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Manufacturing

Clock is ticking on Texas' Chapter 313 incentives — and major projects may lose out

NXP, Tesla among companies with applications pending ahead of Dec. 31 deadline



[Enlarge](#)

The back side of the Texas State Capitol in Austin.

ARNOLD WELLS / ABJ



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A flood of applications for a sunseting and controversial tax abatement program has Texas officials wading through requests for what are known as Chapter 313 incentives — and unlikely to review all of them before a looming deadline.

Hundreds of applications are still being reviewed by the Texas comptroller's office for Chapter 313, which has been used to lure manufacturing and energy projects to the state in the past two decades.

That means companies such as NXP Semiconductors NV and Tesla Inc. could run out of time on their applications when the program expires at the end of this year. At stake are tens of billions of dollars in potential capital expenditures being floated by scores of businesses.

"We will not be able to review all applications by the end of the year," [Korry Castillo](#), associate deputy comptroller for operations and support, said at a Sept. 8 interim hearing of the Texas House of Representatives' Ways & Means Committee in Austin. "... We are working our best to make sure we get to all of them. Some of the projects are more complex, very large. It is going to depend on the quality of the application, when it came in, on how quickly we can get through it."

[The Chapter 313 program](#), authorized in 2001, allows Texas school districts to cap the taxable value of a property for some new projects, saving companies tens of millions of dollars in taxes, or more. It is set to expire at the end of December, after a bipartisan coalition in 2021 stopped efforts to reauthorize the program.

[Critics of Chapter 313](#) call it corporate welfare that deprives Texas public schools of funding.

Proponents have argued that the incentives are needed to counteract Texas' relatively high property taxes. They say that, even with abatements in place, the agreements generate significant tax revenue for school districts, often on land that is otherwise underutilized.

Who might lose out?

Austin Business Journal has [covered the deluge](#) in Chapter 313 applications this year ahead of the program's end.

Named for its place in the state tax code, Chapter 313 gives Texas school districts the ability to cap the taxable value of a property for a portion of school taxes for up to 10 years. The cap, set between \$10 million and \$100 million, only applies to the portion of school taxes used for day-to-day needs — what is referred to as the maintenance and operation rate. The other portion of school taxes, used for debt service, is not affected by the incentive program.

The program was used by Tesla while setting up its electric vehicle factory east of Austin, by Samsung Electronics Co. Ltd in both Austin and Taylor and by Toyota Motor North America Inc. on a truck plant in San Antonio.

To understand how the incentives work, consider NXP. The Netherlands-based semiconductor manufacturer is considering investing nearly \$2.7 billion to expand its existing Austin factory at 3501 and 3949 Ed Bluestein Blvd.

If NXP (Nasdaq: NXPI) is granted Chapter 313 incentives, and if it proceeds with the expansion, it could [save more than \\$140 million on taxes](#) over 10 years, according to an Austin Business Journal analysis. That estimate is subject to change — it is based on projections of future land values and assumes no alterations in the Austin Independent School District tax rate. But it shows the immense value in Chapter 313 for companies.

Austin ISD trustees [voted May 19](#) to accept NXP's application, kicking off negotiations. But the agreement has not yet been fully reviewed by the comptroller's office, so it has not returned to the AISD board for a vote.

At the Sept. 8 hearing, Castillo said the comptroller's office had received 413 applications for the program this year. She explained that 324 of those applications were determined to be complete, while five were withdrawn.

A total of 90 applications have been certified and 35 have moved on to the executive agreement process.

Castillo said the office previously received between 130 and 150 submissions annually.

"It is way more than we anticipated — the increase in the number of applications — since this, in effect, is the last time that anyone could get in under the program," Castillo said. "That uptick really picked up around mid-year."

Elsewhere in Central Texas, Micron Technology Inc. (Nasdaq: MU) has requested incentives for a [possible factory in Lockhart](#), an application that is still pending with the comptroller's office.

In Nueces County, near the Gulf Coast, Tesla (Nasdaq: TSLA) has asked for Chapter 313 tax breaks for a possible [lithium refining facility](#). The application was [received by the comptroller on Aug. 23](#) — the paperwork indicates a final agreement could be voted on in December.

Linde, an industrial gas giant, has requested the incentives for a [possible \\$271 million plant](#) near the Samsung factory being built in Taylor. Taylor Independent School District trustees voted in June to accept the application.

None of these projects have been confirmed; the companies say they are asking for Chapter 313 incentives as part of their planning efforts. But that also highlights a critique opponents have of the flood of applications, arguing that the companies should not be negotiating for potential incentives on projects that are uncertain.



