive relief for failure to comply with statutory requirements, went into effect on January 1, 2021.[1]

Are there any provisions that a city needed to comply with before January 1, 2020?

Yes, only one. Section 106 of the bill provides that, not later than 30 days after the section becomes effective, taxing units must submit to their county assessor-collectors the worksheets used by the taxing unit to calculate the effective and rollback tax rates for the 2015-2019 tax years. The county assessor-collector, in turn, must post the worksheets on the county's website. This section took effect on the 91st day after the last day of the legislation session, at which point cities had 30 days to submit their worksheets. Thus, the deadline for cities to submit their worksheets to the county assessor-collector was September 25, 2019.

What terminology was changed?

Prior to S.B. 2, the term "effective tax rate" referred to the benchmark tax rate needed to raise the same amount of maintenance and operations property taxes on existing property as the previous year, after taking into account changes in appraised values. S.B. 2 changed the terms "effective tax rate" and "effective maintenance and operations tax rate" to "no-new-revenue tax rate" and "no-new-revenue maintenance and operations tax rate," respectively.

Additionally, the term "rollback tax rate" was changed to "voter-approval tax rate." More significant than the change in terminology is the modification to both the voter-approval rate

---

[1] In addition to these sections, pursuant to Section 105 of S.B. 2, each taxing unit located wholly or primarily in an appraisal district established in a county with a population of less than 200,000 need not comply with Tax Code Secs. 26.04(e-2), 26.05(d-1) and (d-2), 26.17, and 26.18 until the 2021 tax year.

formula (discussed in the next question), and the requirement that cities hold automatic elections to approve tax rates exceeding the voter-approval tax rate.

How does S.B. 2 modify the calculation of a city's rollback tax rate?

Under pre-S.B. 2 law, a city's rollback rate was the rate necessary to raise precisely eight percent more maintenance and operations tax revenue as the year before after taking into account appraisal fluctuations. The debt service component of the tax rate is then added to the product of the effective maintenance and operations rate and 1.08.

In addition to changing the terminology from "rollback rate" "to "voter-approval rate," S.B. 2 lowers the multiplier used in the rate calculation from 8 percent to 3.5 percent for cities that aren't considered to be "special taxing units," which is nearly every Texas city. To illustrate, the old calculation of a city's rollback rate was as follows:

Rollback Rate = (Effective Maintenance and Operations Rate x 1.08) + Current Debt Service Tax Rate

Under S.B. 2, that calculation now looks like this:

Voter-Approval Rate = (No-New-Revenue Maintenance and Operations Rate x 1.035) + Current Debt Service Tax Rate

TEX. TAX CODE § 26.04(c).

There are some other adjustments as well. Most notably, under the new formula a city adds its "unused increment rate" to the 3.5 percent limit on maintenance and operations increases. Unused increment is discussed in greater detail below.

Does S.B. 2 modify the procedure for approval of a tax rate that exceeds the voter-approval rate?

Yes. Previously, any rate adopted that exceeded the 8 percent rollback rate triggered the ability of citizens to petition to hold an election to "roll back" the tax rate to the rollback rate. Generally speaking, S.B. 2 requires a city to hold an automatic election (i.e., the bill eliminates the petition requirement) on the November uniform election date if it adopts a rate exceeding the 3.5 percent voter-approval rate. *See* TEX. TAX CODE § 26.07. That said, some cities under 30,000 population are not subject to the automatic election requirement associated with adopting a rate exceeding the new voter-approval rate.

What is a special taxing unit?

Under S.B. 2, a special taxing unit is a taxing unit that remains subject to the 8 percent voter-approval rate and is not subject to the new 3.5 percent voter-approval rate. Two types of taxing units—junior college districts and hospital districts—are expressly considered to be "special taxing units" under the new legislation. TEX. TAX CODE § 26.012(19). Beyond that, only a taxing unit other than a school district with a proposed maintenance and operations tax rate of 2.5 cents or less per $100 of taxable value is considered to be a special taxing unit. In other words, if a city is proposing a tax rate of only 2.5 cents or less, it could continue to calculate the voter-approval rate using 8 percent.

According to the Texas Comptroller's property tax data, of the more than 1000 Texas cities that had adopted property taxes in 2017, only four of those cities had tax rates of less than 2.5 cents per $100. (Website of Texas Comptroller of Public Accounts, Property Tax Survey Data and Reports – 2017 City Values, https://comptroller.texas.gov/taxes/property-tax/reports/index.php.)

What is the unused increment rate?

Included within the voter-approval rate calculation in S.B. 2 is a new term called the "unused increment rate." The unused increment rate can be used to increase the voter-approval rate, depending upon the tax rates adopted by the city in the previous three years.

