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Money for Nothing: An Introduction to Chapter 313 Tax Abatements

by Stanley Greer
Senior Fellow

Key Points

- The Texas Economic Development Act—Chapter 313 of the Texas Tax Code—allows school districts to reduce the maintenance and operations property tax paid by certain businesses for up to 10 years.
- School districts do not lose any revenues in the process as the state usually makes them whole by sending state revenues from taxes paid by all Texans.
- These deals have contributed to the rise of renewable energy projects in Texas. These projects create very few jobs for Texans, but benefit from an array of preferential tax treatments at the federal, state, and local levels.

Introduction

When you hear proponents speak of Chapter 313 of the Texas Tax Code, otherwise known as the Texas Economic Development Act (TEDA), it seems magical. In the Lone Star State, school districts, along with cities and counties, collect property taxes, and property taxes are the largest single source of funding for public schools. Moreover, the property taxes forked over to local schools constitute the bulk of all property taxes paid by Texas businesses and homeowners. But under Chapter 313, a school district may make an agreement with a private business operating within its boundaries to allow the latter to pay less, often far less, in property taxes than it would ordinarily owe over the course of a decade. Whenever a school district and a business cut a Chapter 313 deal, the district ultimately doesn't lose a dime in tax revenue. It may actually collect more revenue than it would have, had the business paid all the property taxes it would normally owe.

As reporter Patrick Michels correctly observed in an illuminating March 2016 profile of the Chapter 313 program for *Texas Observer*, it "actually makes it worthwhile for school districts to give away millions of dollars in tax revenue" (Michels).

Unfortunately for Texans, Chapter 313 isn't really magic. The reason the school district doesn't lose any revenue is that individuals and businesses located across Texas who pay state sales, franchise, and other taxes have to reimburse the school district for all the revenue it doesn't collect in property taxes. There's no clear evidence that, on balance, businesses invest more capital and create and sustain more jobs in Texas as a consequence of Chapter 313 or Chapter 312 (the Property Redevelopment and Tax Abatement Act), a related provision in the Texas Tax Code that authorizes cities, counties, and special districts to cut certain prospective businesses' maintenance-and-operations property tax burdens by an average of roughly 50 percent over the course of 10 years.

For years, property tax abatements under Chapters 312 and 313 have been sharply criticized by free-market advocates who oppose "corporate welfare," the label they use for a wide array of benefits for favored businesses furnished with the intent of improving the outcomes of the marketplace. Progressive voices such as *Texas Observer* have also questioned the wisdom and propriety of such tax abatements as an economic development strategy.

Despite mounting criticism, these property tax abatements remain on the books and have a number of vociferous defenders. Undoubtedly, one key reason for the

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durability of Chapters 312 and 313 is the significant role they have played and continue to play in the building and placement of wind turbines and solar panels in Texas. Government mandates and direct subsidies such as the federal electricity production tax credit have undoubtedly contributed to the rise of renewable energy projects in the land of oil and gas, but without the property tax abatements it is likely Texas would have far fewer turbines and solar panels, and in many cases the turbines/panels wouldn't be located where they currently are.

Environmental activists, even if they tacitly recognize that Chapters 312 and 313 foster excessively cozy and sometimes corrupt relationships between business executives and local public officials, support these code provisions because they believe more investment in renewable energy, however it is spurred, results in lower greenhouse gas emissions and reduces the risk of catastrophic global warming. However, even assuming, for the sake of argument, that catastrophic global warming is a grave risk, political favoritism for renewable-energy companies has proven to be an altogether ineffective means of reducing greenhouse gas emissions. Other, far less costly approaches are available, and they are almost certain to be more effective in the long term as well as in the short term.

While it is very doubtful that Chapters 312 and 313 lower Texas' greenhouse gas emissions by even a small amount, they do have far-reaching consequences. A number of Texans live within eyeshot and earshot of turbines that would almost certainly not be financially viable were it not for state tax abatements. The construction of these turbines and their ongoing operation affect the quality of life of many of the state's rural communities, and the impact is widely regarded as detrimental (Bryce; Le Coz; Weed).

Taxpayers are also affected. As a consequence of Chapter 312, local governments receive less revenue than they otherwise would. As a consequence of Chapter 313, revenue from state sales and other taxes is diverted away from other uses to make up for the reduction in property taxes paid to school districts (Toohey). Rival businesses that furnish energy from different sources are harmed by unfair competition. Incredibly, tax abatements and other subsidies make it possible for wind generators to supply power at a negative cost for significant portions of the day during significant parts of the year. To be competitive at these times, other energy providers (which receive far less favorable treatment from the federal and Texas governments) would have to pay the grid operator to take their energy (Gross).

