



TEXAS MUNICIPAL LEAGUE

Empowering Texas cities to serve their citizens

President **Karen Hunt**, Mayor, Coppell
Executive Director **Bennett Sandlin**

November 13, 2020

The Honorable Dustin Burrows
Chairman, House Committee on Ways and Means
Texas House of Representatives
P.O. Box 2910
Austin, TX 78768-2910
Via E-Mail: Dustin.Burrows@House.Texas.Gov

Re: Texas Municipal League Comments on Ways and Means Interim Charges No. 1.1: *Charge 1.1: Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following: SB 2, which is the Texas Property Tax Reform and Transparency Act of 2019. Monitor the implementation of the legislation, including a review of the tax rates adopted by taxing units in 2019 and 2020, the appraisal review board survey system, and progress in onboarding the tax rate notices and websites. Make recommendations for modifications as necessary and appropriate.*

Dear Chairman Burrows:

The Texas Municipal League (TML) is a non-profit association of 1,158 incorporated cities. TML provides legislative, legal, and educational services to its members. Thank you for the opportunity to provide written comments on the above-mentioned interim charge during the Coronavirus pandemic. Please accept our input on Charge 1.1.

Senate Bill 2 represented a major rewrite of laws governing not just property tax rate calculation, but also the tax rate setting process. There's been a steep learning curve for city officials on S.B. 2, but cities have risen to the occasion, especially considering the added significance of property taxes during the COVID-19 pandemic. TML has published [explanatory information](#) on S.B. 2, hosted and participated in dozens of presentations on the topic, and answered quite literally hundreds of phone calls on S.B. 2 over the past year and half. We stand ready to assist the committee on any further changes that might make the tax rate setting process more transparent and efficient for cities and taxpayers alike. We also ask that any potential changes acknowledge the underlying reality that local elected officials are in the best possible position to make important budgetary and tax rate decisions for those they represent.

2020 City Tax Rates

To assist the committee's review of tax rates adopted by cities in 2020, TML recently conducted an informal survey of our membership on where their adopted tax rates fell in relationship to the no-new-revenue rate, voter-approval rate, and voter-approval rate calculated as if the city were a special taxing unit (which is relevant to most cities under 30,000 population and potentially to cities covered by a disaster declaration). It is our hope that our survey data can supplement or contextualize the comptroller's tax rate report that is required to be published by January 1.

The League [received responses from 344 cities](#) on our survey question asking cities to select a position that best describes their adopted tax rate. Our survey question and responses were as follows:

The city's adopted tax rate for tax year 2020 was:

1. Less than or equal to the city's no new revenue rate – 51.2% (176 cities)
2. Higher than the no-new-revenue rate, but less than or equal to the 3.5% voter approval rate – 40.4% (139 cities)
3. Higher than the 3.5% voter-approval rate, but less than the equivalent of an 8% voter approval rate – 4.9% (17 cities)
4. Equal to or greater than the equivalent of an 8% voter-approval rate – 3.5% (12 cities)

The survey data shows that the vast majority of Texas cities, 92 percent, did not adopt a tax rate higher than the 3.5 percent voter-approval tax rate. In fact, a majority of cities did not increase their rates beyond the no-new-revenue tax rate, meaning that those cities generally did not bring in any additional property tax revenue in 2020 as compared to 2019 for the same properties taxed in both years.

Of those cities that selected options 3 or 4 above, it is worth keeping in mind that under S.B. 2 most cities under 30,000 are granted the legal flexibility to adopt a rate exceeding the 3.5 percent voter-approval rate, with an automatic election only occurring if the city exceeds the “de minimis tax rate.” And although our lone survey question doesn't capture this data, any city under 30,000 selecting option 4 and adopting a tax rate exceeding the voter-approval rate calculated as if the city were a special taxing unit (8 percent), but less than the de minimis tax rate, would be subject to a petition for an election on the adopted tax rate.

Also worth mentioning here is the S.B. 2 provision, codified in Tax Code Sec. 26.04(c-1), providing that the governing body of a taxing unit may direct its designated officer or employee to calculate the voter-approval tax rate in the manner provided for a special taxing unit (an 8 percent rate, instead of a 3.5 percent rate) 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. Due to both the statewide and nationwide disaster proclamations resulting from the COVID-19 pandemic, many cities, upon advice of local counsel, opted into the higher voter-approval rate calculation. Even if a city opted into the higher voter-approval rate calculation, nothing required the city to ultimately adopt a rate equal to the higher calculation.

Why might a city use a higher multiplier for the voter-approval rate calculation but not ultimately adopt a higher tax rate? Anecdotally, the League heard from a number of cities that wished to use the higher voter-approval rate calculation simply to buy a bit of extra time to consider their budgets and tax rate options. Due to the pandemic's impact on property tax appeals, many cities received their certified rolls late and had to rely on estimates to calculate their tax rates. By opting into a higher voter-approval rate calculation, some cities were able to delay their tax rate and budget adoption long enough to get firmer appraised value numbers from their appraisal districts. This allowed cities to ensure their tax rates matched revenue projections in their budget. Further, it allowed many cities to adopt lower tax rates if appraised values ticked upwards once the appraisal roll was certified. In other words, the flexibility seemingly afforded to taxing units during a disaster under Sec. 26.04(c-1), whether intentional or not, was instrumental for cities to get a clearer picture of property values so many cities could adopt *lower* tax rates than those indicated by early estimates of property values.

Indeed, the survey data shows that regardless of whether a city opted into the disaster calculation of the voter-approval rate under Sec. 26.04(c-1), few cities adopted rates exceeding the lower, default voter-approval rate of 3.5 percent.

