



School District Voter-Approval Tax Rate Elections in 2020

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The 86th Texas Legislature passed House Bill 3 (HB 3) (comprehensive school finance legislation) and Senate Bill 2 (SB 2) (comprehensive property tax legislation), both of which significantly changed the procedures for conducting a *voter-approval tax rate election* (VATRE) (formerly known as a tax ratification election or TRE). This memo outlines those procedures. For more information on adopting the district's budget and tax rate, see TASB Legal Services' [School District Budget and Tax Rate Adoption in 2020](#). For a comprehensive timeline of important dates and deadlines, see TASB Legal Services' [Timeline for Budget/Tax Rate Adoption and Voter-Approval Tax Rate Elections](#).

State Resources: The Texas Comptroller's [Truth-in-Taxation \(TNT\) Website](#) provides information about VATREs, a sample ballot, calculation worksheets, and other helpful resources.¹

The comptroller's [Legal Resources Website](#) includes a Summary of SB 2 Deadlines and *Texas Property Tax Law Changes 2019*.

The Texas Education Agency (TEA) [House Bill 3 Website](#) provides HB 3 resources. TEA issued [correspondence](#) regarding 2020 Tax Rates and a [video](#) on Tax Compression Part 2 in January 2020. In addition, the commissioner of education adopted rules regarding TEA's data collection and calculation of each district's maximum compressed tax rate. 19 Tex. Admin. Code § 61.1000.

Region 13 ESC publishes a [template to estimate state aid](#) that may assist districts in calculating their tax rates. [TASBO's Center for School Finance](#) provides resources for its members.

[HB 3 Efficiency Audit Guidelines](#) are on the Legislative Budget Board (LBB) [Website](#).

New Terminology: Both HB 3 and SB 2 introduced new terminology to the tax rate adoption process:

- The *effective maintenance and operations rate* is now the *no-new-revenue maintenance and operations rate*;
- The *effective tax rate* is now the *no-new-revenue tax rate*;

¹ According to the comptroller's office, truth-in-taxation resources and information are being updated to include legislative changes; users should confirm that any resources or information reflect current law.

- The *rollback tax rate* is now the *voter-approval tax rate (VATR)*;²
- A *tax ratification election* will now be referred to as a *voter-approval tax rate election (VATRE)*;³ and
- Each district will have its own *maximum compressed tax rate (MCR)* determined by TEA. A district's MCR (or tier one tax rate) is the rate for the current tax year per \$100 of taxable property value at which the district must levy a maintenance and operations (M&O) tax to receive its full tier one allotment under the Foundation School Program.⁴

Voter-Approval Tax Rate: A district's VATR is the sum of the following:

- the district's MCR for the current year;
- the greater of
 - the district's enrichment tax rate (tier two pennies) for the preceding year; or
 - \$0.05; and
- the district's current debt rate.

For the 2020 tax year, a district must substitute \$0.04 for \$0.05 in the formula above if the board does not adopt its M&O tax rate **by unanimous vote**.⁵ TASB Legal Services interprets the unanimous vote requirement to apply to the board members present at the meeting to adopt the tax rate.

Tax Swaps Prohibited: A district may not increase its M&O tax rate to create a surplus in M&O revenue for the purpose of paying the district's debt service. If a district approves such a tax swap, a district taxpayer is entitled to an injunction restraining the collection of taxes by the district.⁶

Voter-Approval Tax Rate Election: If a school board adopts a tax rate that exceeds its VATR, it must hold a VATRE for the voters of the district to approve that rate.

Exceptions: In some circumstances, a higher tax rate may be adopted without conducting a VATRE:

- **Disaster:** When increased expenditures are necessary to respond to a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not drought, that has impacted a district and the governor has requested federal disaster assistance for the area in which the district is located, a VATRE is not required to approve the tax rate adopted by the board **for the year following the year in which the disaster occurs**. A tax

² Tex. Tax Code § 1.045(3).