In essence, the "unused increment rate" is the 3-year rolling sum of the difference between the adopted tax rate and voter-approval rate. Put differently, the city has the ability to "bank" any unused amounts below the voter-approval rate to use for up to three years. Conversely, if the city adopts the voter-approval rate all years between 2020 and 2022, the unused increment rate would be zero. Under no circumstance can the unused increment rate be less than zero. *See* TEX. TAX CODE § 26.013(b)(1).

The legislature's stated goal in relation to the unused increment rate is to discourage taxing units from adopting a rate equal to the 3.5 percent voter-approval rate every year. Under the new framework, a city that experiences exceptional growth in sales tax revenues in a year, for instance, may be able to adopt a rate less than the 3.5 percent voter-approval rate and bank the difference for a future year when sales taxes perform worse than expected. On the other hand, many cities will be forced to go up to the 3.5 voter-approval rate every year just to keep up with rising costs. For those cities, the unused increment rate will be a non-factor.

S.B. 2 provides that, for each tax year before the 2020 tax year, the difference between the taxing unit's voter-approval tax rate and actual tax rate is considered to be zero. *Id*. § 26.013(c). This means that any difference between the 2019 rollback rate and adopted rate cannot be used to increase the unused increment rate in the three subsequent tax years.

What is the de minimis rate?

The de minimis rate is a new tax rate calculation added by S.B. 2 that is designed to give smaller taxing units, including cities, some relief from the 3.5 percent voter-approval tax rate.

The de minimis rate is defined as the sum of:

1. a taxing unit's no-new-revenue maintenance and operations rate;
2. the rate that, when applied to a taxing unit's current total value, will impose an amount of taxes equal to $500,000; and
3. a taxing unit's current debt rate.

TEX. TAX CODE § 26.012(8-a).

In a nutshell, the de minimis rate was added to S.B. 2 to allow smaller cities some flexibility to adopt a tax rate that generates $500,000 more in property tax revenue than the previous year. The thinking was that applying a 3.5 percent voter-approval rate in some very small communities would unnecessarily restrict revenue growth to sometimes just a nominal amount, and the application of the lowered voter-approval rate created an unfair result for small towns.

Are all cities required to calculate and use the de minimis rate?

No. The provisions of S.B. 2 relating to the de minimis rate apply only to a city with a population of less than 30,000. *See* TEX. TAX CODE §§ 26.063 and 26.075. A city with a population of less than 30,000 must calculate a de minimis rate.[2] Cities with populations of 30,000 or more do not calculate the de minimis rate or receive any of the fiscal flexibility associated with the de minimis rate.

How does the de minimis rate work?

If the city with a population of less than 30,000 adopts a tax rate that exceeds the greater of the city's voter-approval tax rate or the de minimis tax rate, the city council must order an election to approve the adopted tax rate for the November uniform election date. TEX. TAX CODE § 26.07(b).

But what if a city with a population of less than 30,000 adopts a tax rate that exceeds the voter-approval rate but not the de minimis rate? It is possible, depending on the facts, that the voters would be required to petition for a tax approval election instead of the city being required to hold an automatic election.

A city's voters are required to submit a petition to hold a tax approval election if:

1. the city's de minimis rate exceeds the voter-approval rate; and

---

[2] Although nothing in S.B. 2 expressly requires a city under 30,000 in population to calculate the de minimis rate, the alternative notice provisions in Tax Code Sec. 26.063 and the petition requirements in Sec. 26.075 apply only to a city under 30,000 in population if the de minimis rate exceeds the voter-approval rate. Practically speaking, the only way for a city under 30,000 population to know if these statutes apply is to calculate the de minimis rate.

2. the city's adopted rate is: (a) equal to or lower than the de minimis rate; and (b) greater than the greater of the city's voter-approval tax rate (a 3.5 percent rate plus the unused increment rate) or the voter-approval tax rate calculated as if the city were a special taxing unit (an 8 percent rate).[3]

Id. § 26.075.

If the adopted rate is less than either the voter-approval tax rate or voter-approval tax rate for a special taxing unit, the city is not subject to the petition requirements. Essentially, one of these smaller cities that has a de minimis rate that exceeds the 3.5 percent voter-approval tax rate can adopt a rate all the way up to the de minimis rate without an automatic election in November. However, under the bill an 8 percent voter-approval rate (similar to pre-S.B. 2 law) still applies to them in a limited way. If the city's adopted rate exceeds an 8 percent voter-approval rate (but is lower than the de minimis rate) the city is subject to a petition from the voters to conduct a voter-approval election.

