CAPITAL & MAIN

Texas Oil and Gas Producers Want Their Tax Break Back

An effort to resurrect Texas' Chapter 313 tax abatement is underway in the Legislature.

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Texas lawmakers are facing pressure to come up with a replacement for Chapter 313, a recently expired program that helped oil and gas companies, chip manufacturers and other industries secure billions in tax abatements through local school districts.

Nearly 200 representatives of trade organizations, economic development councils and chambers of commerce are included among the signatories of a Feb. 14 letter to the Legislature calling for "a new, transparent, and accountable economic development policy." The signatories warned that Texas could lose business if legislators don't hurry up and create a new tax break program.

"Over the last year, Texas lost several multibillion-dollar deals, including Rivian to Georgia, Intel to Ohio, and Micron to New York," the letter says. "Texas stands to lose more jobs, more investments, more tax base and more growth if we don't restock our economic development toolbox with a new economic development incentive this legislative session."

Two days later, Gov. Greg Abbott delivered his State of the State address at a rare earth metals manufacturing plant in San Marcos. "To keep Texas the best state for business, our local communities need new economic development tools this session," he said. That same day, state Rep. J.M. Lozano, a Republican from the industry-dense region that includes the north side of Corpus Christi Bay, introduced a bill to simply reauthorize the old Chapter 313 with no substantive changes.

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~ Doug Greco, lead organizer, Central Texas Interfaith

The headliners on the Feb. 14 letter are executives of major industry and business lobbying organizations, including the Texas Oil and Gas Association, Texas Association of Manufacturers, the Texas Taxpayers and Research Association, the Texas Association of Business and the Texas Chemical Council. None of those groups was willing to comment on the record about the Feb. 14 letter, but all of them were formerly part of a coalition called Jobs for Texas, which advocated for reauthorizing Chapter 313 with new language that would exclude renewable energy companies from eligibility. Jobs for Texas disbanded in January, according to a statement from Dale Craymer, president of the Texas Taxpayers and Research Association.

But as the recent letter to the Legislature shows, its members have reassembled with what appears to be essentially the same goal: replacing Chapter 313 with a new program that would offer massive tax breaks in order to recruit companies to Texas or to keep companies that are already in Texas from leaving.

Doug Greco, lead organizer at Central Texas Interfaith, one of the organizations that helped shut down reauthorization of Chapter 313 in the 2021 legislative session, said the letter looks like a rebranding effort.

"Jobs for Texas was becoming a detriment to the effort," Greco said. "Now they're signing on local chambers and economic development corporations as opposed to having big statewide industry groups be the front of the face of the movement."

Greco said he thinks activism by groups like his in recent years has raised the profile of Chapter 313 from a little-known tax loophole to an emblem of the dysfunctional relationship between industry and government in Texas. As for the new push, he said, "It's the same people representing the same interests getting the same tax breaks."

Will Other Lawmakers Support a New Tax Break?

It's important to note that the signatories to the Feb. 14 letter are no longer calling for a simple Chapter 313 reauthorization. In fact, their letter to the Legislature does not mention Chapter 313 at all.

"The thing we like to remind people over and over is that 313 is dead. That's not our focus anymore," said a senior staffer at one of the former Jobs for Texas member organizations, who was authorized to speak only on background. "We're trying to get a more modern and transparent tool for communities," the staffer said, clarifying that she was not aware of any draft legislation and had not heard of Lozano's bill.

In the last few years of its two-decade lifespan, the Chapter 313 program faced steadily intensifying scrutiny over what critics claimed was insufficient oversight and accountability. For example, beneficiaries were required by statute to create a specified number of jobs and generate a specified dollar amount of economic growth, but were rarely — if ever — required by the state comptroller to demonstrate that they had met their obligations. Numerous Chapter 313 beneficiaries were also able to secure waivers from the comptroller to avoid the minimum job creation requirements altogether.

On Tuesday, House Speaker Dade Phelan announced in a press release that he was prioritizing House Bill 5 — filed that same day — which would create a "temporary and limited competitive economic incentive" to attract big projects related to critical infrastructure, manufacturing as well as "national and state security and critical domestic supply chain support" industries. Abbott has also promised an announcement on Wednesday "regarding economic development in Texas," though it's unclear if it will be related to HB 5.

