State sees rush of tax break applications as program soft deadline passes

Chapter 313 of the tax code will expire at the end of the year. Experts say it's the only economic development incentive available to Texas school districts.

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AUSTIN, Texas — At the end of the year, Chapter 313 of the Texas tax code will expire. 

"This particular chapter was enacted in 2001, went into effect in January of 2002, and it allows school districts – doesn't require any district to do anything – but it permits school districts to limit the taxes imposed for a period of time, up to ten years, of major economic development in the state that are of a certain size, generating a certain amount of revenue, providing for a certain number of high paying jobs, etc.," said David Thompson, an attorney who has represented school districts during Chapter 313 application processes.

"There are qualifying conditions, but the whole point of Chapter 313, according to the statute, is to allow Texas to compete economically and from an economic development standpoint with other states and in fact with other countries in order to attract these large projects to our state and ultimately if they benefit our state economy," he added.

Companies apply for a Chapter 313 tax abatement with a school district. The district then sends the application to the Texas Comptroller's Office for approval. The Comptroller's Office then sends it back to the school district for final approval.

Any application allows a company to pay the same tax rate on their property, but the property has a lower appraised value under Chapter 313, effectively granting the company lower property taxes for up to 10 years. Once the agreement's 10 years run out, the property value returns to its normal level and the company is required to stay in town for a number of years following the end of the agreement.
If the company up and leaves instead of "continuing to maintain a viable presence," then that company would be financially penalized and forced to pay the money it saved on the tax break.

According to Thompson, who's worked on these agreements since their inception in 2002, education funding is not impacted by Chapter 313 agreements because of the way Texas funds education.

"Formulas determine the total amount [of funding available per school district] then the money to pay that total amount, some of it might recapture, some of that might come from the available school fund as all prices go up, some of it may come from the lottery, some of it may come from state general revenue, which which is highly dependent on sales tax," Thompson said. "You have a variety of accounts that you use to fund the formulas. If you get more funds through recapture or any one of those mechanisms, it doesn't make the formulas higher. It simply reduces how much you have to depend on the other funding streams to fund the formulas."

Basically, the state determines how much funding each school district gets, then the state determines where those funds come from. If a school district, like Austin ISD, does not contribute as much through recapture because of a Chapter 313 agreement, the state will make up the difference from another revenue source. Watch the full interview with Thompson on YouTube.

No matter who applies for a Chapter 313 agreement, some organizations, like Central Texas Interfaith, outright oppose them.

"This takes money away from children's education and gives it to corporations, and that is a nonstarter," said Mother Minerva Camarena Skeith, who helps lead the St. John's Episcopal Church in North Austin. "The corporation was the one that would have been their responsibility as part of our community to do their fair share of investing into our children. Right? And they have abdicated that. They just don't do that. Then we have to pick up the slack."

With Chapter 313 set to expire at the end of the year, the state's comptroller office has received a record number of applications. Since Jan. 1, 2022, school districts sent in 393 company Chapter 313 applications. In any given year before this, the office received maybe 150 applications.

"If all these things get approved, like, we could bankrupt the state," Rev. Miles Brandon worried. "Anybody who's fiscally conservative at all should have a have a real problem with the unlimited nature of 313."

"They're all not anticipating projects that are beginning immediately," Thompson responded. "Some companies, in fact, are pursuing applications that they may not actually begin to develop for several years, but I think it's a reaction to the uncertainty from the expiration of the program. There's always a preference for known over
unknown. So I think if you look at the applications that are submitted, they actually do space out over a multi-year period. And I'm assuming that that is something the [Comptroller's Office] is taking into consideration as they review the applications and give their approval to the applications."

The comptroller's office recommended companies and school districts send in their applications by June 1. With that soft deadline past, the clock is ticking for the comptroller staff to review all the applications and send them back to the school districts to approve by the end of the year. It can take up to 150 days for staff to review applications in a normal year.

Even though Thompson works with school districts to reach these agreements, he agrees with critics saying the tax code for economic development incentives from school districts needs to change.

"I think our current system, where those dollars don't actually benefit schools, they simply free up state dollars to be spent elsewhere is not the way the system should work," Thompson said. "I will always support linking [recapture] if our system worked in that way. I think that would be a notable improvement in our system, and I would love to see the legislature consider that in 2023."