Companies lining up for future tax breaks as Texas incentive program nears end

Hundreds of companies have applied this year for tax benefits under Chapter 313 agreements with local school districts.
Since 2022 began, hundreds of companies have submitted applications to Texas in a mad dash to secure future property tax breaks from local school districts.

The Texas Economic Development Act, better known by its Chapter 313 place in the tax code, is expiring in December, and companies are hoping to secure tax abatements before the window closes. Some of the projects are planned as far out as 2043, potentially making them eligible for tax breaks more than two decades after the law sunsets.

So far this year, the Texas Comptroller’s office has received 389 applications, more than double any other year since 2002. (See a full list of pending applications and approved agreements at the end of this story.)

There’s no guarantee that all of the companies getting in line will be approved for future incentives. Comptroller data from the years before 2022 includes only applications that reached the agreement stage. Since the program began in 2002, 313 applications were later withdrawn, terminated or not approved.
These incentives, negotiated between companies and school districts, let companies reduce property taxes paid to schools for 10 years on costly new investments or expansions. The state is responsible for making up schools’ lost revenue.

That means companies only pay school taxes for a small portion of a project’s worth. A big project like a semiconductor fabrication plant or wind energy farm is often worth billions of dollars in taxable value, but Chapter 313 agreements permit the companies in certain industries like wind, solar, semiconductors and energy to pay taxes on only a portion of that value for a decade.

Chapter 313’s goal is to attract new businesses and jobs to Texas.

In 2021, the comptroller reported that the program saved businesses more than $10.8 billion in school taxes while attracting $217 billion in renewable energy and manufacturing projects. That was based on 509 completed agreements.

With this year’s influx of applications, tax savings and investments could soar even higher. Including applications that have yet to be approved, the comptroller now lists more than 1,000 potential agreements.
taxpayers and the Texas school system as a whole.

Dallas Area Interfaith and its related organizations in the Texas Industrial Areas Foundation helped lead the fight to end Chapter 313 in the Texas legislature last year. The group is also opposing new applications at the school board level, a job that’s picking up as applications pour in this summer.

“Typically, we would find about 5% of the school districts would have tax abatements through 313, and it would come to an average of roughly 100 a year,” Dallas Area Interfaith Leader Bill deHaas said. “We’re on the way to tripling that.”

The bipartisan group opposes new agreements on the basis that they hurt Texas schools and students.

“Dallas ISD, on average is losing about $20 million a year because of the tax abatements. They go to only 5% of the state school districts,” deHaas said.

DeHaas’ point is that the vast majority of Texas school districts would receive more funding per student if the state eliminated costs that go to cover 313 agreements.

Since the comptroller frequently waives a job creation requirement, deHaas also said the tax breaks don’t create many local jobs. At the end of 2021, the comptroller recorded more than 9,000 jobs created by $217 billion in investments.

“It just seems to us to be an unfair system to attract new corporations to the state of Texas, and what happens is it penalizes 95% of the students in the state,” he said.

Who’s in line?

While advocates are glad to see Chapter 313 go, an onslaught of businesses are eager to ride the program out to the very end, attempting to lock in tax benefits for the next decade or more.

Samsung is among those applying this year, laying out potential plans to build up to 11 semiconductor chip plants near Austin that could mean as much as a $200 billion
Companies lining up for future tax breaks as Texas incentive program nears end

Texas Instruments is among the companies seeking future tax breaks for its four 300-millimeter semiconductor plants planned in Sherman, Texas. (Texas Instruments / Texas Instruments Incorporated)

GlobiTech, a company that produces silicon wafers used to create semiconductor chips, submitted a four-phase plan in Sherman in April. Chip producer Texas Instruments submitted four applications there in September 2021. Both companies’ final phases won’t begin until 2040.

Yellow Rose Solar Project LLC, a subsidiary of Orion Renewable Energy Group LLC, submitted an application in the Highland Park school district in May. Construction and tax abatements are expected to begin in 2026. Future plans are still in the works.

“We’re not quite sure on the size of it yet,” project development manager Alicia Smith said. “We’re still acquiring land and such for it.”

Officials at Yellow Rose Solar and Orion Renewables said they were hoping a special legislative session would be called to renew Chapter 313, but when that didn’t occur, they rushed to submit an application.

“We basically just had to get it done at the last minute because the program is ending. We kind of scrambled there at the end to get everything in,” Smith said. “I would’ve
Yellow Rose has other solar projects in Texas already, Smith said. Texas has one of the highest potential solar outputs the U.S., second only to California.