The bill's language regarding the de minimis rate is extremely complicated, so it may be helpful to map out the different scenarios for a city. If a city under 30,000 population has a de minimis rate that exceeds the 3.5 voter-approval rate the following rules apply:

- If the city's adopted rate exceeds de minimis rate – Automatic election in November.
- If the city's adopted rate is equal to or lower than de minimis rate but exceeds the greater of the 3.5 voter-approval tax rate or an 8 percent voter-approval tax rate applicable to a special taxing unit – Citizens may petition for an election.
- If the city's adopted rate is lower than de minimis rate and does not exceed the greater of the 3.5 voter-approval tax rate or an 8 percent voter-approval tax rate applicable to a special taxing unit – No election required (automatic or petition).

What is the petition and election process in a city under 30,000 that adopts a tax rate equal to or lower than the de minimis rate, but higher than an 8 percent voter-approval tax rate?

A petition for an election to determine whether to reduce the city's adopted tax rate is valid only if the petition:

1. states that it is intended to require an election in the city on the question of reducing the city's adopted tax rate for the current year;
2. is signed by at least three percent of the registered voters of the city determined according to the most recent list of those voters; and
3. is submitted to the city council not later than the 90th day after the date on which the city council adopts the tax rate.

---

[3] How could the city's voter-approval tax rate exceed the voter-approval tax rate calculated as if the city were a special taxing unit? It is possible that a city's voter-approval tax rate is higher depending upon the amount of the unused increment rate. Even if it isn't likely, it is possible that a city could bank enough unused increment over a three year window for the 3.5 percent voter-approval rate to exceed the 8 percent voter approval rate for a special taxing unit.

TEX. TAX CODE § 26.075(d).

The city council shall determine whether the petition is valid not later than the 20th day after the date on which the petition is submitted. *Id*. § 26.075(e). If the petition is deemed valid, the city council shall order the election be held on the next uniform election date that allows sufficient time to comply with the requirements of other law. *Id*. § 26.075(f).

At the election, the ballots must be prepared to permit voting for or against the following proposition: "Reducing the tax rate in (name of city) for the current year from (insert tax rate adopted for current year) to (insert voter-approval tax rate)." *Id*. § 26.075(g). Note that, if approved, the tax rate would be reduced to the city's actual voter-approval tax rate, not the 8 percent voter approval tax rate for a special taxing unit. *See Id*. § 26.075(c). If the tax rate is reduced and a property owner already paid taxes calculated using the higher tax rate, the city must refund the difference between the amount of taxes paid and the amount due under the reduced tax rate. *Id*. § 26.075(k).

Are there any other adjustments for cities that can be made to the 3.5 percent voter-approval rate?

Yes. S.B. 2 adds an adjustment to the no-new-revenue maintenance and operations rate—and therefore also the voter-approval rate—for eligible county hospital expenditures. TEX. TAX CODE § 26.0443. The definition of "eligible county hospital" includes a hospital that is owned or leased jointly by a city and a county, and an "eligible county hospital expenditure" includes the amount paid by a city in the tax year preceding the tax year for which the tax is adopted to maintain and operate an eligible county hospital. *Id*. If a city makes these expenditures, and the expenditures exceed the amount of the same expenditures from the preceding tax year, the city may increase its no-new-revenue maintenance and operations tax rate in accordance with an adjusted formula provided by statute. *Id*. § 26.0443(b).

Does the 3.5 percent voter-approval rate calculation include new property?

No. S.B. 2 modified the multiplier in the voter-approval tax rate calculation, reducing it from 8 percent to 3.5 percent. The new 3.5 percent multiplier is applied to the no-new-revenue maintenance and operations tax rate, which used to be called the effective maintenance and operations tax rate. Although the name of that tax rate changed, the calculation did not. The effective maintenance and operations tax rate excluded new property value from the calculation, and the no-new-revenue maintenance and operations rate calculation continues to do so.

Did S.B. 2 change the way cities finance certificates of obligation?

No. At one point during the legislative process, a version of S.B. 2 was considered that would have excluded all non-voter approved debt instruments payable from property taxes from the

definition of debt in the Tax Code. This would have forced cities to finance some certificates of obligation through the maintenance and operations tax rate instead of debt service. The result would have been having the lowered 3.5 voter-approval tax rate apply to all maintenance and operations expenses in addition to tax-supported certificates of obligation. Fortunately for Texas cities, the harmful certificate of obligation provision was stripped out of the bill in its final form.

Similar stand-alone legislation returned in 2021 in the form of H.B. 1869. As filed, this bill would have modified the definition of "debt" for purposes of the debt service property tax rate calculation to only include debt approved at an election, thus essentially eliminating the use of certificates of obligation. After significant stakeholder input, the bill was modified to list out the permissible uses of certificates of obligation for purposes of the definition of "debt" in the Tax Code. The version of H.B. 1869 that ultimately passed and was signed into law largely leaves intact the ability of cities to issue debt obligations like certificates of obligation for capital projects.