HB 5 drew immediate praise from the Texas Association of Business and the Texas Oil and Gas Association and appears to be the bill that industry groups were calling for in their Feb. 14 letter. Its sponsor, Rep. Todd Hunter, represents Corpus Christi and its industry-dense environs in Nueces and Aransas counties, where school districts have awarded Chapter 313 agreements to numerous petrochemical companies.

HB 5's language indicates that it would allow school districts to grant property tax abatements to businesses in exchange for payments — in a manner similar to the expired program — but it does away with Chapter 313's clearly defined economic development requirements.

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~ Dick Lavine, senior fiscal analyst, Every Texan

Under Chapter 313, companies had to pledge to create a minimum number of qualifying full-time jobs with salaries "at least 110 percent of the county average weekly wage for manufacturing jobs in the county where the job is located."

There were also specifications on the duration of agreements (10 years), the minimum size of qualifying investments, the minimum property value limitations for projects and the maximum dollar amount that companies could offer to school districts in order to secure an agreement ($100 per student per year). Chapter 313's authorizing legislation also included penalties for failure to comply with job creation requirements, even if those penalties were inadequately enforced.

“None of that is included in this bill,” said Dick Lavine, a senior fiscal analyst at the nonprofit watchdog group Every Texan. “There’s nothing in there about the length of abatements or the size of abatements. You could be giving them a 100% abatement for 100 years.”

Under HB 5, approved companies would be required only to periodically report various project data to the Comptroller’s Office, including the total number of jobs created by the project, the total wages paid and the total amount of the investment.

School districts entering into agreements would have to report the total amount of payments and benefits received from the companies in lieu of property taxes. The districts would also have to document how they used these payments.

“Texas taxpayers would also have transparency into how those state incentive dollars are used, the number of jobs created and the full economic impact of such projects on communities,” Phelan said in his press release Tuesday, echoing comments he made in January, when he told reporters, “This session we can have a new program. We can have all that oversight and transparency and accountability and hopefully move forward, just so we can compete with other states.”

But Greco, of Central Texas Interfaith, said he’s not convinced by Phelan’s reassurances about improved transparency and accountability.

“Just because you have to report on something doesn’t mean there are any standards,” he said. “Why wouldn’t a school district just approve anything if state taxpayers have to pay for it?”

“Let’s not take the tool out of the toolbox. Let’s make it effective and address the concerns people had about it being abused.”

~ Steve Ahlenius, president, Greater Beaumont Chamber of Commerce

According to an investigation by the *Houston Chronicle*, existing Chapter 313 agreements — hundreds of which were approved in a mad rush in the months before the bill expired — have “put taxpayers on the hook for a projected $31 billion in tax breaks for nearly three decades to come.”

“It looks like it was written on the back of a napkin,” Greco said. “The bill has fewer specifics and less accountability than the original Chapter 313. … The idea they would file a bill with fewer requirements than the old program is insulting.”

Steve Ahlenius, president of the Greater Beaumont Chamber of Commerce, who lives in Phelan’s district, said he signed the Feb. 14 letter because he worries about losing business to states that can offer better deal sweeteners. Tax abatements, he said, “are a major component in terms of economic development incentives to attract industries or to have existing industries expand.” The Beaumont-Port Arthur region is home to numerous petrochemical facilities owned by ExxonMobil, Motiva, Enterprise and Valero, among others. In December, the Beaumont Independent School District awarded several last-minute Chapter 313 abatements, including one to Enterprise Products worth $395 million.

HB 5 had not been filed when Ahlenius spoke to Capital & Main, but he said he would not support a mere reauthorization bill like the one Lozano filed.

“I think it needs to be redone to address the concerns folks have about the 313 process. It needs more transparent reporting mechanisms,” he said.

"Accountability means that the system or program doesn't get abused, that it's not cheating school systems in Texas and that it's fair and equitable in terms of how it's used to grow industry."

