

- SUBJECT:** Extending and altering ch. 313 school property value limit agreements
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 8 ayes — Oliveira, Otto, Bohac, Hartnett, C. Howard, P. King, Paxton, Taylor
- 0 nays
- 3 absent — Hilderbran, Peña, Villarreal
- WITNESSES:** For — Ronnie Krejci, Sterling City Independent School District; Paul Sadler, The Wind Coalition; Patrick Woodson, E.On Climate and Renewables, The Wind Coalition; (*Registered, but did not testify:* Daniel Casey, Dale Craymer, Texas Taxpayers and Research Association; Kathleen Ferrier, Real Estate Council of Austin; David Holt; Billy Howe, Texas Farm Bureau; Chris Hughes, Total Services, Inc.; Vanessa Kellogg, Horizon Wind Energy; Kevin O’Hanlon, O’Hanlon, McCollom, and Demerath; Shannon Ratliff, Invenergy)
- Against — Dick Lavine, Center on Public Policy Priorities
- BACKGROUND:** Under Tax Code, ch. 313, a school district may agree to limit the appraised value of property in the district for property-tax purposes. A project must meet minimum requirements for investment and job creation to qualify for a value-limitation agreement. The comptroller performs an economic analysis of each application for a value-limitation agreement and either recommends or does not recommend the school district’s granting of the agreement. The comptroller’s recommendation is not binding. In most cases, the taxable value of the improvements is limited for eight years. The state makes payments to the school district under the school finance system to make up for some of the tax revenue the schools would have received if the investments were made without the value-limitation agreement. There are more than 90 such agreements in Texas. The authority in ch. 313 to allow such agreements will expire on December 31, 2011.

DIGEST:

CSHB 3676 would extend the expiration date of ch. 313 value-limitation agreements to 2015 and would change their application and reporting requirements.

**Sunset date.** CSHB 3676 would amend Tax Code, sec. 313.007, to extend the sunset date of ch. 313 value-limitation agreements from December 31, 2011, to December 31, 2015.

**Leaseholder's eligibility for value-limitation agreements.** CSHB 3676 would amend sec. 313.025 to allow the owner or lessee of, or the holder of another possessory interest in, qualified property to apply to the governing body of a school district for a value-limitation agreement.

**Comptroller's evaluation of the application for an agreement.** CSHB 3676 would amend sec. 313.026(a) to require the comptroller's economic impact evaluation of an application for a value-limitation agreement to include, among other existing requirements:

- the name of the school district;
- the name of the applicant;
- the general nature of the applicant's investment;
- the number of qualifying jobs to be created by the applicant;
- the impact the project would have on Texas and individual local units of government, including tax and other revenue gains, and the economic effects of the project on local communities;
- the projected market value of the qualified property of the applicant as determined by the comptroller;
- the proposed limitation on appraised value for the qualified property of the applicant;
- the projected dollar amount of the taxes that would be imposed on the qualified property, for each year of the agreement, if the property does not receive a limitation on the appraised value, with assumptions of the projected appreciation or depreciation of the investment and projected tax rates clearly stated;
- the projected dollar amount of the taxes that would be imposed on the qualified property, for each tax year of the agreement, if the property received a limitation on appraised value, with assumptions of the projected appreciation or depreciation of the investment clearly stated;
- the projected effect on the Foundation School Program of payments to the district for each year of the agreement;

- the projected future tax credits if the applicant also applies for school tax credits; and
- the total amount of taxes projected to be lost or gained by the district over the life of the agreement.

After receiving a copy of the application and other pertinent information, the comptroller would be required to determine whether the property met the eligibility requirements for a limitation on appraised value. The comptroller would be required to notify the governing body of the school district of the determination, and to provide the applicant an opportunity for a hearing before the determination became final. The hearing would be conducted by the State Office of Administrative Hearings. The applicant would have the burden of proof on each issue in the hearing. The applicant would to appeal to a Travis County district court, with the appeal to be determined by the substantial evidence rule.

If the comptroller's determination that the property did not meet the eligibility requirements became final, the comptroller would not be required to provide an economic impact evaluation of the application nor to submit an opinion to the school district as to whether the application should be recommended, and the governing body of the school district would not be allowed to grant the application.