How do the new tax rate calculations in S.B. 2 affect cities that have adopted the dedicated sales tax for property tax relief?

The changes made to the tax rate calculations by S.B. 2 also apply to the tax rate calculations for cities that have adopted the sales tax for property tax relief. *See* TEX. TAX CODE § 26.041. The sales tax for property tax relief (referred to in state statute as the "additional sales and use tax") is designed to offset an equivalent amount of city property tax revenue by reducing a city's voter-approval tax rate by the amount of sales tax revenue that corresponds with the portion of the sales tax rate dedicated to property tax relief. According to comptroller data[4], 395 cities have adopted the sales tax for property tax relief.

The voter-approval tax rate calculation in cities that have adopted the sales tax for property tax relief contains a 3.5 percent multiplier and unused increment rate adjustment, just like the calculation for any other city. Before S.B. 2, cities with the sales tax for property tax relief were deducting sales tax revenue from a property tax rate formula that used an eight percent multiplier. Now, the baseline rate is lowered due to the 3.5 percent multiplier, and the sales tax revenue is deducted from that rate. The end result is that cities that have adopted the sales tax for property tax relief will see their voter-approval rates lowered by a greater amount than those cities without the sales tax for property tax relief.

Does a city get any relief from the lowered voter-approval rate during a disaster?

In 2021, the Texas Legislature modified the provisions governing the calculation of a tax rate during a disaster from the new statutory structure put into place by S.B. 2 in 2019. The legislature did so through the passage of S.B. 1438, which became effective immediately upon being signed by the governor on June 16, 2021. The primary goal of S.B. 1438 was to eliminate the ability of a taxing unit, including a city, to opt into greater flexibility in calculating and

---

4   https://comptroller.texas.gov/taxes/sales/city-additional-tax.php.

adopting a tax rate during a pandemic disaster (as was authorized under the provision included in S.B. 2).

Following the modifications of S.B. 1438 in 2021, a city is given flexibility from the lowered voter-approval rate and automatic election during a disaster in two different ways. First, a city council may direct the designated officer or employee[5] to calculate the voter-approval tax rate in the manner provided for a special taxing unit (8 percent) if any part of the city is located in an area declared a disaster area during the current tax year by the governor or by the president of the United States if at least one person is granted the temporary property tax exemption for qualified property physically damaged by a disaster for property located in the city. TEX. TAX CODE § 26.042(a); *see also* TEX. TAX CODE § 11.35.

The impact of the requirement that a property must receive a property tax exemption for property physically damaged by a disaster in order for a city to opt into an 8 percent calculation means that a city may not use the higher voter-approval rate calculation due to a pandemic or other disaster that does not cause physical damage to property.

The designated officer or employee shall continue calculating the voter-approval tax rate using 8 percent instead of 3.5 percent until the earlier of:

1. the first tax year in which the total taxable value of property in the city exceeds the total taxable value of property taxable by the city on January 1st of the tax year in which the disaster occurred; or
2. the third tax year after the tax year in which the disaster occurred.

Id. § 26.042(a).

Secondly, the provision pertaining to disasters gives cities the ability to avoid an automatic tax rate approval election following certain disasters. When an increased expenditure of money by a city is necessary to respond to a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought, epidemic, or pandemic, that impacted the city and the governor has declared any part of the city as a disaster area, an election (petitioned or automatic) is not required to approve the tax rate adopted by the governing body for the year following the year in which the disaster occurs. *Id.* § 26.042(d). If a city adopts a tax rate that exceeds the voter-approval tax rate under this framework, the amount by which the tax rate exceeds the city's voter-approval tax rate for that tax year may not be considered when calculating the city's voter-approval tax rate for the tax year following the year in which the city adopts the rate. *Id.* § 26.042(f)

---

[5] The term "designated officer or employee" is not a new one added by S.B. 2. The city council has the ability to designate any officer or employee to calculate the tax rate. Tax Code § 26.04(c). The designated officer or employee is commonly a city finance officer or even a chief appraiser or county assessor-collector. Because of the increased responsibilities under S.B. 2, cities are encouraged to consult with their designated officer or employee about the changes well in advance of S.B. 2 taking effect. If that is the chief appraiser or county assessor-collector, the city may wish to revisit any written agreements currently in place.

How is the voter-approval rate calculation adjusted in the year following a city's decision to direct the designated officer or employee to calculate the voter-approval rate in the manner provided for a special taxing unit during a disaster?

As provided by S.B. 1438 in 2021, in the first year following the last year in which the designated officer or employee calculates a city's voter-approval tax rate using an 8 percent multiplier due to the impact of a disaster, the taxing unit's voter-approval tax rate is reduced by the city's "emergency revenue rate". TEX. TAX CODE § 26.042(b).