Enlarge

Tesla secured Chapter 313 incentives for its electric vehicle "gigafactory" near Austin, pictured — and is now seeking them for a possible lithium refining facility near the Gulf Coast.

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According to data shared by Castillo, 243 (or 60%) of this year's Chapter 313 applications represent solar energy projects, 114 (28%) are manufacturing projects, 48 (11%) are wind-related energy projects and one was described as an integrated cycle gasification project.

In a typical year, the application and approval process for Chapter 313 incentives can take up to six months, the comptroller's office [said on its website](#). Anticipating an uptick in applications, the office recommended companies submit applications by June 1 this year. After that, it said on its website, it "cannot guarantee" an agreement would be completed in time.

Following the program's expiration on Dec. 31, the comptroller's office will no longer have the authority to certify applications, leaving any pending requests out in the cold.

"Project applications that have not been approved before the expiration date will not be able to receive a limitation for appraised value under Chapter 313," [Kevin Lyons](#), a spokesperson for the comptroller's office, said via email. "Our office is working diligently to process applications in a timely manner before the expiration date. However, if an applicant has not entered into a fully executed agreement with the school district before the expiration of the program, the applicant cannot receive a limitation for appraised value under Chapter 313."

Will there be a replacement for Chapter 313?

Meanwhile, as companies wait to see whether they will be granted Chapter 313 incentives in time, efforts to create a new statewide economic development tool appear muddled. At the Sept. 8 Ways & Means Committee hearing, no clear options emerged for a new incentives program.

"I wish we would have thought a little harder about those choices last year," said Rep. [Trey Martinez Fischer](#), a Democrat who represents District 116, centered in San Antonio.

"This seems like a self-fulfilling prophecy to me," he added.

[Martinez Fischer](#) emphasized that supporters of the incentives program have yet to propose a replacement to Chapter 313.

"You all are experts," he said. "I have not heard a single syllable today about the need to do something, work harder or find a compromise."

[Dale Craymer](#), president of the Texas Taxpayers and Research Association, told the committee that a recommended alternative is still being drafted.

"We are meeting with our member companies, we are trying to put some stuff on paper," he said. "We are just not there yet."

Craymer said that without Chapter 313, businesses face a property tax burden in Texas that is 62% higher than the average state.

"That is an awfully high hurdle to overcome, particularly for large projects," he said. "Texas is simply not going to be able to compete for some of the major projects that we have succeeded in pulling to the state this year."

Craymer said Chapter 313 was implemented by the Texas Legislature in response to the loss of a major plan from Intel to invest in the state.

"We are on the verge of a manufacturing renaissance in this country and Texas is going to miss out," he said.

[Glenn Hamer](#), president and CEO of the Texas Association of Business, warned that the absence of an incentives programs like Chapter 313 could lead to the state missing out on 100,000 to 150,000 jobs, representing a potential \$500 million loss for the state's economy.

"It hurts the state of Texas," Hamer said. "The question is how much. It is going to be important for the state legislature right out of the gates. We live in a global world. We have to replace 313 to keep Texas on top and the shining city on the hill when it comes to job creation."

Others warned that the state should take its time in considering a replacement to the sunset program.

The Rev. [Miles Brandon](#) of St. Julian of Norwich Episcopal Church in Round Rock spoke in support of ending the program for good. He appeared on behalf of the Texas Industrial Areas Foundation and Austin Interfaith, both community activism groups.

"We draw a hard line at using school funding for corporate tax funding," Brandon said at the hearing. "In our minds, it is shameful to take money from school children to line the pockets of wealthy corporations. It seems like greed of biblical proportions. Economic development should never be a threat to the well-being, competitiveness and growth of our most precious, God-given assets. More precious than fossil fuels, more precious than green energy, more precious than electric cars, more precious than computer chips: our children, whose education and future are being bankrupted by Chapter 313."

[Janelle Fritts](#), a policy analyst with the Tax Foundation's Center for State Tax Policy, emphasized that elected officials have time to find an alternative to Chapter 313, if they choose, and that corporations will continue to invest in Texas because of its well-educated workforce and business-friendly environment.

"Although incentives can have some effect on relocation decisions, recent history shows that the effects are short-lived and that such programs can often end up costing states more than they gain in the long run," Fritz said.

Fritz pointed to the successful efforts of the city of Winston-Salem to lure a Dell factory to North Carolina in the mid-2000s, only to see the company [close the manufacturing plant a few years later](#) and cut hundreds of jobs.

"There is no one clear path forward, but I would definitely encourage the committee to consider increasing the state's competitiveness in other ways, including improving the property tax base," Fritz said. "Even without Chapter 313, there is plenty of opportunity for Texas to continue its competitive success in doing business."

Mike Christen covers economic development, with a focus on the city of Austin.