



A controversial tax program promised high-paying jobs. Instead, its costs spiraled out of control.

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When Houston lawmaker Jim Murphy tried to expand Texas' most lucrative corporate tax incentive six years ago, Gov. Greg Abbott vetoed Murphy's legislation, fearing it would cost taxpayers even more money.

"I cannot support expansion of an incentive program that has not been proven to deliver the value taxpayers deserve," Abbott said at the time.

The governor complained that the state's Chapter 313 program, named after a section of the Texas Tax Code that erases billions of dollars in property taxes for eligible companies, was costing taxpayers \$341,000 for every permanent job it created.

His veto, however, didn't slow the program's growth. Since then, that price tag has more than tripled.

Using the same calculation Abbott cited, Chapter 313 now costs more than \$1.1 million in tax breaks per new job, according to state data analyzed by the Houston

Chronicle. By any metric, costs are rising — and there's no telling how high they'll go. The program has no limits.

The spiraling costs of Chapter 313 — which soon are projected to top \$1 billion per year — are just one example of how the program falls short of the benefits touted by supporters.

Ever since lawmakers created the program 20 years ago, they've repeatedly amended the law in the name of reforming it. Not only have promised protections for taxpayers not materialized, however, but the revisions have undercut the program's job-creation goals and weakened wage requirements for the workers at the subsidized job sites.

A Houston Chronicle review of hundreds of records in legislative archives and on file with the Texas Comptroller's Office found that the law was written in ways that encourage the gatekeepers of the program — the comptroller's office and local school districts — to approve nearly every Chapter 313 application they receive.

The review also found the comptroller's office often has shied away from applying a more stringent interpretation of the law, though doing so could have recouped public money from companies that broke their jobs promises or prevented a project from being needlessly subsidized.

Chapter 313 — a reference to its place in the Texas Tax Code — lets companies pretend that a portion of their property values are invisible on school district tax rolls for a decade. More than 500 manufacturing and energy projects are projected to save nearly \$10.8 billion in property taxes over the duration of their deals, according to a comptroller's report on the program that covers all active projects through early 2020.

Since then, some projects have dropped out of the program, but recently released records by the comptroller's office show another 90 projects have since been approved that will save companies an additional \$900 million.

Supporters of Chapter 313 promise that everyone benefits when the incentives end and properties return to the tax rolls at full value.

But the Chronicle's analysis shows that many projects quickly lost their value over time. Texas is missing out on the peak years of potential tax revenue, when property appraisals are at their highest.

Advocates say Chapter 313 guarantees high-paying jobs. But the pay at some tax-subsidized projects isn't keeping pace with wages at other manufacturing businesses in the same region. And in 64 percent of cases, local school boards let companies hire fewer workers than the law's already modest minimum standards require.

Comptroller spokesman Chris Bryan said his colleagues don't track the program's cost per job or the diminished property values of projects when they return to tax rolls after their incentives end. He offered no opinion on either measure.

Dale Craymer, president of Texas Taxpayers and Research Association, which has long supported Chapter 313, said the figures companies report to the comptroller often do not represent all workers employed in connection with a project, nor all the value added to the tax rolls.

And sales tax revenue produced in connection with new projects isn't tracked at all, said Texas Chemical Council president Hector Rivero.

"In some instances, the data doesn't show what we'd like it to, but then the question is, is that because the program isn't working as we'd like it to or because we're not getting all the data that we should be getting?" Craymer said. "The reporting associated with the program, while it's very transparent, it's also very limited."

Supporters also dispute the high cost-per-job metric cited by Abbott and take a dim view of such benchmarks, arguing that higher numbers simply mean a project cost more to build.

Abbott's metric, which relied on figures published by the comptroller's office, used two different time frames in its comparison. It divided the companies' total tax breaks over the entire 10-year life of the deals by the number of high-paying jobs they had created as of their most recent reports. After Abbott cited the metric, the comptroller stopped reporting it.

Even by more conservative measurements, however, the cost per job is still high — and rising.

Dividing the \$2.5 billion in tax breaks companies had received as of 2019 by the number of total jobs they had created as of the same year yields a cost of \$211,600 per job.

Meanwhile, another of the state's marquee economic development programs, the Texas Enterprise Fund, has awarded about \$6,500 per promised job.

In a recent report on Chapter 313, Craymer's research group — whose board includes many recipients of the tax breaks and program consultants — noted that such jobs calculations don't include thousands of temporary construction jobs that aren't reported under the program.

Lauding Chapter 313's benefits, the report repeated a frequent claim: that the jobs in question wouldn't exist at all if it weren't for the program's success in luring business to Texas.

“Consequently, the state is not ‘losing’ any tax dollars,” the group concluded.

Murphy, who filed new legislation this year to renew Chapter 313 for 10 years and expand it to allow more types of projects, emphasized the same point — that companies are investing hundreds of billions of dollars in Texas thanks solely to the program.

