



# HIDDEN FROM PUBLIC VIEW: Increasing the Transparency of the Chapters 312 and 313 Tax Abatement Process

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## Key Points

- Chapters 312 and 313 are used by renewable energy developers in concert with state and federal subsidies to turn a profit on what would otherwise be an unprofitable, inefficient investment.
- Stopping the Chapter 312 process in cities, counties, and special purpose districts can be very difficult—unnecessarily so—as they take place behind closed doors.
- There is a clear need in Texas to increase the transparency of the approval process for Chapters 312 and 313 property tax abatements.

Property tax abatements under Chapters 312 and 313 of the Texas Tax Code allow counties, cities, school districts, and special purpose districts to reduce the amount of taxes paid by favored businesses that locate or expand within their geographic boundaries. They are often used by renewable energy developers in concert with state and federal subsidies to turn a profit on what would otherwise be an unprofitable investment in highly inefficient renewable energy.

## Hidden from Public View

Exemptions from Texas' Open Meetings and Public Information Acts mean that negotiations over property tax abatements between the taxing entities and private businesses usually take place behind closed doors:

### **Texas Open Meetings Act Exemption in the Texas Government Code**

*Sec 551.087. Deliberation Regarding Economic Development Negotiations. This chapter does not require a governmental body to conduct an open meeting:*

1. *to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or*
2. *to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1) ([Office of the Attorney General of Texas 2018a, 54](#)).*

### **Texas Public Information Act Exemption in the Texas Government Code**

*Section 552.131. Exception: Confidentiality of Certain Economic Development*

*Information. (a) Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:*

1. *a trade secret of the business prospect; or*
2. *commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.*

- a. *Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from the requirements of Section 552.021.*
- b. *After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:*
  - (1.) *by the governmental body; or*
  - (2.) *by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source ([Office of the Attorney General of Texas 2018b, 145](#)).*

These exemptions mean that most public input into the process will take place *after* the governing bodies have negotiated with the business seeking the abatement for months and essentially decided to move forward with the abatement. That doesn't mean, though, that citizens can't try to stop and reverse an abatement once they have belatedly learned of it.

### The 312 and 313 Approval Process

However, stopping the Chapter 312 process in cities,

counties, and special purpose districts is very difficult. Citizens usually receive only a 72-hour notice for the city council, commissioners court, or governing board meeting where the tax abatement agreement and the related tax reinvestment zone creation are presented. Public hearings are required, but the short notice makes it difficult for citizens to have meaningful input. The governing board can approve the abatement and, if needed, the reinvestment zone, at this initial—and only—public meeting.

The Chapter 313 process provides more possibility of public input. Even though only a 72-hour notice is required for the public hearing where a school board “considers” a 313 application, the review requirement by Texas Comptroller’s office provides an additional 150 days (it can be a bit less or much longer) for the public to engage and convince the school board to rescind its “consideration” of the 313 application or to not approve the final 313 abatement agreement.

Once a school board has affirmatively voted to consider a 313 application, the school district submits the application (usually through an outside consultant) to the Texas Comptroller. Shortly after receiving it, the Comptroller posts the application in its online database containing all relevant information received on 313 applications. When the Comptroller deems the application to be complete, this triggers a 90-day period of review for state administrators to ensure it meets certain statutory requirements.

**Table 2** shows 313 applications currently with the Comptroller’s office that have not yet been certified. The Application Review Start Date (ARSD) that triggers the 90-day

**Table 1.** Recent 313 applications on the Comptroller’s website.

School District	App. No.	Applying Entity	Application Date	First Full Tax Year	Phase
Crockett County CCSD	1284	White Mesa Wind, LLC	08/22/2018	2020	Application
Barbers Hill ISD	1282	Oneok Hydrocarbon, LLC	8/20/2018	2021	Application
Childress ISD	1280	Excel Advantage Services, LLC	08/13/2018	2021	Application
Blooming Grove ISD	1279	Clean Vision Solar, LLC	08/08/2018	2020	Application
Wink-Loving ISD	1278	Enterprise Products Operating, LLC	08/07/2018	2021	Application
Eden CISD	1277	Maverick Creek Wind, LLC	07/31/2018	2021	Application
Ector ISD	1276	Oberon Solar, LLC	07/30/18	2020	Application
Barbers Hill ISD	1272	Enterprise Products Operating, LLC	7/9/2018	2021	Application
Benjamin ISD	1274	TG East Wind Project, LLC	7/9/2018	2020	Application

Source: [Texas Comptroller of Public Accounts](#)

review is listed for all applications that have been deemed to be administratively complete. The next column shows the date 90 days after the ARSD. The review period can be extended if both parties agree. Applications for projects that do not have an ARSD have been submitted but not yet deemed complete.

After the agreement has been certified by the Comptroller, the school district works with the developer to prepare a final agreement. When completed, this agreement is sent to the Comptroller for review and approval. If the district has not created a tax reinvestment zone, they must do so before the agreement can be approved.

