Lawmakers killed a costly corporate tax break program, but loopholes will still cost Texas billions

Eric Dexheimer, Mike Morris, Staff writers

June 20, 2022 Updated: June 20, 2022 8:29 a.m.

Mark Mulligan, Houston Chronicle / Staff photographer

When state lawmakers last year decided to kill a ballooning economic incentive program that had allowed some of the country’s biggest corporations to collectively avoid paying billions of dollars in school property taxes, it shocked even the program’s many critics.

But legislators left gaping loopholes in the law, known as Chapter 313.

Instead of shutting down the program immediately, they let it fade away over the course of a year. A tidal wave of applicants has now rushed to seek billions of additional dollars in last-minute tax breaks before it shuts down.

And because the law places no limit on when the new projects must be built, many companies could continue to enjoy the subsidies for decades: At least two recent applicants don’t expect their facilities to open until 2040 — almost 20 years after the program’s demise on Dec. 31.

The loopholes have created a perverse scenario.
Lawmakers said its death was long overdue: “It was being abused,” said Sen. Juan “Chuy” Hinojosa, D-McAllen. “It was time to end it.”

Staff in the comptroller’s office, which administers Chapter 313, said portions of the law were “impossible” to apply as written. Even industry groups said they were fed up with its flaws.

Yet the decision to end the program is now poised to cause a dramatic spike in its cost to taxpayers.

“It’s like hogs at the trough,” said Bishop John Ogletree, an official with the faith-based Texas Industrial Areas Foundation, which has opposed the arrangements.

Meanwhile, lawmakers and interest groups have begun discussing how to craft a replacement during next year’s legislative session to keep the tax breaks flowing.

The Chapter 313 deals — named for their location in the state tax code — let companies slash 10 years worth of school property tax bills they otherwise would owe on newly constructed factories and energy projects.

Over the past decade the state comptroller’s office has received an average of about 90 applications annually from companies seeking the subsidy.

Since the Legislature adjourned at the end of May 2021, by comparison, records show companies have filed requests for more than 460 new tax breaks — about 400 in the past five months alone.

Typically, companies sought Chapter 313 tax breaks for projects two to four years in the future, with the occasional oil and gas facility taking six or seven years to complete. Since last May, however, companies have applied for 120 of the subsidies for facilities not scheduled to open until at least 2028. At least 10 won’t be online for a decade or more.

Despite the program’s demise, applicants “have figured out how to extend it,” said Rev. Minerva Camarena-Skeith, of Central Texas Interfaith.

Their strategy seems to be, “Just in case, let’s get 10 years of requests in in one year,” added Bob Fleming, of The Metropolitan Organization, the Houston branch of the Texas Industrial Areas Foundation. “I don’t know anybody who can forecast their needs 30 years out.”

A spokesman for the comptroller’s office said the agency’s staff simply followed the law as it was written.
But by slow-walking the end of a program they said was giving away too much money to corporations at the expense of Texas taxpayers, legislators have now put the state on the hook for billions of additional tax breaks that Texans will be paying off well into the middle of the century.

**A rush of applications**

The program that would grow to be Texas’ largest corporate tax incentive was launched 20 years ago with the help of a misprint. In 2000 an influential magazine reported Texas had lured only three manufacturing companies to the state, ranking it 37th among states for new facilities.

The number turned out to be wrong; Texas actually had attracted 73 new manufacturing facilities, ranking it in the top 10. But lawmakers already were convinced the state was losing its competitive edge. In 2001 the Legislature created the Chapter 313 program to lure companies to the state with a new lucrative tax break.

In exchange for building new facilities and creating jobs here, companies could lop millions of dollars off their local school tax bill, the largest chunk of property taxes. To make sure the schools wouldn’t be out any money, the state would give the local school district whatever taxes the companies didn’t pay.

Some of the country’s largest oil and gas companies used the deals to save hundreds of millions of dollars for their sprawling new refineries and processing facilities along the coast. Dozens of wind and solar companies used it to build electricity-producing facilities in the Panhandle and West Texas. Giant chip manufacturers signed on to save money on their new Central Texas manufacturing plants.

The program’s cost to taxpayers swelled. Worth about $2.4 billion in 2012, by 2020 Chapter 313 tax breaks had soared to $10.8 billion.

Some projects have since expired or been canceled, but the comptroller’s office has also signed off on another 240 applications, records show, representing a projected $4.7 billion in additional tax breaks. And those figures don't include more than 370 applications that are still pending.

To win the incentives, companies needed only to demonstrate they were considering building outside of Texas and that, if not for the 313 incentive, they might go elsewhere. But a Houston Chronicle investigation last year found that
the proof required by the comptroller’s office was so loose that less than 2.5 percent of applications were ever rejected - even if it was apparent the companies had no intention of locating anywhere but Texas.

In dozens of cases companies had already publicly announced the projects - in some cases even starting construction - before applying and got the subsidies anyway.

Close inspection showed some applications were little more than simple cut-and-paste jobs from other applications - typos included. Dozens of companies also failed to create jobs they had promised as part of the deals, with no consequence. Those jobs that were created, meanwhile, cost hundreds of thousands of dollars apiece in tax breaks.

To make up for the taxes the companies aren’t paying, the Legislature must allocate more general revenue — the taxes all Texans pay — to public education, leaving less money not only to increase school spending but to build roads, provide health care and fund other vital services.

As it had three times previously since the program began, Chapter 313 came up for renewal during last year’s legislative session. This time, however, lawmakers from both parties had heard enough of the program’s high cost and abuses. By declining to renew it they insured it would die out at the end of 2022.