“No one's getting money from the state,” Murphy said of the companies. “It's simply a reduction of taxes for 10 years, and then it goes up to the full rate for the rest of time.”

But in case after case, the Chronicle found companies had announced projects and even started construction long before applying for Chapter 313 subsidies, suggesting they would have built the projects without the tax break.

Critics of Chapter 313 include Republicans and Democrats — both state parties have listed the program's abolition in their platforms — as well as the conservative

Texas Public Policy Foundation and the progressive nonprofit Every Texan. These skeptics say it's time to rein in the program — or kill it altogether.

“This is a large, expensive and, I think, badly flawed program,” said Dick Lavine, senior fiscal analyst for Every Texan, who testified at a legislative hearing this year against bills that would renew Chapter 313.

Vance Ginn, chief economist at the Texas Public Policy Foundation, agreed.

“We should have a tax system that doesn't pick winners and losers,” Ginn said at the same hearing. “There are many businesses that come to Texas every day without these incentives. There are also many mom-and-pop shops, small businesses, that don't receive these Chapter 313 property tax abatements.”

The gatekeepers

Businesses applying for a Chapter 313 agreement want the all-important tax limitation that makes the program tick.

This cap lets a company pretend that, for example, a \$500 million petrochemical plant is worth anywhere from \$10 million to \$100 million on a school district's tax rolls for a decade, depending on the size of the district. The limitation can save a company tens of millions of dollars in property taxes.

The savings apply only to the school district's operations taxes. Districts also levy taxes to pay off debts, and Chapter 313 recipients pay all taxes on that portion of their bill, which is typically a far smaller amount.

For companies seeking these incentives, the process starts and ends at a local school district.

School officials are important gatekeepers in the program and ultimately decide whether to approve the agreements. But districts also have a powerful incentive to never deny a Chapter 313 deal: They can make money each time they approve one.

State funding formulas ensure that school districts don't bear the cost of granting property tax breaks. And school officials negotiate additional payments from

companies that can be used for a variety of education purposes — money they never would have received under the state’s educational allotments.

Over the 10-year life of each deal, these extra payments are providing a \$1.5 billion windfall for districts across Texas that participate in the Chapter 313 program. School boards occasionally reject an application if there’s a community outcry against a project. But that seldom happens.

The comptroller’s office itself, in a December 2010 report on the program, said these supplemental payments to schools “are evidence that the incentives awarded are higher than necessary to attract these projects, and represent unnecessary costs to the state.”

Nathan Jensen, a University of Texas at Austin professor who has studied Chapter 313, has noted the perverse incentives these payments create.

“The thing that makes it particularly unique is how politically clever it is,” Jensen said. “It’s kind of an evil-genius program where you’ve essentially bought off the normal opposition for these kinds of programs. School districts always vote yes because it’s set up like that.”

Chapter 313 creates a system of winners and losers among Texas school districts. Only a portion attract the sort of manufacturing investments that qualify for the program. Roughly 1,000 school districts, including the Houston Independent School District and nearly every other big, urban district in Texas, don’t have any active Chapter 313 agreements.

Just a sixth of all Texas school districts — about 170 — are granting tax breaks under the program this year. A majority of the incentives are concentrated in just eight districts, all but one of them petrochemical hubs on the Gulf Coast.

Fully half of the \$95 million in supplemental payments companies make to schools this year will go to just six school districts in industrial areas.

The nonprofit Industrial Areas Foundation argues the program’s beneficiaries are limited to the companies themselves and districts serving just 5 percent of Texas schoolchildren.

“Most districts don’t have these industrial facilities, and if you don’t have these industrial facilities then you don’t get any (extra) revenue,” said Broderick Bagert, an analyst with the foundation.

Few denials

Once a school district initially approves a Chapter 313 deal, the Texas Comptroller’s Office reviews the application. Lawmakers and program supporters say state regulators make sure that tax breaks are going only to companies that need the incentive to build in Texas.

Records show their claims are incorrect.

For the program’s first 12 years, companies were supposed to get the incentives only if their projects could “locate or relocate in another state or another region of this state.”

The comptroller recommended that just one of the nearly 400 applications filed during that period be denied for failing that test.

Dow filed the first Chapter 313 application in September 2002 for a new polymer plant it called “a critical part of Dow’s future growth in Texas,” arguing that its global reach gave it “substantial flexibility in plant location.”

Yet Dow also acknowledged it had begun construction on the project seven months before filing its application. The Chapter 313 deal saved the company \$14 million in taxes.

Dow spokeswoman Ashley Mendoza noted the company’s application had blamed the late filing on state officials taking months to produce the necessary application forms.

“Our applications have met the requirements of the statute and the district rules,” she said.