“It doesn’t kill a project [not to have tax benefits], but it helps. From our standpoint, it makes it more economically feasible,” Smith added.

The Yellow Rose Solar application requests that the job requirement be waived, listing one qualifying job that will be created.

**Speculators see opportunity**

Many of the recent applications are from limited liability corporations that can be sold with tax benefits attached to a different company or investor in the future.

Hill Country Wind Power Rock Creek LLC applied for a Chapter 313 agreement with several central Texas school districts in May. In its Silverton ISD application, it asks for tax benefits to begin in 2028, stating that the tax limitation is necessary to ensure a return on investment attractive enough to later sell a planned wind energy project to a venture capital group. The company also asked for the job requirement to be waived.

Hill Country Wind Power does not plan to build the facility. Rather, it plans to sell the project to an investor who will.

“We’re the big risk takers. We’re the wildcatters. We’re early stage development. What we do is we identify areas that have good interconnection, where you can connect to the grid and put in as much power as you can and then also have wind and solar resources,” Hill Country Wind Power LP president and CEO Seth Ricklin said. “We take the biggest risk and put the project together, and we de-risk it. And then we look for investors to come in and either buy the project from us or invest with us in bringing the project to construction because unfortunately, we can’t write half-a-billion-dollar checks to cover the costs.”
“When you’re talking about wind farms, you’re talking about tens of thousands of acres and billions and billions of dollars of investment into their counties, into their school districts,” he said. “That really makes almost a life-and-death difference for these struggling rural school districts.”

One wind energy advocate wonders if Chapter 313’s expiration is a way to slow renewable projects in rural Texas. (Spencer Platt / Getty Images)

He believes the failure to renew Chapter 313 is an “intentional way to slow down renewable development in the state of Texas” that will also raise electricity prices. When placed in the right areas, wind power is one of the lowest-priced energy sources available today.

Hill Country Wind Power’s strategy of securing tax benefits now to sell to a later investor or venture capital group later is completely legal under the current tax code.

“An agreement can be wholly assigned to another entity,” comptroller spokesperson Kevin Lyons said.
“It’s an extremely expensive process, and we had to make a quick decision on which projects we were willing to invest in the tax abatement,” he said.

Applicants must pay a nonrefundable fee, which typically ranges from $75,000 to $150,000, to the school district when applying.

There is no formal submission deadline for 313 applications, but the comptroller has had a recommendation on its website for most of the year advising applicants to submit materials by June 1 since the application and approval process can take up to six months.

The comptroller is still receiving last-minute submissions past that recommendation, including one submitted July 28 by Exodus Solar.

‘A program that’s ending for good reason’

Nathan Jensen, a government professor at the University of Texas at Austin, has been one of the state’s most outspoken critics of Chapter 313 based on his research. He said the program is “expensive and poorly targeted,” handing out money to companies that would have come to Texas anyway without creating a large number of jobs. This year’s surge in applications left him confounded.

“I was a little shocked. I figured a lot of companies would maybe push up their construction dates and put in an application for next year or the year after. I didn’t honestly think the controller would let companies put in an application for 2043,” he said. “It’s a program that’s ending for good reason, and then they’re allowing companies to lock in [tax benefits] in the future.”

As long as agreements are reached before December and an applicant makes the minimum investment during the qualifying time period, the tax benefits can begin whenever manufacturing begins.

“If an applicant and school district agree to start the limitation at the start of commercial operations, there is nothing illegal or disqualifying about the limitation
Jensen also pointed out that the program’s job creation and wage stipulations are not indexed to account for inflation and economic changes. To get tax benefits, a company must show that it is creating jobs with a minimum wage equal to 110% of an area’s current manufacturing wage, but that formula might not work two decades from now.

Companies are “locking in that wage for a 2043 project,” he said.

Lyons confirmed that wage requirements are established when the application is complete.

In light of this and other factors, Jensen said he fully understands why companies are getting in line.

“It was just so lucrative,” he said. “This is why you see so many of these applications. It is just an incredible deal for these companies.”
Here are the applications pending and agreements approved under Texas' tax incentive program known as Chapter 313.

<table>
<thead>
<tr>
<th>School District</th>
<th>App. No.</th>
<th>Applying Entity</th>
<th>Application Date</th>
<th>First Full Tax Year</th>
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<td>Lockhart ISD</td>
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<td>Cayuga ISD</td>
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<td>Anderson-Shiro Cisd</td>
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<td>Seguin ISD</td>
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<td>Jacksboro ISD</td>
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