³ Tex. Tax. Code § 26.08. See Voter-Approval Tax Rate Election Ballot for School Districts on the comptroller's TNT Website at *Rollback Elections* under *School Districts*.

⁴ Tex. Educ. Code § 48.2551.

⁵ Tex. Tax Code § 26.08(n), (n-1).

⁶ Tex. Educ. Code § 45.0021.

rate adopted under this exception applies only in the year for which it is adopted. If a district adopts a rate under this exception, the amount by which that rate exceeds the district's VATR for that tax year may not be considered when calculating the district's VATR for the next tax year.⁷

- **Pollution Control Equipment:** Some districts may be eligible for a higher VATR due to pollution control efforts as determined by the Texas Commission on Environmental Quality (TCEQ).⁸

Efficiency Audit: Unless the disaster exception discussed below applies, the board must conduct an efficiency audit before holding a VATRE. An efficiency audit is an investigation of the operations of the district to examine fiscal management, efficiency, and utilization of resources. A district must pay the costs associated with an efficiency audit. The LBB has established mandatory guidelines identifying the scope and areas of investigation of an efficiency audit. According to the guidelines, the purpose of the efficiency audit is to provide information to voters regarding a school district's fiscal management, efficiency, and utilization of resources before a VATRE.

Disaster Exception: The board of a district located in an area declared a disaster area by the governor may hold a VATRE during the two-year period following the date of the declaration without conducting an efficiency audit. On March 13, 2020, Governor Greg Abbott [declared](#) a state of disaster for all counties in Texas as a result of the coronavirus (COVID-19) pandemic. Thus, during the two-year period following the March 13, 2020 disaster declaration, districts are not required to conduct an efficiency audit prior to conducting a VATRE.

Audit Deadlines:

- **Four months before VATRE—Select Auditor:** The board must select an auditor to conduct an efficiency audit not later than four months before the date on which the district proposes to hold a VATRE. The board may select the auditor that conducts the district's annual audit to conduct the efficiency audit and may include the efficiency audit as part of the district's annual audit. The auditor must follow the LBB guidelines.
- **Three months after auditor selection—Complete Audit:** An auditor must maintain independence from the district and complete the efficiency audit not later than three months after the date the auditor was selected. A district must provide all documents, records, and personnel requested by the auditor as needed to conduct the audit in an efficient manner.
- **Thirty days before VATRE—Post Results and Conduct Meeting:** Not later than 30 days before the date of the VATRE, the results of an efficiency audit must be posted on the district's website. Before the VATRE, the board must hold an open meeting to discuss the results of the efficiency audit.

⁷ Tex. Tax Code § 26.08(a-1).

⁸ Tex. Tax Code § 26.045.

Uniform Election Date: A VATRE must be held on a uniform election date.⁹ The deadline to order an election on a uniform election date is not later than the 78th day before election day.¹⁰ The uniform election date is Tuesday, November 3, 2020. A VATRE on this date must be ordered no later than Monday, August 17, 2020. The board must adopt the budget and tax rate before ordering a VATRE.

All other deadlines and requirements of the Texas Election Code apply to a VATRE. For each uniform election date, the Secretary of State Elections Division publishes on its website a comprehensive Election Law Calendar with all relevant dates and requirements. Likewise, TASB Legal Services publishes a memo of the deadlines relevant to school district elections.

Joint Election Not Generally Required: VATREs are not required to be held jointly with other political subdivisions unless the district holds its VATRE at the same time as its trustee election. In that case, the VATRE will be subject to the same joint election requirements as the trustee election.¹¹

Campaign Speech Reminder: Public funds may not be used for political advertising or electioneering to support a VATRE. School districts are permitted, however, to disseminate purely factual information about a VATRE, including specific information about the election (date, polling sites, etc.), as long as there is no advocacy in any materials. For more information, see TASB Legal Services' [Campaign Speech During Elections](#) and the Texas Ethics Commission's [A Short Guide to the Prohibition against Using School District Resources for Political Advertising in Connection with an Election](#) (revised Oct. 13, 2017).

