



Off The Air: Tax Abatements for Wind Energy Interfere with Military Aviation Facilities, Free Market Forces

Bill Analysis SB 277, HB 445

by Carine Martinez-Gouhier

Chapter 312 (the Property Redevelopment and Tax Abatement Act) and Chapter 313 (the Texas Economic Development Act) of the Tax Code are economic development programs created with the intent of attracting new investments and creating jobs. Chapter 313 is considered the largest economic development incentive program in the state of Texas ([Senate Committee on Natural Resources and Economic Development, 52](#)).

Key Points

- Research showed that wind-powered energy devices can meddle with civil and military aviation radars, causing clutter and interference.
- Chapter 312 and 313 tax abatements incentivize businesses to locate in the areas that offer them.
- Nearly 50 percent of currently active (as of May 2016) Chapter 313 projects are for Wind Renewable Energy Electric Generation.
- SB 277 and HB 445 could prevent wind-powered energy devices from being installed too close to military aviation facilities by removing the incentive to choose corporate welfare over other, possibly safer locations in the state.

Cities, counties, and special districts have put in place more than 1,000 tax abatement agreements under Chapter 312 since the 1980s. These tax abatements can only be offered in “reinvestment zones,” which may be delimited only by the boundaries of the property applying for an abatement. A Chapter 312 abatement may last up to 10 years and must be conditioned upon improvements made to the property. Tax abatements are only valid for increases in the value of the property and cannot include existing value of the property prior to improvement ([Hunker, et al., 46-47](#)).

Chapter 313 allows school districts (barred from entering Chapter 312 agreements) to enter into appraised value limitation agreements between a taxpayer and a school district in which the former agrees to make a minimum level of investment in the community and create a certain number of jobs above a particular wage threshold, and the latter offers a multi-year limitation on the taxable value of new investment in real and tangible personal property. The Texas Comptroller must determine whether a proposed project is likely to generate enough state and local tax revenue to offset the tax losses due to the limitation agreement within 25 years. The Comptroller’s office must also find that the limitation is “a determining factor” in the company’s decision to invest and build in Texas. Without the Comptroller’s certification, school districts cannot enter into limitation agreements ([Hunker, et al., 48-49](#)).

Although these tax incentives are sold as having only benefits—increased tax revenues on the long term, growth and job creation, and temporary tax relief for the business parties of such agreements—the costs of such programs—including their unintended consequences, as with any government intervention—are usually not discussed.

One example of the costs of local tax abatements comes to us through SB 277 and HB 445. The bills would prohibit owners or lessees of real property (under Chapter 312) and owners of a parcel of land, a new building constructed on the parcel of land, a new improvement erected or affixed on the parcel of land, or tangible personal property placed in service in the building or improvement or on the parcel of land (under Chapter 313) located wholly or partially in a reinvestment zone from receiving a Chapter 312 exemption from taxation or a Chapter 313 limitation on appraised value, if a wind-powered energy device is installed or constructed on the property or parcel of land that is located within 30 nautical miles of the boundaries of a military aviation facility located in the state ([HB 445](#); [SB 277](#)).

Research showed that wind-powered energy devices can meddle with civil and military aviation radars, causing clutter and interference. A report prepared for the Department of Energy recognized that the “electromagnetic interference of wind turbines on the nation’s

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radar systems is a concern to flight safety, homeland security, national defense, and severe weather warning missions.” The goals of the report included identifying the impact of wind turbines on air surveillance radars and suggesting mitigation measures ([Sandia National Laboratories](#)). The National Oceanic and Atmospheric Administration has also reported interferences with weather radars ([NOAA](#)). A recent Navy study concluded that wind turbines could negatively impact air traffic control in south Texas, possibly necessitating mitigation measures ([Garcia](#)).

The Comptroller’s 2017 report on Chapter 313 notes that of the 311 active (as of May 2016) projects, 53 percent are for renewable energy and received 25 percent of the total estimated gross tax benefits, while they represent only 22.6 percent of the total money invested and 11 percent of the jobs created. Of the 166 renewable energy projects, 144 were for Wind Renewable Energy Electric Generation ([Texas Comptroller 2017, a, 3](#)).

