



# Testimony to the Texas House Ways and Means Committee

by Brent Bennett, Ph.D., Policy Director, Life:Powered

## Chairman Meyer and Members of the Committee:

Thank you for allowing us the opportunity to testify today on Chapter 313 and to express our views about the future of school district property taxes and the overall balance of the tax structure.

On the whole, our position on this issue has not changed since last year. **The Legislature should focus on eliminating school district maintenance and operations (M&O) taxes for all Texans, rather than focusing on tax breaks that will only benefit a few businesses.** We've presented our plan to buy down M&O taxes to this committee several times over the years and continue to stand by that approach. Getting rid of these taxes will largely obviate the need for replacing Chapter 313 and can be done quickly enough to give companies confidence that they can continue to invest in Texas. Targeted tax breaks for certain businesses runs opposite to this goal by shifting the tax burden onto a smaller base of taxpayers.

We understand that capital-intensive businesses bear a large burden under Texas' tax regime, but Texas has bigger economic challenges to solve right now. How will a new program like this help restaurateurs and vendors who are faced with labor shortages and rising rent due to soaring property values and tax bills? How will it help our vital ecosystem of smaller oil and gas companies find more good workers and produce more oil and gas that we desperately need? How will it help the families in our major cities that can't find an affordable home? What will help these folks is lower tax bills, improved workforce development, and a renewed focus on spending the tax dollars we have more wisely to ensure prompt permitting and infrastructure development. Those are the things that Texans need right now, not another tax break program for big businesses, no matter how well it is designed.

Keeping that point in mind, if the Legislature decides to move forward with a new program in place of Chapter 313, we offer three points that should be central to its deliberations.

### 1. Do not include energy infrastructure projects.

Detailed studies have been done to document how Chapter 313 program is primarily serving projects that were going to be located in Texas even without the subsidy, but it doesn't take a lot of thought to show why that is the case. **The vast majority of the [projects currently receiving Chapter 313 incentives](#), 96% as of June 30, are energy-related and their location depends heavily on geography, not on tax rates.** About two thirds of the existing projects are wind and solar energy generators, and the remainder are midstream and downstream oil and gas infrastructure. With the occasional exception of Louisiana, we are not competing with other states for energy infrastructure projects because Texas is the only place where these projects can locate.

The inclusion of electricity generators in Chapter 313 is especially head-scratching. The Electric Reliability Council of Texas (ERCOT) grid serves 90% of Texas, and it is effectively a closed market with only a marginal amount of electricity traded with our neighbors. **By subsidizing new electricity generation in one part of the state, we're simply replacing a power plant in another part of the state or building new generation that should be financed through the ERCOT market.** This is not economic development, nor is it creating any net new jobs beyond the temporary construction jobs. It's

simple infrastructure building, and we don't need to provide tax breaks for it. If we want different types of electricity generation to be built, then we should do it through changes to the ERCOT wholesale market.

Furthermore, as Life:Powered has argued, the biggest problem with the ERCOT market is not enough investment in electricity generation but rather too much investment in highly variable wind and solar generation. More than [\\$60 billion in private investment](#) and nearly [\\$30 billion in state and federal subsidies](#) have been poured into new wind and solar generation in Texas, yet all that investment produced less than [2% of our electricity](#) at the height of Winter Storm Uri. The root problem with our grid is not weather resiliency but rather subsidies that are driving us to build only variable generation and making investments in dispatchable generation and weather resiliency almost impossible. Texans don't need more investment in our grid. They need smarter investment, and smarter investment requires not distorting our electric market with more subsidies, whether for natural gas power plants or for wind and solar facilities.

On the oil and gas side, the reason we have so much midstream and downstream infrastructure in Texas is not because of Chapter 313 but because we have the resources and a regulatory environment that enables Texas businesses to develop them. Companies are not going to spend billions building pipelines to Louisiana just because they can't get a property tax break in Texas. Finding qualified workers has been the main constraint for the energy industry over the past decade, and we should focus on that problem, not on tax breaks that largely benefit big corporations. We built plenty of oil and gas infrastructure before Chapter 313, and we will continue to see these projects come to Texas if we work on reducing taxes across the board.

While any tax incentive program like Chapter 313 is a fundamentally flawed economic development tool, the inclusion of energy projects that must locate in Texas because of geography is a particularly egregious flaw that cannot be repeated. Texas is not competing with other states for these projects, and the state should continue to focus on creating a tax and regulatory environment that is conducive to all forms of energy investment, rather than giving special tax breaks to certain companies.