Ballot Language: The VATRE ballot must permit voting for or against the proposition:

Ratifying the ad valorem tax rate of ____ (insert adopted tax rate) in (name of school district) for the current year, a rate that will result in an increase of _____ (insert percentage increase in maintenance and operations tax revenue under the adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year) percent in maintenance and operations tax revenue for the district for the current year as compared to the preceding year, which is an additional \$____ (insert dollar amount of increase in maintenance and operations tax revenue under the adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year).¹²

⁹ Tex. Tax Code § 26.08(b).

¹⁰ Tex. Elec. Code § 3.005(c). Texas Election Code section 3.005(d) still allows an election to approve a tax rate adopted under the *early adoption method* to be ordered not later than the 30th day before election day. Although that method remains a legal option, changes to the tax rate calculation process and the requirement to conduct a VATRE on a uniform election date make it an impractical, if not impossible, option. Likewise, while the May uniform election date is a legal option, the other deadlines and legal requirements a district must satisfy to adopt its tax rate and conduct a VATRE make it infeasible.

¹¹ Tex. Educ. Code § 11.0581.

¹² Tex. Tax Code § 26.08(b).

A sample ballot can be found on the Comptroller's TNT Website in the *Rollback Elections* section under *School Districts*.

Election Outcome: If a majority of the votes cast in a VATRE favor the proposition to approve the rate, the tax rate for the current year is the rate adopted by the board. If the proposition is not approved, the board may not adopt a rate that exceeds the district's VATR.¹³

Final Tax Roll: On receipt of notice of the tax rate for the current year, the assessor will calculate the tax imposed on each property on the district's appraisal roll, enter the amount of tax in the appraisal roll, and submit it to the board for approval. This appraisal roll approved by the board constitutes the district's tax roll.¹⁴

Tax Information to County Assessor-Collector: A district must provide to each county in which it is located, the district's adopted tax rate, M&O rate, the debt rate, no-new-revenue tax rate, no-new-revenue M&O rate, and VATR. The county assessor-collector must post the information on the county's website in a *Truth in Taxation* Summary table, which will include definitions of the various taxes.¹⁵

Tax Rate and Budget Information on the District Website: Each district must maintain a website or have access to a generally accessible website on which the district must post the following information in the format prescribed by the comptroller:

- the name of each board member;
- the mailing address, e-mail address, and telephone number of the district;
- the official contact information for each board member, if that information is different from the information described above;
- the district's budget for the preceding two years;
- the district's proposed or adopted budget for the current year;
- the change in the amount of the district's budget from the preceding year to the current year, by dollar amount and percentage;
- the M&O tax rate adopted by the district for the preceding two years;
- the I&S tax rate adopted by the district for the preceding two years;
- the M&O tax rate proposed by the district for the current year;
- the I&S tax rate proposed by the district for the current year; and
- the most recent financial audit of the district.¹⁶

¹³ Tex. Tax Code § 26.08(c)-(d).

¹⁴ Tex. Tax Code § 26.09.

¹⁵ Tex. Tax Code § 26.16.

¹⁶ Tex. Tax Code § 26.18. School districts located wholly or primarily in an appraisal district established in a county with a population of 200,000 or more must comply with this beginning with the 2020 tax year; school

Much of this information also must be posted under other laws. A district should consider whether duplicate postings of particular information are necessary to comply with all applicable statutes.

For additional questions concerning VATREs, please contact TEA, the Texas Comptroller, the Secretary of State Elections Division, your district's attorney, or TASB Legal Services at 800.580.5345.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-esource/business/documents/school-district-voter-approval-tax-rate-elections.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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districts located wholly or primarily in an appraisal district established in a county with a population of less than 200,000 must comply with this beginning with the 2021 tax year.