A Tax Rate Notice Discrepancy

One primary component of S.B. 2 that received strong support from city officials relates to increased transparency in the tax rate setting process. City officials have long sought local and state-level reforms that bolster public participation in city government, and that includes receiving public input on the property tax rate and budget adoption processes. S.B. 2 provided a number of reforms on this front – from requiring additional information on city websites, to creation of a property tax database, to increased financial transparency in statutorily-required notices, among others.

During the 2020 tax rate setting process, many smaller cities learned of an apparent drafting error in S.B. 2 that required those cities to announce in the statutorily-required notice that citizens may petition for a tax rate election, or that a city may be required to hold an automatic tax rate election, even though the city was not actually subject to either requirement under the bill.

Under S.B. 2, a city under 30,000 generally may be required to hold an election on its tax rate in only one of two circumstances:

- **Automatic Election:** A city under 30,000 population is granted the flexibility to calculate a “*de minimis rate*,” which is essentially a rate that will generate an additional \$500,000 in property tax revenue. If a city’s calculated *de minimis* rate exceeds the city’s voter approval rate, the city must hold a November “rollback” election on the tax rate if the city adopts a tax rate exceeding the *de minimis* rate.
- **Election Pursuant to Petition:** Pursuant to Tax Code Sec. 26.075, a city under 30,000 population (assuming again that the *de minimis* rate exceeds the voter-approval rate) is subject to a petition for an election to be held on the May uniform election date if it adopts a tax rate exceeding the greater of: (1) the voter-approval tax rate (3.5 percent multiplier);

or (2) the voter-approval tax rate calculated as if the city were a special taxing unit (8 percent multiplier).

The misleading notice is required when a city under 30,000 population, in which the *de minimis* tax rate exceeds the voter-approval tax rate, proposes to adopt a tax rate that:

- (1) is less than the *de minimis* rate;
- (2) higher than the voter-approval tax rate (3.5 percent multiplier); and
- (3) equal to or lower than the voter-approval tax rate calculated as if the city were a special taxing unit (eight percent multiplier).

For a small city with a proposed tax rate in the range described above, no tax rate election is required. Additionally, the voters do not have the ability to petition for an election on the tax rate. But even though no election is required, the city must provide notice of its tax rate hearing using the exact language provided by Tax Code Sec. 26.06(b-1) or (b-3). The required language states that – because the proposed tax rate exceeds the voter-approval rate – an election is required. That’s not accurate.

Small cities that were forced to publish a misleading notice during the 2020 tax rate setting process due to the discrepancy listed above were put in a tough position. Many opted to include some addendum language to the notice stating that—in spite of the statutorily-required language—an election was not actually required. But this understandably could be confusing to the taxpaying residents of the city. In the interest of full transparency, we ask that the committee recommend the passage of new notice language that accurately reflects the position of some of these smaller cities, and the rights of the taxpaying citizens that reside in those cities.

Tax Rate Calculation Issue

Property taxes aren’t especially popular, either in Texas or elsewhere. A majority of Texans believe their property taxes are too high.¹

Despite public opinion on property taxes, one thing can be said for them. Unlike some forms of taxation, property taxes generally represent a predictable source of revenue for governmental entities. As we enter month nine of dealing with the COVID-19 pandemic, and the resulting impacts to businesses across the state, many city governments must come to terms with significant losses to other sources of revenue – namely sales taxes and hotel occupancy taxes, among others. At a minimum, the property tax system in Texas affords a level of revenue stability from year to year that other revenue streams do not, which in turn allows city leaders to better plan city budgets in advance.

The predictable nature of property tax revenue was hindered by one little-discussed provision of S.B. 2 in 2019. The Conference Committee Report for S.B. 2 contained a previously unseen modification to the definition of “last year’s levy” for tax rate setting purposes, which was included in the version that was signed into law.

¹ <https://www.texastribune.org/2020/02/17/most-texans-want-lower-property-taxes-and-more-school-spending-poll-fi/>.

The new definition of “last year’s levy” in Tax Code Sec. 26.012(13) now requires the inclusion of “the portion of taxable value of property that is the subject of an appeal under Chapter 42 on July 25 that is not in dispute.” The ultimate impact of this modification is that the comptroller’s tax rate worksheet requires an appraisal district to *exclude* from the definition of “last year’s levy” the *disputed* property value being appealed under Chapter 42 of the Tax Code. This is in spite of the fact that the same definition of “last year’s levy” expressly includes “taxable value that was reduced in an appeal under Chapter 42.” In other words, get credited back value lost as a result of a *concluded* Chapter 42 appeals process, but disputed value in a Chapter 42 appeal that has not been concluded on July 25 is permanently excluded.

Of primary importance to Texas cities, the new language doesn’t account for the fact that there’s no uniform way for a chief appraiser to determine the disputed amount remaining under protest for each city. This reality was made clear during the 2020 tax rate setting process, when this new provision was very inconsistently applied across the state. Consequently, cities and other taxing units have lost a level of predictability in their baseline property tax revenues, both from year to year, and county to county (for those cities with jurisdiction in multiple counties). To ensure some stability in the process, we hope this committee will revisit this late addition to S.B. 2 during the 87th Legislative Session.

Prayer

TML respectfully requests that your office consider these comments when issuing your interim report.

Please contact me if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Monty Wynn". The signature is stylized and cursive.

Monty Wynn
Director, Grassroots and Legislative Services
Texas Municipal League
1821 Rutherford Lane, Suite 400
Austin, Texas 78754
512-231-7400
monty@tml.org