**2. Avoid relying on taxable value limitations that involve the recapture system and force the rest of the state to pay for the decisions of individual school districts.**

A fundamental flaw of Chapter 313 is that it relies on reducing the taxable value of the property being developed, thereby intertwining the program with the recapture system and enabling a school district to give out a limitation with the rest of the state picking up a large portion of the tab. The Legislature should do everything possible to avoid repeating this flaw and instead require school districts to absorb the full cost of the tax break, just as other local jurisdictions do with their tax incentive programs. We don't have a specific recommendation on how this could be done, but perhaps it could involve a reimbursement of taxes paid instead of relying on a taxable value limitation. This change would not entirely fix the perverse incentives that are driving the rubber stamping of these agreements, but it would help prevent school boards from shifting their tax burden onto taxpayers that did not elect them.

Another approach would be a state administered program that would reimburse the companies for a portion of their taxes paid. However, this would make the program more like the Texas Enterprise Fund, which, [as we've documented](#), has its own set of problems. The bottom line is that any program that carves out special tax breaks for big businesses will fall prey to corruption, as Chapter 313 has, and fail to provide a real cost/benefit for Texas as a whole. That's why we advocate for the elimination of these programs in their entirety and a singular focus on property tax relief efforts that will benefit all Texans.

**3. Establish more simple and clear reporting requirements, no waivers for job requirements, greater notice requirements, and a firm sunset date.**

Economic development programs are often sold on the basis of job creation, and Chapter 313 is no exception. If a primary goal of a renewed program is to bring high-paying jobs to Texas, then companies should not be allowed to bypass the jobs requirements simply because they can show that the standard number of jobs in their industry for that type of project is below the requirement. It would be better to dispense with the charade of a jobs requirement if the requirement is toothless. If a new program does have job and wage requirements, they should be based on clear cost/

benefit criteria for the state with no waivers. If a company can't meet the requirements, then the state is not gaining enough benefit to give them a tax break.

School boards generally lack the time and skills to ensure proper negotiation and assessment of an application, often leading to deals that heavily favor the applicant, and greater transparency and notice requirements would enable more public involvement and force more open deliberation. All school board meetings for considering applications should be subject to a 30-day notice and open meetings requirements. More could be done to streamline the reporting process and ease the workload on the Comptroller but having documentation and forecasts readily available online is essential to facilitate public input on individual projects and to assess the effectiveness of the program as a whole.

We also strongly support a firm sunset date on the program. Sunsetting Chapter 313 prevented the runaway abuse of the program and enabled a reassessment of its structure in light of new business and economic conditions. A new program will need to be assessed similarly. One compromise could be to create a 10–12-year sunset date for a new program while completing full buydown of M&O taxes over the same period. But again, carving out special tax breaks for businesses makes it harder to complete the buydown, so the ideal situation for Texas is to not create a new program at all.

Much will be said about how Texas needs a replacement for Chapter 313 to compete with other states. But Texas should not compete by doing everything the same as other states, or by simply doing more than what they do. The fact that both [Republican](#) and [Democratic](#) state party platforms advocate against school district property tax breaks shows just how problematic this type of program is. We urge the Legislature to compete not by working harder but by working smarter, and smarter work begins with lowering the school property tax burden for *all* Texans.

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**Brent Bennett, Ph.D.**, is the policy director for Life:Powered, an initiative of the Texas Public Policy Foundation to raise America's energy IQ.

As part of the Life:Powered team, Dr. Bennett regularly speaks with policymakers, energy experts, and industry associations across the country. He is responsible for researching, fact-checking, and spearheading many of the team's policy and regulatory initiatives. He has written extensively on how America has improved its environment while growing its energy use and on future energy technologies.

Dr. Bennett has an M.S.E. and Ph.D. in materials science and engineering from the University of Texas at Austin and a B.S. in physics from the University of Tulsa. His graduate research focused on advanced chemistries for utility-scale energy storage systems. Prior to joining the Foundation, Dr. Bennett worked for a startup company selling carbon nanotubes to battery manufacturers, and he continues to provide technology consulting to energy storage companies.

As a native of Midland, Texas—the heart of the oil patch—Dr. Bennett is a passionate student of energy and proponent of freedom and human flourishing. He currently lives in Austin, Texas, with his wife, Erin, and their son, Jack.

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