A city's emergency revenue rate is calculated according to the following formula:

((Last Year's Adopted Tax Rate – Adjusted Voter-Approval Tax Rate) x Last Year's Total Value) / (Current Total Value – New Property Value)

Id. § 26.042(b).
The emergency revenue rate formula includes a new term called the "adjusted voter-approval tax rate". This term refers to the voter-approval tax rate a city would have calculated in the last year for which the city directed the designated officer or employee to calculate the city's voter-approval tax rate using an 8 percent multiplier if, in each tax year that 8 percent calculation was used, the city instead adopted a tax rate equal to the greater of: (1) the tax rate actually adopted by the city for that tax year, if that tax rate was approved at a ratification election by the voters under Tax Code Sec. 26.07; or (2) the city's voter-approval tax rate for that tax year, calculated in the manner provided for a taxing unit other than a special taxing unit (3.5 percent multiplier). *Id*. § 26.042(c).

Essentially, the adjustment to the voter-approval rate calculation in the first year following the use of an 8 percent voter-approval rate due to a disaster reduces the city's voter-approval rate as if the city had adopted the 3.5 percent voter-approval rate each year the 8 percent voter-approval rate was actually used. City officials will want to understand the impact of this negative adjustment on the voter-approval rate prior to opting into an 8 percent voter-approval rate calculation due to a disaster.

When must the tax rate be adopted?

While the Tax Code still requires a city to adopt its tax rate before the later of September 30th or the 60th day after the certified appraisal roll is received by the city, S.B. 2 moves up the date on which a city must adopt a tax rate that exceeds the voter-approval tax rate. TEX. TAX CODE § 26.05(a). If a city adopts a rate exceeding the voter-approval tax rate, it must do so not later than the 71st day before the November uniform election date, which is the first Tuesday following the first Monday in November. *Id*.; *See also* TEX. ELEC. CODE § 41.001(a)(3).

Because S.B. 2 is designed to have cities' automatic tax rate approval elections held on the November uniform election date, the legislature deemed it necessary to require cities to adopt their tax rates earlier to provide ample time to order the election. Indeed, S.B. 2 requires the city council to order the tax rate approval election not later than the 71st day before the date of the

election. TEX. TAX CODE § 26.07(c). The 71st day will change every year depending upon when the November election date occurs, but generally it will occur in mid-to-late August.

Using the 71st day before election day as the deadline to order the election in S.B. 2 appears to be a drafting mistake by the legislature. The Election Code provides that, for an election held on a uniform election date, the election shall be ordered not later than the 78th day before election day. TEX. ELEC. CODE § 3.005(c). Further, the Election Code provides that the 78-day deadline supersedes any law outside the Election Code to the extent of any conflict. *Id*. § 3.005(b). Because the 78th day deadline for ordering the election expressly prevails over the 71st day deadline in S.B. 2, a city must order its election by no later than the 78th day before the November uniform election date. Even though the election must be ordered by the 78th day before the election, theoretically a city could push off the adoption of a tax rate exceeding the voter-approval tax rate until the 71st day before the election as provided by S.B. 2.

Interestingly, this expedited tax rate adoption calendar applies to a city under 30,000 that adopts a tax rate that exceeds the voter-approval rate, even if the city's adopted rate does not exceed the de minimis tax rate. *See* TEX. TAX CODE § 26.05(a). If *any* city adopts a tax rate that exceeds the voter-approval rate, it must do so by the 71st day before the November uniform election date.

Because state law provides that a city may levy taxes only in accordance with the budget, a city must adopt its budget before it adopts its tax rate, regardless of the deadline to do so. *See* TEX. LOC. GOV'T CODE § 102.009(a). If a city adopts a tax rate in August that exceeds the voter-approval tax rate, it must adopt its budget before doing so.

What is the election process for a city that must hold an automatic election to approve a tax rate?

A city with a population of 30,000 or more that adopts a tax rate exceeding the voter-approval tax rate, or a city with a population of less than 30,000 that adopts a tax rate exceeding the greater of the taxing unit's voter-approval tax rate or de minimis rate must hold an automatic election to approve the adopted tax rate as required by Texas Tax Code Sec. 26.07. As mentioned above, a city to which Sec. 26.07 applies must order its election by the 78th day before the November uniform election date. TEX. ELEC. CODE § 3.005(c).

The ballots must be prepared to permit voting for or against the following proposition: "Approving the ad valorem tax rate of $ per $100 valuation in (name of taxing unit) for the current year, a rate that is $ higher per $100 valuation than the voter-approval tax rate of (name of taxing unit), for the purpose of (description of purpose of increase). Last year, the ad valorem tax rate in (name of taxing unit) was $ per $100 valuation." TEX. TAX CODE § 26.07(c).

