



Chapter 312 and 313 Property Tax Abatements Help the Wealthy and Connected at Other Texans' Expense

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Key Points

- It is difficult to justify Chapter 312 and 313 abatements for any project since they take money from average Texas taxpayers and redistribute it to wealthy businesses that don't need it and to marginally viable businesses that cannot compete without subsidies.
- With Chapter 312 abatements, the locality is left with less money to pay for public safety, public transportation, and other government services, or it has to tax other businesses and homeowners at a higher rate in order to make up for the loss.
- As of May 2016, the estimated total tax abatements given to then-current Chapter 313 renewable-energy projects equaled roughly \$1.8 billion over the life of the projects. Since then, the number of active Chapter 313 renewable-energy projects has grown by 37%.
- Texas should end Chapter 312 and 313 tax abatements for renewable energy projects to restore the reliability of the electric grid and because these projects create very few permanent jobs.

A Closer Look at Chapter 312, the Property Redevelopment and Tax Abatement Act

On Election Day 1981, Texas voters approved a constitutional amendment authorizing cities, counties, towns, and other government units that collect property taxes to grant exemptions “for the purpose of encouraging development or redevelopment and improvement of the property” ([Texas Constitution Art. 8, Sec. 1-g](#)). Soon after the vote, legislators took advantage of their new power under the Texas Constitution by adopting the Property Redevelopment and Tax Abatement Act (PRTAA), which is found today in [Chapter 312 of the Texas Tax Code](#).

Originally, school districts, along with other local taxing units, could grant exemptions under this law, but in 2001 it was amended to exclude them. Critics worried that abatements were eroding school districts' tax bases. That same year, lawmakers permitted school districts to cut tax abatement deals under Chapter 313 and largely circumvented this problem by requiring state taxpayers to reimburse school districts for all the property taxes they agreed not to collect.

The requirements for city, county, and other local property tax abatements under Chapter 312 are in several regards similar to those for school districts' Chapter 313 deals. The Foundation's *Policymaker's Guide to Corporate Welfare* provides this summary of the PRTAA as currently amended:

Tax abatements are only able to be offered in a “reinvestment zone,” which may encompass a number of properties. However, these boundaries are often drawn to only include the property of a single private entity for which the abatement is being sought. A Chapter 312 abatement may last up to 10 years ... and must be conditioned upon improvements made to the property ([46](#)).

Under a Chapter 312 deal, a locality may, for example, agree to tax a property enhancement as if it were worth only 10 percent as much as it actually is for the first year, then raise the assessment to 20 percent of the property's real value the second year, to 30 percent the third year, and so on, until the property is taxed at its full value 10 years into the agreement. In such a case, the business would, over the life of the agreement, ultimately fork over only about half as much in property taxes as it otherwise would.

To this extent, the provision's effects are somewhat similar to a related program that allows school districts to offer abatements under Chapter 313. A key difference is that state taxpayers aren't required to, and therefore do not, reimburse the taxing unit that hands out a Chapter 312 tax break for the revenue it loses. Consequently, either the locality is left with less money to pay for public safety, public transportation, and other government services, or it has to tax other businesses

and homeowners at a higher rate in order to make up for the loss.

Of course, local officials who dole out a property tax abatement for a new investment insist other taxpayers aren't being shortchanged, because, they claim, if the abatement had not been granted, the investment would never have happened at all. Such claims are specious for several reasons. First of all, Chapter 312's broad guidelines do not require a locality to furnish any meaningful evidence that a business investment would not have occurred if the preferential tax treatment had not been offered in exchange. Homeowners and business owners who understandably believe they have to pay more in property taxes because certain businesses get substantial multi-year tax breaks simply have to take the officials' word that they are not being harmed.

Moreover, even when it really is true that a particular investment would not have been made without a property tax abatement, how can local officials be sure another investment, fully taxed and of equal or higher value, could not be made on the property in question? Even seasoned and savvy professional economists have had a poor track record over the years of outsmarting the marketplace when they attempted to do so. There is no reason to expect mayors, city councils, or county supervisors to do better.

The High Cost of Chapter 313, the Texas Economic Development Act

Because the state has to cover the revenue lost through Chapter 313 tax abatements, legislators have paid much more attention to it than they have to Chapter 312. Among the multiple attempts made by state lawmakers to "fix" the Texas Economic Development Act since it was first adopted 17 years ago, probably the most worthwhile is the 2009 amendment requiring the state Comptroller to post certain documents related to Chapter 313 applications on its website within 15 days of their creation or receipt.

Because the state has to cover the revenue lost through Chapter 313 tax abatements, legislators have paid much more attention to it than they have to Chapter 312.

Thanks to the 2009 Legislature's H.B. 3676, concerned citizens and other researchers who are curious as to how much money state taxpayers are having to fork over every year to make up for local tax abatements granted through Chapter 313, and about how rapidly the cost of these abatements is

growing, may periodically consult a page on the Comptroller's website entitled "[Chapter 313 School Value Limitation Agreement Documents](#)." At this writing, this web page features certain key information, but not comprehensive information, about all Chapter 313 projects that were active as of October 15, 2018.