The governing body of a school district would be allowed to approve an application the comptroller had not recommended only if the governing body held a public hearing to consider the application and the comptroller's decision, and at a subsequent meeting at least two-thirds of the members of the governing body voted to approve the application.

**Disclosure of public information.** CSHB 3676 would amend ch. 313, subch. B, to require disclosure of appraised value limitation. The comptroller would be required to post on the comptroller's website each document or item of information the comptroller designated as substantive before the 15th day after the date the document or item of information was received or created. Each document or item of information would have to be posted until the appraised value limitation expired.

If a school district maintained a website, the district would be required to post a link to the area of the comptroller's website where information on each of their district's value-limitation agreements was maintained.

CSHB 3676 would amend sec. 313.028 to make certain business information confidential by segregating confidential information from other information in the application. This information could not be disclosed publicly. Other application information, including information related to economic impact or eligibility, such as the nature and amount of the projected investment, employment, wages, and benefits, would not be considered confidential business information if the governing body of the school district agreed to consider the application.

**Agreement provisions.** CSHB 3676 would amend sec. 313.027 to allow a value-limitation agreement to provide that the property owner would protect the school district in the event the district incurred extraordinary education-related expenses related to the project that were not directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the project.

The agreement would be allowed to provide for a deferral of the date on which the qualifying time period for the project was to commence or, subsequent to the date the agreement is entered into, be amended to provide for such a deferral. The agreement would not be allowed to permit a qualifying time period that had commenced to continue for more than the number of years applicable to the project.

**Limits on PILOTs.** The school district and a person also would not be allowed to enter into agreements under which the person agreed to provide payments in lieu of taxes (PILOTs) to a school district in an amount that exceeded \$100 per student per year in average daily attendance or for certain periods of time.

**Recapture provisions.** CSHB 3676 would amend ch. 313, subch. B, to allow for the recapture of lost property-tax revenue. A person with whom a school district entered into an agreement would be required to make the minimum amount of qualified investment during the qualifying time period and would be required to create the minimum number of qualifying jobs during each year of the agreement.

If in any tax year a property owner failed to comply with the minimum investment and job creation requirements, the property owner would be liable to the state for a penalty equal to the amount computed by

subtracting from the market value of the property for that tax year the value of the property as limited by the agreement and multiplying the difference by the maintenance and operations tax rate of the school district for that tax year. Such a penalty would become delinquent if not paid on or before February 1 of the following tax year.

**Definitions.** CSHB 3676 would amend several definitions in ch. 313.

*Qualified investment.* The bill would amend sec. 313.021(1)(A) and sec. 313.021(1)(E) to define “qualified investment” as a tangible personal property that was first placed in service in Texas during the applicable qualifying time period that began on or after January 1, 2002, without regard to whether the property was affixed to or incorporated into certain real property. “Qualified investment” also would mean tangible property that was first placed into service in Texas during the applicable qualifying time period that began on or after January 1, 2010, without regard to whether the property was affixed to or incorporated into real property and that was used in connection with operating certain advanced clean energy projects. “Qualified investment” also would mean a building or permanent, nonremovable component of a building that was built or constructed during the applicable qualifying time period that began on after January 1, 2002, and housed tangible personal property related to, among other things, advanced clean energy projects.

*Qualified property.* CSHB 3676 would amend sec. 313.021(2) to create a definition of “qualified property” as land on which, in connection with a new building or new improvement, the owner or lessee of, or the holder of another possessory interest in, the land proposed to make at least the minimum qualified investment and create at least 25 new jobs.

*Qualified time period.* CSHB 3676 would amend sec. 313.021(4)(A) to create a “qualifying time period,” which would be a period that began on the date that a person’s application for a limitation on appraised value was approved by the governing body of the school district and would end on December 31 of the second tax year that began after that date. An advanced clean energy project’s qualifying time period would be the first five years that began on or after the third anniversary of the date the school district approved the property owner’s application for a limitation on appraised value, unless a shorter time period was agreed to by the governing body of the school district and the property owners.