Upon approval of the agreement (with adjustments required by the Comptroller to ensure statutory compliance), the school board can vote to execute the agreement and provide the tax abatement at a public meeting. This means that at least 150 days must pass from the time that a school board votes to “consider” a 313 application to when a school can approve a 313 agreement. The timeline could potentially be a bit shorter if the Comptroller finishes a review early, but most projects will take 150 days or longer.

## Conclusion

There is a clear need in Texas to increase the transparency of the approval process for Chapters 312 and 313 property tax abatements. The most significant change that could be made would be to extend the period of time that the public is aware that the process is underway. This need not increase the length of the overall process; as we’ve seen in the process involving Amazon’s search for subsidies and abatements regarding its second headquarters, the negotiations often take months. But unlike in the Amazon case, the public generally is not even aware negotiations are taking place. The public should be notified at the start that negotiations are beginning and should have at least 30 days to examine any proposed agreement before local governing bodies can vote to approve an application or (in the case of 313 abatements) consider an application. Also, the timeline of the 312 process should be closer to that of the 313 process. ★

**Table 2.** Current 313 applications for renewable projects that are not yet certified.

School District	Project	County	ARSD	End Review
Blooming Grove ISD	Clean Vision Solar, LLC	Navarro		
Eden CISD	Maverick Creek Wind, LLC	Concho		
Ector ISD	Oberon Solar, LLC	Fannin		
Benjamin ISD	TG East Wind Project, LLC	Knox		
Edinburg CISD	Monte Cristo Windpower, LLC	Hidalgo	8/30/2018	11/28/2018
Edinburg CISD	Buenos Aires Windpower, LLC	Hidalgo	8/30/2018	11/28/2018
Rio Grande City CISD	Mesteno Windpower, LLC	Starr	8/24/2018	11/22/2018
Elgin ISD	East Blackland Solar Project 1	Bastrop	8/24/2018	11/22/2018
Zapata CISD	Reloj del Sol Wind Farm, LLC	Zapata	8/23/2018	11/21/2018
Benavides ISD	Torrecillas Wind Energy, LLC	Duval	8/21/2018	11/19/2018
Anson ISD	Anson Solar Center 3, LLC	Jones	8/14/2018	11/12/2018
Anson ISD	Anson Solar Center 2, LLC	Jones	8/14/2018	11/12/2018
Anson ISD	Anson Solar Center, LLC	Jones	8/14/2018	11/12/2018
Ira ISD	Canyon Wind Project, LLC	Scurry	6/28/2018	9/26/2018
Grape Creek ISD	EC&R Solar Development, LLC	Tom Green	6/27/2018	9/25/2018
Vernon ISD	Lockett Wind Farm, LLC	Wilbarger	6/11/2018	9/9/2018
Crockett County CCSD	High Lonesome Wind	Crockett	5/04/2018	8/2/2018
Rankin ISD	High Lonesome Wind Power	Upton	5/04/2018	8/2/2018

Source: [Texas Comptroller of Public Accounts](#)

## References

Office of the Attorney General of Texas. 2018a. [Open Meetings Handbook 2018](#). Office of the Attorney General of Texas.

Office of the Attorney General of Texas. 2018b. [Public Information Act Handbook 2018](#). Office of the Attorney General of Texas.

Texas Comptroller of Public Accounts. 2018. "[Chapter 313 School Value Limitation Agreement Documents](#)." Accessed September 4.

## About the Authors



**Bill Peacock** is the vice president of research at the Texas Public Policy Foundation and has been with the Foundation since February 2005. Bill has extensive experience in Texas government and policy on a variety of issues including economic and regulatory policy, natural resources, public finance, and public education. His work has focused on identifying and reducing the harmful effects of regulations on the economy, businesses, and consumers. Prior to joining the Foundation, Bill served as the deputy commissioner for Coastal Resources for Commissioner Jerry Patterson at the Texas General Land Office (GLO). Before he worked at GLO, he was a legislative and media consultant, working with groups like Citizens for a Sound Economy and Putting Children First. Bill also served as the deputy assistant commissioner for intergovernmental affairs for Commissioner Rick Perry at the Texas Department of Agriculture, as a legislative aide to Rep. John Culberson in the Texas House of Representatives, and as an analyst for the Texas Senate Committee on Education.



**Cutter González** is a policy analyst at Texas Public Policy Foundation. He has worked on behalf of numerous political organizations to further an agenda of economic freedom, individual responsibility, and liberty, most recently through his service as a member of the Constitutionalist Foundation, Inc., board of directors.

Trained in geosciences, he joined the Texas Public Policy Foundation team to manage the campaign for its wind energy project in order to end subsidies that corrupt the energy market and result in less-desirable environmental outcomes. Additionally, he offers criticism and new research that meets the highest standards of academic output, in line with the Foundation's values.

González earned his bachelor of science in geography with minors in psychology and public administration from Texas State University.

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