By offering preferential tax treatments in areas that are close to military aviation facilities, Chapters 312 and 313 incentivize businesses to locate in *these* areas because they can receive the preferential tax treatments, even if these areas present challenges such as radar interference. SB 277 and HB 445 could prevent wind-powered energy devices from being installed too close to military aviation facilities if the motivation behind the location is the perverse incentive.

When government offers subsidies or preferential treatments to businesses, these businesses tend to divert their resources away from creating the greatest value for their customers, to seek corporate welfare instead. In this case, wind energy companies, among other businesses, are incentivized to go where the tax abatements are. Horn Wind LLC President Jimmy Horn, whose wind farm company is seeking such tax abatements in Clay County, recently explained that “. . . when we come to an area we look for tax incentives. It hurts our financials if we don’t get tax incentives. We can build without them but it’s a lot harder” ([McCulloch](#)).

SB 277 and HB 445 do not seek to prohibit wind devices around military bases, but only remove the incentive to choose corporate welfare and disregard other, possibly safer locations in the state. According to Texas A&M, over 3,500 square miles of existing military Special Use Airspace overlaps with a Competitive Renewable Energy Zones (CREZ), out of more than 32,000 square miles of CREZ in Texas ([Texas A&M](#)). There is plenty of space for wind farms to develop in the state.

What about the benefits that Chapters 312 and 313 are supposed to generate? Reality seems to be off the radar here. As with similar “business incentive” programs, Chapters 312 and 313 interfere with the free market system on which the successful Texas Model is built.

Such programs shift the burden of taxation onto other taxpayers, individuals and businesses alike. In the case of Chapter 312, local governments tend to increase the scope and reach of their services with the growth of their community. The businesses that are granted tax abatements for a period of time may not pay the share of taxes needed to cover the services they use because of tax abatements.

In many cases, the much bragged-about benefits, such as the job creation requirements, can be waived. A 2011 Legislative Budget Board report found that since the enactment of legislation passed by the 80th Legislature (2007) authorizing school districts to waive the minimum number of jobs to be created by an agreement, “63 percent of agreements have done so” (8). In 2013, the Texas Comptroller issued a report estimating that taxpayers spent a whopping \$341,363 for every job created by Chapter 313 ([Texas Comptroller 2013, 5](#)). Businesses do win, though. Businesses that have entered a Chapter 313 agreement are expected to derive around \$7.1 billion in gross tax benefit—tax savings—throughout the existence of these agreements. The forsaken tax revenues are not necessarily lost for the school districts that enter such agreements, as the school funding formula can make up for them ([Texas Comptroller 2017, a](#)).

Perhaps the largest cost to the Texas economy of the preferential tax treatments for wind generating facilities is the disruption it has caused in the Texas electricity market. Mauricio Gutierrez, the president and CEO of NRG, recently said, “I believe the IPP [independent power producer] model is now obsolete and unable to create value over the long term.” He based his claim on the pressure put on the traditional IPP by “changes in fuel mix, consumer preference, technological innovation and increased distributed generation.” In the energy business, these terms are code talk for renewable energy; in Texas, it particularly refers to wind, which has recently overtaken nuclear energy as the third largest “fuel” for generating electricity in Texas ([Liam; SeekingAlpha.com](#)). If wind generation had grown on its own in Texas’ competitive electricity market, that would be one thing. But the reason for the winds rapid growth is largely because of government subsidies

at the federal, state, and local levels; the Foundation estimates that these costs—without taking into account local preferential tax treatments, topped \$13.4 billion from 2006-2015 ([Peacock and Neeley, 2](#)). These subsidies have so distorted the electricity market that, according to Gutierrez, the market itself may not survive.

SB 277 and HB 445 try to mitigate the interference that such corporate welfare programs may have on military aviation facilities. But it is urgent to also question how badly these programs interfere with the Texas economy and Texans in general. That such legislation is necessary to protect Texans is evidence that government intervention, far from creating solutions and growth, brings about problems. Chapters 312 and 313 should be repealed, lest they meddle with other, crucial areas of Texans' lives.

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