Chapter 313 applications take about six months to process. That gave companies until mid-year 2022 to file their paperwork. Last month, the comptroller’s office clarified that any corporation filing after early June would not make the deadline.

The rush was on. In April alone the comptroller’s office received 66 Chapter 313 applications - about two-thirds the number it fielded in all of 2020. It received another 64 in the first half of May alone, the latest date for which the agency has released detailed application information.

“They know they’re not going to get another deal like this anytime soon, so while the door’s open they’re rushing through it,” said Dick Lavine, a senior policy analyst for Every Texan, a left-leaning nonprofit that has long opposed the program. “The state will be paying for literally decades to come.”

**A tax break for two jobs**

Some of the last-minute applications provide more examples of the same loose regulation and high program costs for modest return that convinced legislators
to kill Chapter 313, said Nathan Jensen, a University of Texas government professor who has studied economic incentive programs. “They’re openly gaming the system,” he said.

Records show companies have continued to recycle text that has appeared in their applications for years - even a decade or more. The comptroller’s office often continues to justify their approvals by simply quoting from the companies’ applications, with no evidence of independent research listed.

Enterprise Products Operating, a midstream energy company that already has obtained 18 Chapter 313 tax breaks, submitted two new applications under the wire, records show. The most recent, filed a month ago, is for a “ethane cracker” slated to open in Beaumont in 2028.

In its application, the company proposes creating 10 new $63,000-a-year jobs in exchange for $395 million in avoided property taxes over a decade.

Also getting in its 11th-hour request for the incentives was GlobiTech, a semiconductor wafer manufacturer. The company’s requests, filed in April, were for four separate, but connected projects in Grayson County. The final one isn’t scheduled to go online until 2040.

That facility would be situated next to an existing manufacturing plant the company already has in Sherman, GlobiTech said in filings. But, it warned, if it doesn’t get the 313 tax break it might decide to build in Korea, which has offered generous incentives, or Ohio, which is trying to become a semiconductor hub.

Neither company responded to inquiries from the Chronicle.

In Central Texas, the giant tech company Samsung has applied for 313 tax breaks so far into the future its officials conceded they aren’t even sure how they will be used. “While we do not have specific plans to build at this time, the Chapter 313 applications to the state of Texas are part of a long-term planning process of Samsung to evaluate the viability of potentially building additional fabrication plants in the United States,” a spokeswoman told the Austin American-Statesman.

Tony Bennett, of the Texas Association of Manufacturers, said many members have filed placeholder applications knowing that the Legislature may not pass a replacement for Chapter 313, or may do so in a very different form.

“Many of those applications are placeholders for very legitimate advanced manufacturing projects,” he said.
Triangle Brick Company submitted its request for the expiring tax breaks late last year for a new brick-making facility outside of Wichita Falls. In exchange for $5 million in tax breaks, it has proposed creating two new full-time jobs.

The company already has a manufacturing plant in Clay County. But it said without the valuable Chapter 313 incentives it might decide to locate in North Carolina, where it also has business, according to filings.

Jensen, whose research has concluded that 85 percent of the projects receiving Chapter 313 tax breaks would have been built in Texas without the incentive, is skeptical. “Bricks are often produced in areas of raw materials, but close to demand,” he said. “Brick companies come to Texas to sell bricks to Texans.”

Sen. Paul Bettencourt, R-Houston, urged the comptroller’s office and school boards to apply extra scrutiny to the flood of last-minute applications.

“I’m trying to warn everybody to take the time to review this stuff, don’t do anything crazy - especially when we’re looking at things not happening for decades,” he said.

The odds of that are low. The comptroller last rejected a Chapter 313 application in 2016.

**Legislature will decide**

Lawmakers and industry groups for months have discussed what a replacement for Chapter 313 should look like ahead of the legislative session that starts in January.

There is no shortage of political pressure points.

Those concerned that tax breaks have gone to businesses that were going to build in Texas anyway may seek stronger evidence than the cost-savings merely being “a determining factor,” the current wording.

Some conservatives have suggested removing wind and solar energy projects from the program, though doing so could risk draining Democratic support.

Industry groups have long griped about the dynamic they face with school districts, whose trustees ultimately must vote to approve each Chapter 313 deal.
School officials negotiate additional payments from companies that can be used for a variety of education purposes. Districts collect billions of dollars this way — money they never would have received through the state’s school funding system.

“A lot of folks compare it to extortion. That doesn’t offer the public a good vibe about the program,” said Dale Craymer, president of the Texas Taxpayers and Research Association, a longtime supporter of the program. “We’d like those amounts to be specified by formula rather than negotiated.”

This topic, too, is touchy. When a bill last year initially sought to scrap these payments to schools, superintendents hit the roof.

“It’s critical that school districts be involved in the conversation,” said Sara Leon, a consultant who guides school districts through the Chapter 313 process, adding that she has heard draft language is circulating but that industry sources have not shared a copy with her. “During the last session industry kind of wrote its own bill and was not able to get that passed.”

There are other issues: Bettencourt said jobs provisions must be “ironclad.” Bennett, of the Texas Association of Manufacturers, said the program may need to expand eligibility to more types of projects, and should be made more generous, in both the length of the subsidies and the taxes reduced.

“Even with the old 313 program,” Bennett said, “we were losing projects left and right to more competitive states and countries.”

Ultimately, Craymer said, the matter is up to lawmakers.

“Ideally we’ll create something that helps us stay competitive with other states but is viewed with better confidence than what the old Chapter 313 program was,” Craymer said. “If the public doesn’t have confidence in the program, then it’s not going to pass the Legislature regardless.”