Caterpillar applied for tax breaks in August 2009 for a new plant in Seguin, telling the comptroller's office it had "many attractive opportunities" and had considered locations outside Texas. But company officials had already chosen Seguin, even hosting a groundbreaking ceremony seven months earlier with then-Gov. Rick Perry and other state leaders.

"The good people of Caterpillar have chosen Texas for the new home for their worldwide assembly, test and paint operations," Perry said. The company cut \$9.5 million from its tax bill.

Caterpillar declined to comment.

In 2013, lawmakers promised to strengthen the program by adding more stringent oversight.

State Sen. Bob Deuell, a Republican sponsor of the bill, said it included provisions to make sure projects would not have come to the state without an incentive.

This view is still prevalent. At a December conference hosted by the tax research organization that supports Chapter 313, Dallas Rep. Rafael Anchia, a Democrat, stressed the comptroller's oversight role.

"But for the state investment, the private entity would not have made the investment," he said. "Without that, there's a rejection of the incentive."

The reality is far different.

The 2013 reforms instructed the comptroller to decide only whether the incentive is "a determining factor" in the company's decision to proceed with the project — not the sole, overriding factor.

Of the more than 550 applications filed under this phrasing of the law, only eight have failed the "determining factor" test. Of those, four rewrote their applications, applied again, and were approved.

"The "determining factor" criterion is ... difficult to assess," the comptroller's office acknowledged in a November article posted to its website. "It's generally

impossible to determine the factors that ultimately cause a company to make a final decision, but it's plausible to assume that the availability of a large tax break is often a determining factor, if one of many."

Lackluster benefits

Supporters of Chapter 313 say the huge tax incentives are worth it. The program brings in high-paying jobs, they say, and at the end of the 10-year deals, the properties return to the tax rolls at their full value.

"It's a win-win-win situation," said Pete Pape, president of Texas Schools for Texas Economic Development, who testified at a legislative hearing this year in support of the program. "It's definitely a win for the corporation. It's a win for the school district. And it is a win for the community."

But upon closer inspection, Chapter 313's benefits are fraught with problems. Chief among them: depreciation.

Like a new car that loses its luster as soon as it leaves the showroom, the value of manufacturing plants, wind farms and other facilities can fall over time. In scores of cases, records show Texas is missing out on the years when Chapter 313 projects' appraisals are at their peak.

In all, 81 projects had finished their Chapter 313 deals by 2019 and fully returned to the tax rolls, having received \$1.3 billion in tax breaks.

These projects, at the height of their taxable value, were worth \$22 billion. But in the first year after their tax breaks ended, they were worth just \$9 billion — 41 percent of their peak values. For manufacturing projects, the figure was 44 percent; for wind projects, it was 35 percent.

Motiva Enterprises, which applied in 2006 for a tax break at its refinery in Port Arthur, reported investing \$10.3 billion — the largest amount of any single Chapter 313 deal — but never reported a taxable value of more than \$3.5 billion.

By the time the limitation ended, the facility's taxable value was \$1.1 billion, a tenth of what the firm reported investing at the site.

The company received \$237 million in tax breaks.

After the refinery returned to the tax rolls at full value, Motiva protested its valuation and was successful; Port Arthur superintendent Mark Porterie said the district had to repay the company \$8 million.

Porterie said he supports the Chapter 313 program, under which the district has approved 10 applications, and welcomes the extra payments companies make to school districts.

But he has been critical of the companies' efforts to reduce their taxable values and has called for Chapter 313 recipients to be banned from doing so while their values are artificially capped.

"We have these companies that come before us and they tell us that the business is going to be at a certain value at the end of the 10-year period," he recently told a legislative committee debating a Chapter 313 bill. "At the end of the 10-year period ... it has lowered tremendously, and then we have to fight. It's not always what it seems to be at the beginning of the process."

Motiva declined to comment.

What about the high-paying jobs touted by Chapter 313's supporters? Records show that some Chapter 313 companies aren't paying wages that keep pace with the region's prevailing wages in similar industries.

The law doesn't require them to.

When Chapter 313 was created in 2001, 80 percent of new jobs had to be high-paying "qualifying" jobs, with wages required to exceed 110 percent of the local average manufacturing wage.

Over the years, lawmakers have chipped away at these requirements.

Applicants have never been required to create more than 25 jobs, or 10 jobs in rural areas. But in 2007, job waivers entered the program, letting companies lower their job-creation requirements or scrap them altogether. Among active projects, 64 percent have received job waivers.

In 2009, the wage target was “clarified” as being set using data as of the time the company applied for tax breaks, ensuring companies could avoid increasing employees’ pay over time.

Of the roughly 310 projects that reported jobs data in 2019, a fifth reported paying workers a median salary lower than the average manufacturing wage in that region; at 20 projects, companies reported paying workers 80 cents or less on the dollar.