Although most of the required ballot language is fairly straightforward, cities have raised questions about what exactly would satisfy the requirement to describe the purpose of the increase. For example, it may not be easy to discern if an increased expenditure is attributable to the revenue derived from the amount by which a city goes over the voter-approval tax rate, or if

the expenditure was something the city prioritized in its budget that would have been covered by city's adoption of the voter-approval tax rate or even the no-new-revenue tax rate. Without any additional statutory guidance, cities would appear to maintain the discretion to make a reasonable determination under this provision. Cities are encouraged to consult with their city attorney about the ballot language describing the purpose of the increase.

What happens if voters don't approve a city tax rate exceeding the voter-approval rate?

If voters do not approve the city's adopted tax rate at a tax rate approval election, the city's rate for the current tax year is set at the voter-approval tax rate. TEX. TAX CODE § 26.07(e). If property owners pay their taxes using the originally adopted tax rate and the voters ultimately reject that rate at an election in November, the city must refund the difference between the amount of taxes paid and the amount of taxes due under the voter-approval tax rate. *Id*. § 26.07(g).

What happens if the city doesn't receive the certified appraisal roll on time?

Prior to the passage of S.B. 2, the law required the chief appraiser to submit the certified appraisal roll to the assessor for each taxing unit by July 25th. TEX. TAX CODE § 26.01(a). The certified roll could be certified once the appraisal review board has completed substantially all timely filed protests so that the amount of undetermined value is not more than five percent of the total appraised value of all taxable properties. *Id*. § 41.12(b). The deadline for appraisal review boards to complete substantially all of their work was July 20th, though appraisal districts located in counties with populations of one million or more could postpone this deadline until August 20th. *Id*. § 41.12(c).

Certifying the tax roll triggers the tax rate setting process, as a city may not calculate the tax rates without a firm grasp the appraised values contained in the certified roll. Because a city that adopts a rate exceeding the voter-approval rate must act quickly, the timely delivery of the certified tax roll becomes even more important under S.B. 2. Delivery of the certified appraisal roll by August 20th or later is completely untenable for cities given the new deadlines for adopting the tax rate under S.B. 2.

Instead of requiring all appraisal review boards to complete substantially all protests by July 20th so the roll can be certified by the chief appraiser by July 25th, S.B. 2 instead gives chief appraisers an alternative to submitting a certified roll to the assessor. S.B. 2 amends the Tax Code to provide that, if the appraisal review board has not approved the appraisal records by July 20th, the chief appraiser shall prepare and certify to the assessor for each taxing unit an *estimate* of the taxable value by not later than July 25th. *Id*. § 26.01(a-1). If a certified estimate is provided instead of a certified appraisal roll, the officer or employee designated by the city council shall calculate the no-new-revenue tax rate and voter-approval tax rate using the certified estimate of taxable value. *Id*. § 26.04(c-2).

What changes were made to how a city provides notice of its tax rate every year?

Prior to the passage of S.B. 2, most cities provided notice of their property tax rates pursuant to Local Government Code Section 140.010. That statute was repealed by S.B. 2 and replaced with a few different mechanisms for providing notice of the city's tax rate:

- By August 7th or as soon thereafter as practicable, the designated officer or employee of a city must post notice on the city's website, in the form prescribed by the comptroller, the following: (1) the no-new-revenue tax rate and the voter-approval tax rate, along with an explanation of how they were calculated; (2) the estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding existing debt obligations; and (3) a schedule of the city's debt obligations. TEX. TAX CODE § 26.04(e).
- New notice provisions for the public hearing on the tax rate, loosely based upon the tax rate notice located in Local Government Code Sec 140.010 that was repealed by S.B. 2, are included in the bill. A different notice is required for each of the following scenarios: (1) the proposed tax rate exceeds the no-new-revenue tax rate and the voter-approval tax rate; (2) the proposed tax rate exceeds the no-new-revenue tax rate but does not exceed the voter-approval tax rate; and (3) the proposed tax rate does not exceed the no-new-revenue tax rate but exceeds the voter-approval tax rate; and (4) in a city with a population of less than 30,000 in which the de minimis tax rate exceeds the voter-approval tax rate, the proposed tax rate exceeds the voter-approval rate. *Id.* §§ 26.06(b-1) – (b-3), 26.063.
- S.B. 2 includes new notice provisions for the meeting to vote on a proposed tax rate that does not exceed the lower of the no-new-revenue tax rate or voter-approval tax rate. (Note: this notice is similar to the notice requirements related to the public hearing on the tax rate, except that no public hearing is required because the proposed rate doesn't exceed the lower of the no-new-revenue rate or voter-approval rate.) *Id.* § 26.061.
- S.B. 2 also requires a table to be included at the end of the notice of the hearing on the tax rate or meeting to adopt the tax rate, as applicable, that compares the taxes imposed on the average residence homestead in the city last year to the taxes proposed to be imposed on the average residence homestead this year.

