

## **BILL ANALYSIS**

Senate Research Center

S.B. 1438  
By: Bettencourt  
Finance  
6/3/2021  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

When we passed S.B. 2 last session, there was a specific provision that exempted a drought from being a reason a taxing unit could increase revenue above the 3.5 percent voter-approval rate. The reason behind this is a drought is more of an economic disaster than a disaster that causes physical damage, like a hurricane or tornado or a flood. It had been over 100 years since the last global pandemic until March 2020 and COVID-19. Like a drought, a pandemic is an economic disaster more than a physical disaster. There were multiple jurisdictions that attempted to use the pandemic disaster declaration as a way to increase revenue by up to eight percent. Fortunately, very few followed through with raising property taxes on their citizens in the middle of a pandemic.

S.B. 1438 seeks to clearly codify when the disaster exception would apply and for how long. In addition to the area being declared a disaster, S.B. 1438 adds that the disaster caused physical damage to property located in the taxing unit in order to be able to calculate at the eight percent voter-approval rate. Additionally, S.B. 1438 puts a timeframe on how long a taxing unit may use the higher rate. It is the earlier of the first year in which the total taxable value of property on the appraisal roll exceeds the total taxable value of property on January 1 of the year the disaster occurred or the third tax year after the tax year the disaster occurred in that taxing unit.

S.B. 1438 removes the election requirement for a taxing unit still responding to the disaster the year after the disaster occurred. There is a separate provision for school districts that also removes the election requirement for the year after the disaster occurred if they are still recovering; however, the rate adopted applies only for that year.

S.B. 1438 seeks to add clarity when dealing with different types of disasters.

(Original Author's / Sponsor's Statement of Intent)

S.B. 1438 amends current law relating to the effect of a disaster on the calculation of certain tax rates and the procedure for adoption of a tax rate by a taxing unit.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 45.0032(d), Education Code, as follows:

(d) Provides that for a school district to which Section 26.042(e), rather than Section 26.08(a-1) (relating to the exception that an election is not required to approve certain tax rates to respond to certain disasters), Tax Code, applies, the amount by which the district's maintenance tax rate exceeds the district's voter-approval tax rate, excluding the district's current debt rate under Section 26.08(n)(3) (relating to the district's current debt rate), Tax Code, for the preceding year is not considered in determining a district's tier one maintenance and operations tax rate under Subsection (a) (relating to a tier one

maintenance and operations tax rate) or the district's enrichment tax rate under Subsection (b) (relating to a district's enrichment tax rate) for the current tax year.

SECTION 2. Amends Section 48.202(f), Education Code, as follows:

(f) Prohibits a school district, unless Section 26.042(e), rather than Section 26.08(a-1), Tax Code, applies to the district, for a tax year in which a district must reduce the district's tax rate under this subsection, from increasing the district's maintenance and operations tax rate to a rate that exceeds the maximum maintenance and operations tax rate permitted under Section 45.003(d) or (f) (relating to maximum maintenance and operations tax rates), as applicable, minus the reduction of tax effort required under this subsection.

SECTION 3. Amends Section 3828.157, Special District Local Laws Code, to include Section 26.042, Tax Code, in the list of certain sections that do not apply to a tax imposed under Section 3828.153 (Maintenance and Operation Tax; Election) or 3828.156 (Taxes for Bonds and Other Obligations).

SECTION 4. Amends Section 8876.152(a), Special District Local Laws Code, to include Section 26.042, Tax Code, in the list of certain sections that do not apply to a tax imposed by the Reeves County Groundwater Conservation District.

SECTION 5. Amends Section 11.43(s), Tax Code, to delete existing text requiring a person who qualifies for an exemption under Section 11.35(c) (relating to an exemption from taxation in a taxing unit in which a disaster is declared on or after the date a taxing unit adopts a tax rate for the tax year in which the declaration is issued) to apply for the exemption not later than the 45th day after the date the governing body of the taxing unit adopts the exemption. Makes a conforming change.

SECTION 6. Amends Chapter 26, Tax Code, by adding Section 26.042, as follows:

Sec. 26.042. CALCULATION AND ADOPTION OF CERTAIN TAX RATES IN DISASTER AREA. (a) Authorizes the governing body of a taxing unit other than a school district or a special taxing unit, notwithstanding Sections 26.04 (Submission of Roll to Governing Body; No-New-Revenue and Voter-Approval Tax Rates) and 26.041 (Tax Rate of Unit Imposing Additional Sales and Use Tax), to direct the designated officer or employee to calculate the voter-approval tax rate of the taxing unit 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 by the president of the United States and at least one person is granted an exemption under Section 11.35 (Temporary Exemption for Qualified Property Damaged by Disaster) for property located in the taxing unit. Requires the designated officer or employee to continue calculating the voter-approval tax rate in the manner provided by this subsection until the earlier of:

(1) the first tax year in which the total taxable value of property taxable by the taxing unit as shown on the appraisal roll for the taxing unit submitted by the assessor for the taxing unit to the governing body exceeds the total taxable value of property taxable by the taxing unit on January 1 of the tax year in which the disaster occurred; or

(2) the third tax year after the tax year in which the disaster occurred.

