

**SUBJECT:** Limiting disasters in which property tax may be raised without election

**COMMITTEE:** Ways and Means — favorable, without amendment

**VOTE:** 7 ayes — Meyer, Thierry, Button, Murphy, Noble, Sanford, Shine

2 nays — Cole, Rodriguez

2 absent — Guerra, Martinez Fischer

**WITNESSES:** For — Vance Ginn, Texas Public Policy Foundation; (*Registered, but did not testify:* Justin Keener, Americans for Prosperity and Libre Initiative; Dale Craymer, Texas Taxpayers and Research Association)

Against — (*Registered, but did not testify:* David Anderson, Arlington ISD Board of Trustees; Melissa Shannon, Bexar County Commissioners Court; Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; Daniel Collins, El Paso County; Thamara Narvaez, Harris County Commissioners Court; Colby Nichols, Leander Independent School District; Amanda Brownson, Texas Association of School Business Officials and Texas School Alliance; Louann Martinez, Texas Urban Council of Superintendents; Julie Wheeler, Travis County Commissioners Court; Heather Sheffield)

On — Sally Bakko, City of Galveston; (*Registered, but did not testify:* Korry Castillo, Comptroller of Public Accounts; Russell Schaffner, Tarrant County; Christy Rome, Texas School Coalition)

**BACKGROUND:** Tax Code ch. 26 governs how local taxing units may propose and adopt property tax rates. Generally, a proposed rate must be approved by election if a taxing unit adopts a rate exceeding the voter-approval rate. The voter-approval rate for a taxing unit other than a special taxing unit is the rate that would increase property tax revenues by 3.5 percent. The voter approval rate for a special taxing unit is the rate that would increase revenue by 8 percent.

Under sec. 26.04(c-1), a taxing unit other than a special district may calculate the voter-approval tax rate in the manner provided for a special taxing unit if any part of the taxing unit is located in an area declared a disaster area during the current tax year by the governor or president. This calculation continues until the second tax year in which the total taxable value of property exceeded the total value the year the disaster occurred, up to three years.

Secs. 26.07(b) and 26.08(a-1) provide that taxing units and school districts, respectively, are not required to hold an election to approve a tax rate when increased expenditures are necessary to respond to certain disasters, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought. The exception applies to tax rates adopted the year after the disaster. If a school district adopted a rate under this section, the amount by which it exceeded the voter-approval rate could not be considered with calculating rates for the following tax year.

**DIGEST:**

HB 3376 would specify that a taxing unit other than a special taxing unit could calculate the voter-approval tax rate in the manner provided for a special taxing unit during a disaster if the disaster caused physical damage to property in the taxing unit. The bill would limit the period of time taxing units would use this calculation to the first tax year in which the total taxable value of property exceeded the total value the year the disaster occurred, up to three years.

The bill would limit the disasters in which a taxing unit or school district could adopt a tax rate without holding an election. Such a disaster still would include a tornado, hurricane, flood, wildfire, or other calamity, but not a drought, epidemic, or pandemic. If a taxing unit adopted a tax rate under this provision, the amount by which the rate exceeded the voter-approval tax rate could not be considered when calculating rates for the following tax year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS  
SAY:

HB 3376 would clarify that the property tax disaster exceptions provided to taxing units would apply only during disasters that caused physical property damage and not during a pandemic or epidemic.

Last session, the Legislature enacted property tax reform in SB 2 by Bettencourt, which also created two exceptions allowing taxing units to raise property tax rates during a disaster without triggering an automatic election. The first exception allows certain localities to raise property tax revenue up to 8 percent, instead of 3.5 percent, for up to three years. The second allows localities or school districts to exceed the voter-approval tax rate without holding an election if increased expenditures are needed to respond to a disaster. However, these exceptions were not meant for disasters such as pandemics or epidemics, which do not cause property damage.

Although the Legislature did not intend for the disaster exclusion to apply to pandemics, some localities improperly attempted to use the statute to increase taxes without holding an election during the COVID-19 pandemic. By raising rates, these localities imposed an additional burden on struggling businesses and homeowners, who were already facing an economic downturn.

HB 3376 would limit the disaster exceptions so that taxing units could raise rates without an election only during a disaster that caused physical damage and not during a pandemic or epidemic. This correction would be in line with current law, which excludes droughts. The bill also would limit the amount of time that a taxing unit could raise property tax revenue up to 8 percent to the first year that property values recovered to pre-disaster levels. By limiting the exceptions, the bill would provide that taxing units only claimed the disaster exceptions in situations where it was necessary to fund major repairs and only for a limited time.

HB 3376 would not prohibit a taxing unit from raising tax rates to respond to a disaster but would ensure that if the taxing unit wanted to surpass the voter-approval rate, approval from the voters would be required. Local

elections are the ultimate form of local control and allow the taxpayers to decide whether it is necessary to send more dollars to their local governments.

The disaster exception, as clarified by the bill, should stay in place for the legitimate needs of local governments and school districts facing physical property damage due to a disaster like a hurricane or similar calamity. Such an adjustment provides those taxing units with flexibility to set rates to fund major repairs and fund disaster response.

CRITICS  
SAY:

HB 3376 would limit the ability of local governments to respond to and recover from a disaster by limiting the disaster exceptions for increasing property tax rates without having to hold an election. Disasters, including pandemics like the current COVID-19 pandemic, impose additional costs on taxing units, and localities should not be restricted from calculating their taxing needs according to their own disaster response plans.

The bill could cost millions of dollars for some localities that had already adopted property tax rates at the increased rates, as allowed by current law, decreasing the availability of public services. The bill also could prevent certain school districts from responding to the current or future pandemics in a timely fashion, affecting their ability to get children back in school. While not all localities would need to use the disaster exception, this bill would limit those that had genuine need. These decisions should be made at the local level because communities know their needs best.

By shortening the recalculation of the voter-approval rate to the first year in which property values reached pre-disaster levels, the bill could prevent communities from fully recovering. Rather than limiting this timeframe, the bill should allow localities to claim the disaster exception for up to five years if property values had not recovered to pre-disaster levels. By providing more time, taxing units could raise rates incrementally to slowly recover rather than spiking rates in three years to cover the cost of repairs.

OTHER  
CRITICS

While HB 3376 is a good first step, it could go further by eliminating the disaster exception. Such an exception is unnecessary because if a taxing

**SAY:** unit's property values declined because of damage from a disaster, the taxing unit simply could adjust its tax rate to generate the same amount of revenue as the prior year, or up to 3.5 percent more revenue, without holding an election.

**NOTES:** According to the Legislative Budget Board, the bill's provisions could result in reduced tax revenues for school districts and impact costs to the state through the operation of the school funding formulas.

SB 1438 by Bettencourt, the Senate companion bill, was passed to engrossment by the Senate on April 19.