Of all the groups that are potentially and actually harmed by Chapters 312 and 313, the most important is the Texas consumer. As the great French political economist and statesman Frederic Bastiat observed nearly 170 years ago, all economic questions should be treated "from the viewpoint of the consumer," for "the interests of the consumer are the interests of the human race." For consumers, tax abatements distort the market, and the intermittency of wind and solar generation increases the cost of energy, while also making the system less reliable.

"Their Incentive Is to Get as Much Money as Possible"

The Texas Economic Development Act, otherwise known as Chapter 313, where it is located in the Texas Tax Code, was originally sold to lawmakers and the public as a means of enabling Texas to compete more effectively for business investment. In 1997, many of the state's business boosters were distressed after Intel, which had already begun building a $1.2 billion semiconductor chip factory at a site in North Fort Worth, announced it would shelve the project. As a 2001 story published in *Site Selection* magazine pointed out, Intel was definitely "in an expansion mode" at that time, "with projects announced in Oregon and Arizona," but company officials complained that the higher-than-expected and huge local school property tax liability it faced made the North Fort Worth project "simply too expensive" to continue (Deal).

Frustrated by the loss of the chip factory, Republican state Rep. Kim Brimer (Fort Worth) concocted a measure that would, once adopted, ingeniously recruit public school district officials to collaborate with corporate executives on tax-break deals (Michels). The Texas Legislature ultimately adopted Brimer's bill, which became law without the signature of the then-skeptical Gov. Rick Perry. In 2013, the law was overwhelmingly reauthorized in the state House and Senate (Mirzatuny).

Chapter 313 deals routinely *increase* the revenues at the school district's disposal even as they *slash* the school property taxes paid by the corporation for periods as long as a decade. A survey of "corporate welfare" published by Texas Public Policy Foundation in 2016 explained what it does in legal terms:

> Chapter 313 works by way of an appraised value limitation, which is an agreement between a taxpayer and a school district where the former agrees to make a minimum level of investment in the community, and

> the latter offers a multi-year limitation on the taxable value of new investment in real and tangible . . . property. However, this limitation applies only to a portion of school district property taxes.
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> School property taxes consist of two elements: 1) the maintenance and operations (M&O) portion that funds day-to-day operations, and 2) the interest and sinking (I&S) portion that pays debt service on bonds. A limitation agreement may apply only to the former and not the latter (Hunker et al., 48).

Chapter 313 deals typically reduce the business's M&O school property taxes by as much as 90 percent during the life of the agreement, and they currently reduce the property taxes collected by roughly a billion dollars a year in the aggregate. However, as a survey of the program published in the *Austin American-Statesman* in 2015 explained, school districts "have little incentive to say no to proposed Chapter 313 deals, because the deals don't cost the districts anything." Reporter Marty Toohey explained:

> The state's school finance laws require a district to be "kept whole"—which means every dollar a district waives in company property taxes as part of a Chapter 313 deal is instead paid to the district by the state.
>
> Under such circumstances, school districts don't have to wrestle with the difficult questions about economic incentives: Are they worth it? Is locking in a company worth potentially shifting the tax base?

Toohey went on to quote Deputy State Comptroller Robert Wood, who observed that school district officials have little reason to be concerned about whether or not a Chapter 313 agreement makes sound economic sense. "Their incentive is to get as much money as possible," said Wood (Toohey).

School districts actually often do far better than simply recouping the amount of the tax abatement. Patrick Michels has noted that the law actually allows companies benefitting from tax breaks to make "supplemental payments" to school districts to "sweeten the deal." According to Michels, during the first few years after the adoption of the Texas Economic Development Act, the supplemental payments were relatively small, but "gradually school districts began playing hardball, cutting deals for up to half of the company's tax benefit." The payments sometimes go directly into a school district bank account, or they may be diverted to nonprofit foundations that then forward the money to the school district. Some of the "bonus" payments to school districts have been in excess of $30 million, though since 2009 they may not legally exceed $100 per student enrolled in the district per year (Michels).

Wind Farms May Receive Tax Abatements Even if They Employ No One at All

Brimer originally intended that his legislation would require businesses to pledge to create at least 100 high-paying jobs in order to be eligible for a Chapter 313 deal. The law as it was ultimately adopted sharply reduced that requirement to 25 jobs, and only 10 in rural jurisdictions. Certain would-be investors, predominantly in the wind energy business, protested that even the reduced jobs requirement was excessive for them. In 2007, lawmakers responded by enabling school districts to waive the jobs requirement altogether. In 2016, the *Texas Observer*, which published Michels' article, analyzed what had happened as a consequence of legislators' handiwork. Michels summarized the findings:

> The *Observer*'s review of program records shows that in more than 150 of the agreements on the books today—around half—companies don't even pledge to deliver 10 jobs. Seven deals promise zero jobs (Michels).