How must the tax comparison table be formatted?

In addition to requiring specific language both before and after the table, S.B. 2 requires the table itself to be generally formatted as follows (example for 2021 tax year):

	2020	**2021**	**Change**
Total Tax Rate (per $100 of value)	2020 adopted rate	2021 proposed rate	Statement of nominal and percentage difference
Average Homestead Taxable Value	2020 average taxable value of residence homestead	2021 average taxable value of residence homestead	Statement of percentage difference
Tax on Average Homestead	2020 Amount of taxes on average homestead	2021 amount of taxes on average homestead	Statement of nominal and percentage difference
Total tax levy on all properties	2020 Levy	(Proposed rate x current total value)/100	Statement of nominal and percentage difference

See TEX. TAX CODE § 26.062.

Are low-tax-levy cities exempt from the new notice requirements?

Mostly, yes. Just like the law prior to S.B. 2, cities with low tax levies have a simplified tax rate notice and are exempt from the other notice requirements in the Tax Code. A "low tax levy" city is one that levies under $500,000 in total property taxes and has a tax rate under $.50 per $100 of valuation. *See* TEX. TAX CODE § 26.052(a). Under S.B. 2, any such city is exempt from both the requirement to post tax rate and debt notice on the city's website under Tax Code Sec. 26.04(e), and the new notices of the tax rate hearing or meeting to adopt the tax rate in Tax Code Secs. 26.06 and 26.063.

A low-tax levy city must, however, provide notice of the meeting to vote on a proposed tax rate that does not exceed the lower of the no-new-revenue or voter-approval tax rate pursuant to Tax Code Sec. 26.061. The notice may be delivered by mail or published in the newspaper. *See Id.* §§ 26.061(d) and 26.06(c). If the notice is published in the newspaper, the city must also post the notice prominently on the home page of the city's website from the date the notice is first published until the meeting is concluded. *Id.* § 26.06(c).

If a low-tax-levy city publishes in the newspaper simplified notice as authorized under Tax Code Sec. 26.052(e), the city must also provide public notice of its proposed tax rate by posting the simplified notice prominently on the city's website. *Id.* § 26.052(f).

Does a city need to use a specific form to calculate its tax rate?

Yes. The comptroller is required to create tax rate calculation forms to be used by cities and other taxing units when calculating their property tax rates. TEX. TAX CODE § 5.07(f). The forms are required to be in an electronic format and have blanks that can be filled in electronically. *Id.* § 5.07(g). Further, the forms must be capable of being certified by the designated officer or

employee of a city after completion as accurately calculating the applicable tax rates and using values that are the same as the values shown in either the city's certified appraisal roll or the certified estimate of taxable value. *Id.* The forms also must be capable of being electronically incorporated into the property tax database maintained by each appraisal district (discussed in greater detail below) and electronically submitted to the county assessor-collector. *Id.*

The designated officer or employee of the city is required to use the tax rate calculation forms prescribed by the comptroller to calculate the no-new-revenue tax rate and the voter-approval tax rate. *Id.* § 26.04(d-1). The designated officer or employee of the city may not submit the no-new-revenue tax rate and the voter-approval tax rate to the city council, and the city council may not adopt a tax rate, until the designated officer or employee certifies on the tax rate calculation forms that he or she has accurately calculated the tax rates and has used values that are the same as the values show in the city's certified appraisal roll in performing the calculations. *Id.* § 26.04(d-2).

As soon as practicable after the designated officer or employee calculates the no-new-revenue and voter-approval tax rates, he or she must electronically submit the tax rate calculation forms used in calculating the rates to the county assessor-collector for each county in which the city is located, and the assessor-collector must post the forms on the county's website. *Id.* §§ 26.04(d-3), 26.16(d-1).

The city council must include as an appendix to the city's budget for a fiscal year the tax rate calculation forms used by the designated officer or employee of the city to calculate the no-new-revenue tax rate and the voter-approval tax rate of the city for the tax year in which the fiscal year begins. *Id.* § 26.04(e-5).

Is a city still required to hold two public hearings on the tax rate if the rate exceeds the no-new-revenue rate?

No. Before S.B. 2, when a city proposed a tax rate that exceeded the lower of the effective tax rate or the rollback rate, the city was required to hold two public hearings prior to adopting the tax rate. Due to the compressed timeframe for adopting a tax rate that exceeds the voter-approval rate, the drafters of S.B. 2 eliminated one of the existing tax rate hearings. Under S.B. 2, a city that adopts a rate exceeding the lower of the no-new-revenue tax rate or the voter-approval tax rate must only hold one public hearing. *See* TEX. TAX CODE § 26.05(d).

