

Chapter 313: Texas Economic Development Act

The Issue

In 2001, the Texas Legislature passed the Texas Economic Development Act—known as [Chapter 313](#)—in response to a large and growing number of economic development incentives offered by other states. The Legislature reasoned that Texas's relatively high property tax burden was putting the Lone Star State at a disadvantage in terms of attracting jobs and business activity. As such, lawmakers sought to artificially induce economic growth through Chapter 313, which allows school districts to offer property owners or lessees a temporary tax reprieve on the value of new investment, assuming that certain qualifications are met.

Chapter 313 works by way of an [appraised value limitation](#), which is an agreement between a taxpayer and a school district where the former agrees to make a minimum level of investment in the community and create a certain number of jobs above a particular wage threshold, and the latter offers a multi-year limitation on the taxable value of new investment in real and tangible personal property. However, this limitation only applies to a portion of school district property taxes.

School property taxes consist of two elements: (a) the maintenance and operations (M&O) portion that funds day-to-day operations, and (b) the interest and sinking (I&S) portion that pays debt service on bonds. A limitation agreement may only apply to the former and not the latter.

Companies seeking a limitation agreement send an application to the school district where the project will be located. Limitation amounts are set in state law and vary from \$10 million to \$100 million, depending on the school district's taxable property values and whether the district is considered rural or non-rural. Further, companies must make a minimum investment in the relevant school district in order to qualify for the limitation amount. This minimum investment varies from \$1 million to \$100 million. Finally, companies must create a minimum of 25 qualifying jobs in non-rural school districts and 10 qualifying jobs in rural districts in order to be eligible for the limitation. However, this job requirement can be waived, and more than half of all applicants have received waivers.

Since 2013, the Texas Comptroller must determine whether a proposed project is likely to generate enough state and local tax revenue to offset the tax losses due to the limitation agreement within 25 years. The Comptroller's office must also find that the limitation is "a determining factor" in the company's decision to invest and build in Texas. Without the Comptroller's certification, school districts cannot enter into limitation agreements.

Over the years, Chapter 313 has earned many detractors who argue that the program is too costly, too uncertain, and perhaps even unnecessary altogether.

First, it is unclear whether the overall economic benefit provided by limitation agreements outweighs the cost. In 2013, the Texas Comptroller issued a report suggesting that taxpayers spent a whopping \$341,363 for every new job created by Chapter 313.

Additionally, while the Comptroller must determine whether a proposed project is likely to generate enough tax revenue within 25 years to offset the loss in revenue, such determinations are often fraught with uncertainty. For example, an assessment from the Comptroller's office demonstrates that among the 13 limitation agreements that expired from 2013 through 2015, actual market values in the last year of the limitation period ranged from 28 percent to 125 percent of the initial market value.

Many of the tax revenues forgone by the school districts under Chapter 313 will be replaced by state funding, putting the burden of the local agreements on all Texas taxpayers. This is despite the fact that school districts are allowed to and do negotiate "supplemental payments" with businesses applying for an agreement.

Finally, the evidence suggests that tax incentives are wholly unnecessary to attract business investment. The *Texas Observer* found in its review of more than 360 limitation agreements that many agreements were created even after companies had already announced plans to build in Texas. Consider the cost of such unnecessary deals: From 2002 to 2014, Texas schools committed limitation agreements that cost the state budget \$5.5 billion.

Further, while the Comptroller must check whether getting the tax break is "a determining factor" in a company's decision to build in Texas, companies have learned how to game the approval process. For instance, in December 2014, Solar Prime applied for a limitation agreement to build a solar array in West Texas and stated that the break would "improve the economic viability of the project." The Comptroller denied approval. Six months later, Solar Prime reapplied and claimed it required the tax incentive in order to build. This time, the Comptroller approved.

Taking these concerns into account, state and local leaders should consider more fiscally sustainable and time-tested alternatives, like creating and maintaining an environment of low tax and limited government. In this way, out-of-state businesses looking to relocate to Texas can be confident that the low tax environment they seek will be one that lasts.

The Facts

- As of August 31, 2018, there were 389 current and executed agreements, with 57% of them being for renewable energy projects and 42% for manufacturing. Renewable energy projects represented only 9.7% of the jobs committed, compared to 88% for manufacturing.
- More than half of applicants receive job waivers.

- A recent study by Nathan Jensen, professor at UT Austin, estimated that between 85% and 90% of Chapter 313 projects would still have happened without the incentive.
- Supplemental payments paid to school districts sometimes amount to nearly 40% of the tax benefits offered.

Recommendations

- Let Chapter 313 expire in 2022.
- Require that school districts publish a 30-day public notice before meeting to approve a Chapter 313 agreement, similarly to the requirement passed by the 86th Legislature for Chapter 312 agreements.
- Eliminate the possibility for school districts to waive job requirements.

Resources

[*Money for Nothing: An Introduction to Chapter 313 Tax Abatements*](#) by Stanley Greer, Texas Public Policy Foundation (Nov. 2018).

[*Breaking the Bank: Robin Hood and Chapter 313*](#) by Stanley Greer, Texas Public Policy Foundation (Nov. 2018).

[*Texas Economic Development Act Chapter 313 Summary Data 2019*](#) by Texas Comptroller of Public Accounts (2018).

[“School tax abatement deals: Boon or pandora’s box?”](#) by Carine Martinez and Vance Ginn, *Odessa American* (March 8, 2018).

[*Exit Options in Firm-Government Negotiations: An Evaluation of the Texas Chapter 313 Program*](#) by Nathan Jensen, University of Texas at Austin (2017).

[“Free Lunch”](#) by Patrick Michels, *Texas Observer* (March 15, 2016).

[“Chapter 313: Attracting Jobs and Investment”](#) by Olga Garza and Annet Nalukwago, *Fiscal Notes*, Texas Comptroller of Public Accounts (April 2016).