*County average weekly wage for manufacturing jobs.* CSHB 3676 would amend sec. 313.021(5) to define “county average weekly wage for manufacturing jobs” as the average weekly wage in a county for manufacturing jobs during the most recent four quarterly periods for which data were available at the time a person submitted an application for a limitation on appraised value as computed by the Texas Workforce Commission.

*Manufacturing.* CSHB 3676 would amend sec. 313.024(e) to define “manufacturing” as an establishment primarily engaged in activities described in sectors 31-33 of the 2007 North American Industry Classification System.

*Research and development.* CSHB 3676 would amend sec. 313.024(e) to “Research and Development” as an establishment primarily engaged in activities described in category 541710 of the 2002 North American Industry Classification system.

The bill contains a statement that the Legislature would intend that the amendments that would be made by CSHB 3676 to definitions in current law would clarify rather than change existing law.

**Other provisions.** CSHB 3676 would make several other changes to ch. 313, including:

*Eligibility of school districts.* CSHB 3676 would amend sec. 313.051(a) to limit which school districts would be allowed to enter into value-limitation agreements. An eligible school district would have territory in an area that qualified as a strategic investment area. The requirement that the school district not have territory in a metropolitan statistical area would be removed.

*TEA tax credits.* CSHB 3676 would amend sec. 313.103 to make any information related to a tax credit provided to the school district by TEA not confidential.

*Repeal of limits on tax-increase elections.* CSHB 3676 would repeal sec. 313.029. Under current law, this section creates limits on maintenance and operations tax-rate increases where a school district has created a value-limitation agreement.

*Effective date.* The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS  
SAY:

CSHB 3676 would make several changes to ch. 313 to increase the effectiveness and transparency of value-limitation agreements. Ch. 313 agreements are one of the single most effective economic development tools in Texas. Ch. 313 agreements allow school districts to provide a temporary limitation on the taxable value of new property investments that are subject to the property tax. No existing facility's value may be abated under ch. 313, and they must meet stringent guidelines to be eligible. These limitations generally expire after eight years, after which time the property is taxed at its full value. This adds substantial value to local tax rolls. The program has been very successful in bringing new investments and jobs to Texas, many of which would not have located here if not for these tax abatements. Through the beginning of 2009, 90 projects involving over \$40 billion of new investment and an estimated 5,600 high-wage jobs, have qualified for ch. 313 agreements. These new facilities include semi-conductor manufacturing, chemical plants, auto manufacturing, research and development facilities, renewable energy, and nuclear energy.

While ch. 313 agreements have produced excellent results, changes could and should be made to improve this valuable program. CSHB 3676 would extend the sunset date from 2011 to 2015 to reassure projects with a long-planning horizon that the state is committed to the ch. 313 program while permitting the Legislature to review the effectiveness of the program and the changes made by CSHB 3676 again after a reasonable period.

The bill would increase the transparency of ch. 313 agreements. CSHB 3676 would:

- provide greater transparency by requiring school districts and the comptroller to have posted all relevant information associated with the agreements on their websites, which would ensure that all the information associated with an application for value-limitation agreement was made public;
- provide greater oversight by requiring the comptroller to determine whether or not a project met all statutory requirements before allowing the agreement;
- provide a more thorough and balanced economic evaluation of

applications by requiring the comptroller to conduct an economic study to evaluate both the value of the limitation agreement and the associated economic and financial benefits to the state and local communities.

By increasing transparency, CSHB 3676 would allow local leaders and voters to make more informed and accurate decisions regarding these agreements and their local economies. Further, the more detailed studies would enable state policy makers to better evaluate the effectiveness and worth of ch. 313 agreements.

The bill would make important changes to the way ch. 313 affects school finance. CSHB 3676 would limit the amount of revenue a school district could receive from payments in lieu of taxes, or PILOTs, to \$100 per student per year. Had this provision existed previously, it could have limited average PILOT in existing projects to 20 percent of their current levels. While these payments currently are legal, CSHB 3676 would cap them to ensure that no district received excessive payments outside of the school-finance system.