Tying Tax Breaks to School Funding Loses Support

Lozano serves as chair of the House Higher Education Committee. In an email, one of his committee staffers said that conversations with "economic development corporations, cities and other stakeholders across the state" compelled Lozano to file for a simple renewal of Chapter 313. "This filing will allow for a conversation on how we can move forward to solidify Texas' position as an economic powerhouse in the United States," the staffer wrote.

"I don't think you can get it passed as is," Ahlenius said, referring to Lozano's bill. "I think change is coming, and let's make it effective. Let's not take the tool out of the toolbox. Let's make it effective and address the concerns people had about it being abused."

Lavine, of Every Texan, said that Hunter's sponsorship of the bill lends it gravitas because of his political clout, but that HB 5 looks like a draft bill "missing any and all important details."

Lavine said the essential requirement of any new tax abatement program should be what he calls a "but for test" — essentially, companies should have to prove that their decision to locate in Texas hinges on an abatement.

"A serious program would be targeted at those specific projects where it's really necessary to have an incentive to attract them to Texas," Lavine said, "where the approval process is a thoughtful and legitimate one and not one where school districts are paid to say yes."

“There is no constitutional obligation to attract business to Texas, but there is one to create fair and efficient schools.”

~ Bob Fleming, organizer, The Metropolitan Organization

Greco said the original intent of Chapter 313 — to entice companies to make major capital investments in Texas — has been abandoned altogether in HB 5.

“There is absolutely no language in here about demonstrating the need for these tax abatements in order to relocate to Texas,” he said. “This is no longer a program about luring companies.”

Bob Fleming, an organizer with the Houston-based nonprofit the Metropolitan Organization, said he thinks the Legislature is a less favorable environment for a simple Chapter 313 reauthorization like Lozano’s today than back in 2021, when the last reauthorization bill failed. He expects any bill like HB 5 that ties tax abatements to education funding will face similar headwinds.

“They can’t escape the connection: Tax breaks for big businesses equals less money for school districts,” he said.

Fleming said that per capita funding for students in Texas — known officially as the “basic allotment,” which is guaranteed by the state constitution — has never recovered from cuts that were made during the Great Recession of 2008.

“There is no constitutional obligation to attract business to Texas, but there is one to create fair and efficient schools,” Fleming said. “And if you look at education as a workforce development program, they’re skimping on that. That side of economic development is being short-changed for incentives for big business."

As for the Feb. 14 letter, Fleming said he was struck by the lack of response to criticisms that tanked Chapter 313 back in 2021.

"It doesn't recognize a single objection that opponents made," he said. "There's no mention of PILOT payments and whether they'll be part of it, no mention of limits to the total amount of money that can be given away, no tightening up of regulations on jobs and what counts for a good proposal, no limitations." (PILOT payments, or payments in lieu of taxes, were the kickbacks offered to school districts by companies as part of Chapter 313 agreements.)

Mike Culbertson, interim CEO of the Corpus Christi Regional Economic Development Council and one of the signers of the Feb. 14 letter, said he worries, like Ahlenius in Beaumont, that Texas will lose major capital investments to other states — particularly Louisiana and Oklahoma — without a new tax incentive program "on the school tax side" to replace Chapter 313.

"The choice isn't that Texas would get 100% of the taxes or 70% of the taxes," Culbertson said. "It's that Texas has a chance to get 70% of the new taxes or nothing when the company doesn't come."

Asked whether he saw any possibility of a new tax incentive program that did not rely on school property taxes, Culberston said, "A couple of states use general funds that the governor can use for incentives. With the size of Texas, that would require the governor to pick winners and losers. If there were only one location in Texas and the Legislature created a specific fund, then maybe it would work."

Culbertson said he had not seen Lozano's bill, and he spoke to Capital & Main before HB 5 was filed.

Greco and Fleming both said they would oppose any Chapter 313 replacement program that involves school funding.

“The Chapter 313 program has taken more money from the public school system than any other factor,” Fleming said.

As for HB 5, Greco said it looks like a “shell bill” filed out of desperation.

“They had to get something in before the filing deadline so that they might be able to go back and shove things in later,” Greco said.