The lone public hearing under the new law may not be held before the fifth day after the date the notice of the public hearing is given. *See Id.* § 26.06(a). The city council also may not hold its public hearing or public meeting to adopt a tax rate until the fifth day after the date the chief appraiser of each appraisal district in which the city participates has delivered its tax estimate notice under Tax Code Sec. 26.04(e-2) and made various tax rate information and the tax rate calculation forms available on to the public via the property tax database under Tax Code Sec. 26.17(f) (discussed in greater detail below). *Id.* § 26.05(d-1). In fact, the city council is prohibited from adopting a tax rate until the chief appraiser has given notice and updated the property tax database. *Id.* § 26.05(d-2).

May the city council vote to approve the tax rate at the public hearing on the tax rate?

Yes. As opposed to prior law, which required a city to space out its two public hearings as well as the meeting to adopt the tax rate, the law as amended by S.B. 2 expressly authorizes the city council to vote on the proposed tax rate at the public hearing. *See* TEX. TAX CODE § 26.06(d). Again, this change reflects the reality that if a city council must adopt a tax rate that exceeds the voter-approval tax rate, it must act quickly to do so.

What is the property tax database?

S.B. 2 requires the chief appraiser of each appraisal district to create and maintain a property tax database that: (1) contains information that is provided by taxing units located in the appraisal district; (2) is continuously updated as preliminary and revised data becomes available and is provided by the designated officers or employees of taxing units; (3) is accessible to the public; and (4) is searchable by property address and owner. TEX. TAX CODE § 26.17(a).

The property tax database is required to include various types of information with respect to each property listed on the appraisal roll for the appraisal district. A city's designated officer or employee is required to electronically incorporate the following information into the database as the information becomes available:

1. the no-new-revenue tax rate and the voter-approval tax rate;
2. the proposed tax rate;
3. the date, time, and location of the public hearing, if applicable, on the proposed tax rate;
4. the date, time, and location of the public meeting, if applicable, at which the tax rate will be adopted; and
5. the tax rate calculation forms.

Id. § 26.17(e).

In 2021, the Texas Legislature passed H.B. 2723, which requires the Texas Department of Information Resources to develop and maintain an easily accessible Internet website that lists each property tax database and includes a method to assist a property owner in identifying the appropriate property tax database for the owner's property.

Additionally, the bill requires certain existing property tax rate notices to contain a statement encouraging taxpayers to visit a website collecting property tax database information to read as follows: "Visit Texas.gov/PropertyTaxes to find a link to your local property tax database on which you can easily access information regarding your property taxes, including information about proposed tax rates and scheduled public hearings of each entity that taxes your property." The changes made by H.B. 2723 apply only to a notice required to be delivered for a property tax year beginning on or after January 1, 2022.

Does S.B. 2 require a city to create a website?

Not quite. S.B. 2 requires every taxing unit to either maintain an internet website or have access to a generally accessible Internet website that may be used for the purposes of posting tax rate and budget information. TEX. TAX CODE § 26.18. A "taxing unit" means any city "that is authorized to impose and is imposing ad valorem taxes on property… ." TEX. TAX CODE § 1.04(12). Thus, any city that has adopted a property tax rate must comply with the website requirements in S.B. 2.

The term "generally accessible Internet website" is not defined in the bill, but presumably refers to Facebook or some other website that is widely accessible and on which the city can post its information.

What is a city required to post on its website under S.B. 2?

The information required to be posted on a city's website, or generally accessible Internet website, includes:

1. The name of each member of the city council;
2. The mailing address, email address, and telephone number of the city;
3. The official contact information for each member of the city council;
4. The city's budget for the previous two years;
5. The city's proposed or adopted budget for the current year;
6. The change in the amount of the city's budget from the preceding year to the current year, by dollar amount and percentage;
7. The amount of property tax revenue budgeted for maintenance and operations for the current year and previous two years;
8. The tax rate for maintenance and operations adopted by the city for the current year and previous two years;
9. The tax rate for debt service adopted by the city for the current year and previous two years; and
10. The most recent financial audit of the city.

TEX. TAX CODE § 26.18.

What are the legal ramifications for a city that doesn't comply with all of the new legal requirements in S.B. 2?

Just like the law prior to the passage of S.B. 2, a person owning taxable property in the city is entitled to an injunction either preventing the adoption of a tax rate or restraining the collection of taxes by the city if the city or designated officer or employee of the city, as applicable, has not complied with procedural certain requirements in the Tax Code. *See* TEX. TAX CODE §§ 26.04(g)

and 26.05(e). In either scenario, the city has an affirmative defense in an action for an injunction that the failure to comply with the procedural requirements was in good faith. *Id.*