CSHB 3676 also would eliminate a provision in current law that prevents school districts that have ch. 313 agreements from seeking voter approval to increase their local maintenance and operations tax rates. This would encourage school districts to enter into ch. 313 agreements by allowing them to have the same flexibility through an election to raise rates that other school districts currently have.

By clarifying certain definitions, the bill would ensure by statute that school districts had the legal authority to enter into tax abatement agreements.

CSHB 3676 would create important protections for state funds by creating recapture provisions. If, in any year, a person in a value-limitation agreement with a school district failed to meet minimum investment or job creation obligations, that property owner's investment would be taxed at full value for that year. This would ensure that the investment and job-creation goals would be met, or that the state would receive its investment back if the developer failed to honor the developer's minimum obligations.

CSHB 3676 would speed investment in Texas during the current recession by allowing projects to make qualifying investments immediately, as opposed to after an entity had waited until the start of the next year as required by current law.

CSHB 3676 would not assist wind-project developers solely. The bill would assist manufacturers by updating modern industrial definitions to allow the industries that will dominate the future of Texas' economy to be eligible for ch. 313 agreements. The bill also would increase the transparency of ch. 313 programs, and thus would protect the public's investment. The bill would expand the kinds of industries that would be eligible for ch. 313 agreements, create jobs and investment in Texas, and bring projects to the state that would not be otherwise economically feasible.

**OPPONENTS  
SAY:**

Texas cannot afford four more years of ch. 313 agreements. The main problem with ch. 313 agreements is that local school boards grant these subsidies, but the state absorbs the entire cost of foregone property-tax revenue through the school finance system. While the comptroller can recommend or not recommend an application for a ch. 313 agreement, that recommendation is not binding on the school district. Several districts have signed agreements for these tax breaks even with a lack of recommendation by the comptroller. The state should have more control over how its funds are spent.

Extending the expiration date would cost Texas \$2.4 billion. Under ch. 313, the state must make payments to local school districts through the school finance system to reimburse them for the funds they would have received had the value-limitation agreement not been made. According to the comptroller, the cost to the state over the lifetime of projects already in existence and those likely to be signed by the current expiration date of December 31, 2011, is \$5.7 billion. This would be \$900 million out of the total fiscal 2014-2015 budget alone. Extending the program until December 31, 2015, would add an additional \$2.4 billion worth of obligations to the state.

Some companies make side-payments to school districts for signing these agreements. These companies give school districts a share of their tax savings as a reward for signing an agreement. These payments in lieu of taxes, or PILOTs, can come to many thousands of dollars per student for each year of the ten-year life of an agreement. One Texas school district

receives almost \$9,700 per student per year through PILOTs. These payments are not included in school-finance calculations and can enrich select districts with per-student revenue that is two or three times the target revenues most districts receive. While CSHB 3676 would add a cap on these payments, it would not be enough. Further, these payments, no matter how small, should be included in school-finance calculations.

CSHB 3676 would not offer meaningful protections for state investments. While the bill would create claw-back provisions that would apply when a developer failed to make the required the investments or create the required number of jobs, the required minimums would be so low, especially in rural areas, that the provisions rarely would apply.

CSHB 3676 would be a move away from the original intent of ch. 313, which was to attract manufacturing jobs to Texas. Wind developments, which have benefited from these agreements, do not produce nearly as many long-term jobs. Besides, wind developers would come to Texas regardless because some of the some of the world's most constant wind is located in Texas. They do not need these exemptions.

OTHER  
OPPONENTS  
SAY:

The extension period to ch. 313 that CSHB 3676 would provide is too long. Instead, the Legislature should conduct an interim study to review all aspects of the program.

NOTES:

The committee substitute differs from the filed bill by including:

- advanced clean energy projects;
- directions to the comptroller regarding the review of an application;
- rules for posting public information on the Internet;
- rights of appeal of a comptroller determination on eligibility of an application for a value-limitation agreement;
- an expansion of terms the agreement might include; and
- provisions for the recapture of property tax revenues.

The companion bill, SB 1593 by Seliger, was reported favorably as amended, by the Senate Economic Development Committee on April 23, and was recommended for the Local and Uncontested Calendar.