

Lawmakers Should Not Renew Tax Giveaways without Proper Review

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A gigantic program that lets companies get out of paying most school property taxes is scheduled to expire at the end of 2022, but lawmakers are considering rubber stamping its renewal, without reviewing its effectiveness or efficiency.

Known as “Chapter 313” tax abatements, after the chapter of the Texas Tax Code containing the program’s provisions, the colossal giveaway strains the rest of the state budget to make up for foregone school tax revenue.

In a legislative session where lawmakers aim to tackle school finance reform, it’s imperative to note that ending Chapter 313 abatements could be part of a viable long-term solution.

The problematic bill to extend the program until 2032 – HB 2129 by Rep. Jim Murphy – was voted out of the House Ways and Means on March 27 and is currently pending in the Calendars Committee.

Lawmakers created Chapter 313 in 2001 to incentivize the creation of high-paying jobs and investments by allowing school districts to choose to reduce a company’s property taxes if the companies made certain investments. This special treatment was intended to benefit only companies deciding whether to locate in Texas rather than in another state.

The state budget fills in any gap in school taxes created by these giveaways by maintaining funding for a district’s school-finance formulas, as if the property did not exist. In most cases, the addition of valuable property would reduce state aid to a school district in order to maintain equity among districts of different property wealth.

Don’t Renew a Wasteful Program

The Comptroller estimates that nearly 400 active “Chapter 313” projects are costing the state \$9.6 billion in lost school property taxes over the life



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of these agreements. Another 100 projects have applied since that calculation, likely multiplying the loss to the state. Just for the upcoming 2020-2021 biennium, the state is predicted to lose \$1.6 billion in school tax revenue.

The proposed Chapter 313 ten-year renewal would increase the cost to the state by another \$10 billion over the life of new agreements permitted by the renewal. Until lawmakers enact an adequate and sustainable source of revenue for our schools, the Legislature should put off renewing this expensive program.

Postponing Renewal Would Allow Time to Address Problems with the Program

The Chapter 313 program has many shortcomings that the Legislative Budget Board and the Comptroller have identified repeatedly. The Legislature should not extend the program before constructively addressing these problems. Postponing consideration of renewal until the next legislative session would allow time for a full interim review of the costs and effectiveness of Chapter 313.

These Tax Giveaways Are Unnecessary

A key question in economic development is whether a project would have located in Texas without an incentive.

A recent study by Professor Nathan Jensen of The University of Texas at Austin concluded that 85 percent of the projects receiving Chapter 313 tax breaks would have located in Texas without the special treatment

The Comptroller has approved Chapter 313 agreements despite clear evidence that a project would have located in Texas without an incentive. For instance, the boom in natural gas production in the Permian Basin has generated many applications for projects to process the gas on its way to petrochemical plants located near Corpus Christi and Houston. Similarly, tax giveaways have gone to liquefied natural gas (LNG) export facilities on the Texas Gulf Coast. The geography of Texas clearly determines where these projects must be located, even without tax breaks; none of these coastal projects would have gone to Oklahoma, for example.

In fact, two multi-billion-dollar LNG projects are being built in Brownsville even after local school districts rejected their applications for Ch. 313 tax giveaways.

Lawmakers should amend the statute to ensure that the proposed tax break is “the” determining factor in choosing to locate in Texas, not just “a” determining factor, as currently required [Chapter (313.026(c) (2))], or to otherwise demonstrate that the project would not locate in Texas for other economic reasons. The Comptroller currently approves projects after the applicant merely asserts that the project is not “financially feasible” without the abatement, without regard to whether out-of-state alternatives are even being considered.

Extra payments by companies to school districts

Companies seeking school district approval for a tax giveaway routinely offer “supplemental payments” to the district as an incentive to grant a break. The payments, known as Payments In Lieu of Taxes (PILTs) can run to \$100 per pupil per year. Only a handful of Chapter 313 agreements do not include some “supplemental payment” by the company to the school district in consideration for granting the tax giveaway.

These payments are not included in school-finance formulas, which increases inequality among school districts. In addition, such payments can obviously distort district decision-making, leading districts to grant giveaways that, as one Comptroller study phrased it, “may not be beneficial to the state.”

More importantly, the willingness of companies to make these PILT payments – which reach as high as 40 to 50 percent of the tax benefits the company receives – is a strong warning that, in the Comptroller’s words, “incentives awarded are higher than necessary to attract these projects and represent unnecessary cost to the state.” Professor Jensen pointed to these payments as indications that companies were attracted to Texas for other reasons and probably would have located in the state without any incentive at all.

Don’t Extend Wasteful Tax Giveaways

Lawmakers this session should not renew Chapter 313, which does not expire until 2022. The Legislature is currently considering reform of Texas’ school finance system, and any changes should have time to work through the system before evaluating whether to extend Chapter 313.

Before the next legislative session, the State Auditor should give Chapter 313 a complete audit to determine whether job creation, wage, and benefit requirements have been fulfilled. Neither the school district nor the Comptroller verifies reports from companies concerning compliance with statutory mandates. The State Auditor merely samples three school districts annually in a limited review of their execution and administration of agreements.

In addition, the Legislature needs an independent cost-benefit analysis of Chapter 313 giveaways, compared to other uses of state revenue to promote economic development – investments in education, transportation, water, or health and human services. Only industry representatives have done analyses in the past, rarely finding fault with incentive programs.

Ending Tax Abatements Should Be Part of the School Finance Funding Discussion

Lawmakers need a sustainable source of revenue to increase the state share of school funding while reducing school-finance inequality. Ending Chapter 313 abatements could be part of the long-term answer. Ending the abatements would free up future state revenue, remove inequities created by the PILT payments, and ensure that large and profitable corporations pay their fair share of supporting our schools.