(b) Provides that in the first tax year following the last tax year for which the designated officer or employee calculates a taxing unit's voter-approval tax rate in the manner provided by Subsection (a), the taxing unit's voter-approval tax rate is reduced by the taxing unit's emergency revenue rate. Provides that for purposes of this subsection, a taxing unit's emergency revenue rate means a rate expressed in dollars per \$100 of taxable value calculated according to a certain formula.

(c) Defines "adjusted voter-approval tax rate" for purposes of Subsection (b).

(d) Provides that when increased expenditure of money by a taxing unit other than a school district 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 has impacted the taxing unit and the governor has declared any part of the area in which the taxing unit is located as a disaster area, an election is not required under Section 26.07 to approve the tax rate adopted by the governing body for the year following the year in which the disaster occurs.

(e) Provides that when increased expenditure of money by a school district 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 has impacted the school district and the governor has requested federal disaster assistance for the area in which the school district is located, an election is not required under Section 26.08 (Automatic Election to Approve Tax Rate of School District) to approve the tax rate adopted by the governing body of the school district for the year following the year in which the disaster occurs. Provides that a tax rate adopted under this subsection applies only in the year for which the rate is adopted.

(f) Prohibits the amount by which that rate exceeds the taxing unit's voter-approval tax rate for that tax year, if a taxing unit adopts a tax rate under Subsection (d) or (e), from being considered when calculating the taxing unit's voter-approval tax rate for the tax year following the year in which the taxing unit adopts the rate.

(g) Requires a taxing unit that in a tax year elects to calculate the taxing unit's voter-approval tax rate under Subsection (a) or adopt a tax rate that exceeds the taxing unit's voter-approval tax rate for that tax year without holding an election under Subsection (d) or (e) to specify the disaster declaration that provides the basis for authorizing the taxing unit to calculate or adopt a tax rate under the applicable subsection. Prohibits a taxing unit that in a tax year specifies a disaster declaration as providing the basis for authorizing the taxing unit to calculate or adopt a tax rate under Subsection (a), (d), or (e) from in a subsequent tax year specifying the same disaster declaration as providing the basis for authorizing the taxing unit to calculate or adopt a tax rate under one of those subsections if in an intervening tax year the taxing unit specifies a different disaster declaration as the basis for authorizing the taxing unit to calculate or adopt a tax rate under one of those subsections.

SECTION 7. Amends Section 26.07(b), Tax Code, to make a conforming change.

SECTION 8. Amends Section 49.107(g), Water Code, to include Section 26.042, Tax Code, in the list of certain sections that do not apply to a tax levied and collected under Section 49.107 (Operation and Maintenance Tax) or an ad valorem tax levied and collected for the payment of the interest on and principal of bonds issued by a district.

SECTION 9. Amends Section 49.108(f), Water Code, to include Section 26.042, Tax Code, in the list of certain sections that do not apply to a tax levied and collected for payments made under a contract approved in accordance with Section 49.108 (Contract Elections).

SECTION 10. Repealer: Section 11.35 (c) (relating to an exemption from taxation in a taxing unit in which a disaster is declared on or after the date a taxing unit adopts a tax rate for the tax year in which the declaration is issued), Tax Code.

Repealer: Section 11.35 (d) (relating to requirements for an exemption adopted by the governing body of a taxing unit), Tax Code.

Repealer: Section 11.35 (e) (relating to requiring a taxing unit to notify certain individuals after adopting an exemption from taxation), Tax Code.

Repealer: Section 26.04(c-1) (relating to authorizing a designated officer to calculate the voter-approval tax rate of the taxing unit if any part of the unit is in an area declared a disaster area), Tax Code.

Repealer: Section 26.041(c-1) (relating to authorizing a designated officer to calculate the voter-approval tax rate of the taxing unit if any part of the unit is in an area declared a disaster area), Tax Code.

Repealer: Section 26.08(a-1) (relating to not requiring an election to approve certain tax rates during certain disasters), Tax Code.

SECTION 11. Provides that the changes in law made by this Act to Sections 11.35 and 11.43, Tax Code, apply only to ad valorem taxes imposed for a tax year that begins on or after January 1, 2022.

SECTION 12. Effective date: upon passage or September 1, 2021.