Multiple statistical analyses of Chapter 313 deals conducted since the law was amended to allow waivers of job-creation requirements have shown that wind farms disproportionately take advantage of their ability to qualify for big tax breaks from school districts without providing any new employment opportunities to the community. A February 2013 report issued by the Texas Conservative Coalition Research Institute, for example, noted:

> Renewable energy represents only eight percent of job commitment[s] and 27.6 percent of committed investment under the incentive, but represents fully thirty-seven percent of gross tax benefits. Of the projects that have waived the job creation requirement since [the] waiver was authorized, eighty-seven percent have been in the renewable energy industry.
>
> Wind farms have been an especially poor job creator. As measured in 2009 wind farms had only created 572 jobs for an estimated total gross tax benefit of $712,376,734 through the length of the agreements – that is, a $1,245,413 cost per job created (TCCRI, 10).

Apologists for Chapter 313 generally and special tax treatment for renewable energy specifically insist such analyses are unfair, because they do not account for jobs that are indirect results of tax abatements. But there is no plausible reason to believe more jobs are indirectly created as a result of subsidized investments in renewable energy than are created as a result of any other private investment.

Another putative condition for any Chapter 313 deal is that, were it not for the availability of the property-tax abatement, the business would have gone somewhere outside of Texas. But the requirement that the tax break be "a determining factor" in the site selection was almost completely meaningless from the time the TEDA was adopted until 2013, because throughout those years school districts that typically stood to reap large financial benefits at state taxpayers' expense by making tax-abatement agreements were the sole arbiters of whether or not the incentive was "a determining factor."

Eventually, legislators sought to remedy the flagrant conflict of interest by granting the state Comptroller's Office the power to oversee Chapter 313 deals jointly with school districts. In practice, as Michels demonstrated, the state Comptroller's involvement has done little to reduce approval for these school district projects:

> The state comptroller's office . . . has signed off on all but seven of the 337 applications it has received since 2010, when the law first required posting them online. Of those seven, four reapplied and three were subsequently approved; the last is still under consideration (Michels).

School district administrators are not normally specialists in economic development, and state policymakers shouldn't expect them to be. They are attracted to Chapter 313 opportunities first and foremost because they enable them to increase the funding for the programs they oversee without having to sell the community on why a property tax increase is necessary (Snyder). In the early years of the TEDA, before the $100 annual per pupil cap on "side deals" between school districts and Chapter 313 investors was imposed, the windfalls for school administrators could be enormous.

A November 2011 report for the *Texas Tribune* focused on the case of the 160-student Blackwell Independent School District (BISD) in west Texas, which has since been consolidated into a district with nearly five times as many students. Thanks to a deal it had brokered with a wind farm company in 2005, this tiny district could expect to ultimately rake in $35 million, wrote a trio of journalists for the *Tribune*. Wind farm revenue had already made it possible for the district to buy a new football stadium and an "academic complex attached to the original school building" (Smith et al.).

The huge influx of money had also enabled the district to set up a $28 million scholarship and "buy an iPad for every student, starting in the seventh grade." Because of a grandfather clause in the 2009 amendment setting a cap on side deals, the money would continue to flow in for years to come (Smith et al.).

Editor's Note: *This is the first in a series of research papers examining the problems with Chapter 312 and Chapter 313 local tax abatements. The papers will examine both the overall problems with the abatements as well as their use for renewable energy projects. This research is timely because Chapter 312 will expire in 2019, and Chapter 313 will expire in 2022. If not renewed by the Legislature in 2019, Chapter 312 and the ability of local governments to offer tax abatements will go away. Likewise, if not renewed by the Legislature in 2021, Chapter 313 and the ability of school districts to offer tax abatements will go away. The next two legislative sessions will provide Texans and their elected state officials the opportunity to examine whether these programs deliver the jobs and economic development they promise.*

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About the Author

Stanley Greer is a senior fellow at the Texas Public Policy Foundation and a senior research associate for the National Institute for Labor Relations Research (NILRR), based in Springfield, Virginia. He is also the newsletter editor for the National Right to Work Committee, with which NILRR is affiliated. Greer received a bachelor's degree from Georgetown University in 1983 and a master's from the University of Pittsburgh in 1986. He and his wife Carol have six children and live in Fairfax, Va.

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