A much fuller picture regarding Chapter 313 projects that were active as of May 2016 was provided by Comptroller Glenn Hegar in the *Report of the Texas Economic Development Act* he submitted to legislators in January 2017. As of May 2016, there were 311 active Chapter 313 projects of which 53 percent were in renewable energy. At that time, the estimated total tax benefit over the life of the agreement for Chapter 313 deals was \$7.1 billion of which 25 percent (roughly \$1.8 billion) was in renewable energy ([Hegar.a](#)).

Under current Chapter 313 deals, as was previously noted, the tax abatement is spread out over 10 years, but under deals forged prior to January 1, 2014, the total benefit was reaped in just eight years. Consequently, one may conservatively estimate that as of May 2016, active Chapter 313 agreements were costing Texas state taxpayers, in the aggregate, roughly \$790 million a year.

The Chapter 313 data released by the Comptroller this fall show there are now 402 active agreements between school districts and benefits but do not include estimates of what the total expected tax abatement of each deal will be before it concludes. However, since the number of active agreements has increased by 29% just since May 2016, one may conservatively estimate, assuming the cost per project hasn't increased at all, that active Chapter 313 projects will cost Texas state taxpayers nearly \$9.2 billion before they are concluded, or roughly a billion dollars a year.

Among today's 402 active agreements, 226, or 56 percent, are for renewable energy. Since the number of active renewable-energy projects has risen by 37 percent since May 2016, it follows that the total state taxpayer cost of renewable energy projects is now more than \$270 million a year, again assuming the cost per project hasn't increased at all. More precise data will soon be issued by the Texas Comptroller in his forthcoming *2019 Report of the Texas Economic Development Act*, and they will almost certainly show the current costs of all Chapter 313 abatements, and renewable-energy abatements specifically, are even higher than estimated here.

Unfortunately, neither the Texas Comptroller nor any other public official has the analogous authority to assemble data on Chapter 312 agreements forged between businesses and local governments. Consequently, this researcher is unable to furnish estimates of the property-tax revenue to be lost over the life of current Chapter 312 agreements, of the share

of the losses that is connected to renewable energy projects, or how rapidly the losses are rising.

However, given the similarities between the programs discussed above, and given the fact that the same business investment will often simultaneously receive property-tax abatements under Chapters 312 and 313, it is a safe bet that the total cost of Chapter 312, while almost certainly smaller than that of Chapter 313, is quite large and rising rapidly.

“Fixing” Texas’ Property Tax Abatements

In 2013, the last time state legislators had the opportunity to put an end to Chapter 313 tax abatements merely by declining to renew the law, public concerns about unnecessary and ill-advised handouts to businesses and select local school officials’ padding their own districts’ budgets at the expense of the rest of the state were already considerable.

Instead of telling school districts they could no longer use state taxpayers’ money to entice businesses to locate in their districts and furnish them with large financial “gifts,” lawmakers tried to fix Chapter 313’s flaws by adopting an amendment requiring the state Comptroller to certify that tax abatement deals are economically sensible and “a determining factor” in the applicant’s decision to invest and build in Texas ([Hunker et al., 48](#); [Jensen, 29](#)).

It is difficult to actually justify to the public why any abatements should continue for investments that typically don’t need them to flourish or for investments that very likely wouldn’t be profitable without them.

This might have seemed at least to be a step in the right direction. In practice, however, the certification mandate has put the Comptroller’s office in the position of checking off boxes. The process does not actually determine whether the abatements are good for the state from an economic perspective, but instead just makes sure that the paperwork is filed properly. And an entire industry of consultants has

developed to make sure that 313 applications meet the paperwork requirements. The projects continue to be offensive both to those Texans who oppose government redistribution of income on principle and to others who may be supportive of business subsidies in some cases, but only if they support lots of good-paying jobs—since school districts can simply waive the already small job creation minimum of 10 jobs ([Jensen](#); [Toohey](#)).

To address the lack of jobs created by renewable energy projects under Chapters 312 and 313, it would make sense to end abatements for renewable energy projects. This would address the concern about the lack of jobs created by renewable energy projects, as well as concerns about the growing negative effects wind and solar projects are having on the reliability of the Texas electricity grid ([Ritchie](#); [McConnell](#)). These concerns are distinct from the use of Chapters 312 and 313 for other industries, potentially justifying the “carving out” of renewables from eligibility.

However, in the final analysis it is difficult to actually justify to the public why any abatements should continue for investments that typically don’t need them to flourish or for investments that very likely wouldn’t be profitable without them. Abatements under Chapter 312 and 313 take money from average Texas taxpayers and either give it to wealthy businesses that don’t need it or give it to businesses that cannot compete without it ([Michels](#)).



Editor’s Note: *This is the third in a series of research papers examining the problems with Chapter 312 and Chapter 313 local tax abatements. The papers will examine the overall problems with the abatements and the particular problems with their use for renewable energy projects. This research is timely because Chapter 312 will expire in 2019, and Chapter 313 will expire in 2022. If not renewed by the Legislature in 2019, Chapter 312 and the ability of local governments to offer tax abatements will go away. Likewise, if not renewed by the Legislature in 2021, Chapter 313 and the ability of school districts to offer tax abatements will go away. The next two legislative sessions will provide Texans and their elected state officials the opportunity to examine whether these programs deliver the jobs and economic development they promise. ★*

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