



An Audit Report on

Selected Major Agreements Under the Texas Economic Development Act

July 2018
Report No. 18-037



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Overall Conclusion

Under the Texas Economic Development Act (Texas Tax Code, Chapter 313), businesses have made capital investments and created jobs through their agreements for limitations on the appraised value for property (agreements) with independent school districts (ISDs). (See Appendix 4 for more information on the Texas Economic Development Act.) As of January 31, 2018, there were 386 executed agreements for 177 ISDs.

The State Auditor's Office audited three agreements under the Texas Economic Development Act (Texas Tax Code, Chapter 313) at three ISDs and determined the following (see text box for additional information on the audited agreements):

- **Processing Applications for Agreements and Developing Agreements.** The agreements audited and their corresponding applications included statutorily required provisions and were approved by the school boards.
- **Disclosing Conflicts of Interest.** The ISDs audited complied with statutory requirements and had processes in place for disclosing conflicts of interest. The ISDs also complied with their policies and procedures for disclosing conflicts of interest. However, auditors identified areas in which the ISDs could strengthen those policies and procedures.
- **Administrative Processes.** The ISDs audited relied on consultants' calculations for revenue protection payments and payments in lieu of taxes. One ISD, Dimmitt ISD, had no errors in processing those payments for fiscal years 2016 and 2017. Two of the ISDs, Highland ISD and Pecos-Barstow-Toyah ISD, had errors in processing those payments.

Background Information on the Audited Agreements

Dimmitt ISD Agreement (Application No. 1085):

- The agreement is with Bethel Wind Farm, LLC.
- Type of business: Renewable energy electricity generation
- County: Castro
- Tax year 2017 appraised value: \$329,228,460
- Appraisal limitation for the maintenance and operation portion of property taxes imposed by the ISD: \$20,000,000
- Term of the agreement: December 28, 2015, through December 31, 2031

Highland ISD Agreement (Application No. 55):

- The agreement is with Sweetwater Wind Power, L.L.C.
- Type of business: Renewable energy electricity generation
- County: Nolan
- Tax year 2017 appraised value: \$89,663,280
- Appraisal limitation for the maintenance and operation portion of property taxes imposed by the ISD: \$10,000,000
- Term of the agreement: January 1, 2007, to December 31, 2019

Pecos-Barstow-Toyah ISD Agreement (Application No. 1030):

- The agreement is with Regency Field Services, LLC.
- Type of business: Manufacturing
- County: Ward
- Tax year 2017 appraised value: \$177,966,440
- Appraisal limitation for the maintenance and operation portion of property taxes imposed by the ISD: \$25,000,000
- Term of the agreement: April 16, 2015, through December 31, 2030.

Sources: County appraisal districts for Castro, Nolan, and Ward counties and individual applications and agreements for each ISD audited.

This audit was conducted in accordance with Texas Government Code, Section 321.0132 and Texas Tax Code, Section 313.010.

For more information regarding this report, please contact Audrey O'Neill, Audit Manager, or Lisa Collier, First Assistant State Auditor, at (512) 936-9500.

- **Compliance Reporting.** The ISDs submitted the required reports to the Office of the Comptroller of Public Accounts (**Comptroller’s Office**). In addition, **Dimmitt ISD’s consultant provided documentation showing that it** verified historical information in the reports tested. However, the consultants for Pecos-Barstow-Toyah ISD and Highland ISD did not provide documentation supporting that they verified historical information in the reports tested.

In addition, auditors determined that the Texas Education Agency (Agency) complied with applicable statutory requirements regarding facilities impact evaluations for the selected ISDs’ **Chapter 313 agreements and resolved a prior** year finding related to providing guidance on tax credits to ISDs.

Most of the issues discussed in this report are consistent with issues the State **Auditor’s Office identified in** previous audit reports in November 2014, August 2015, October 2016, and July 2017.¹

Auditors also communicated other, less significant issues separately in writing to the ISDs audited, the **Comptroller’s Office, and the Agency.**

Table 1 presents a summary of the findings in this report and the related issue rating. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Table 1

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/ Subchapter	Title	Issue Rating ^a
1	Summary of the Agreements Audited	Not Rated
2-A	Processing Applications for Agreements and Developing Agreements	Low
2-B	Disclosing Conflicts of Interest	Medium
3	Administrative Processes	Medium
4	Compliance Reporting	Medium
5	The Texas Education Agency’s Compliance with Statute	Low
<p>^a A chapter/subchapter is rated Priority if the issues identified present risks or effects that if not addressed could critically affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.</p> <p>A chapter/subchapter is rated High if the issues identified present risks or effects that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.</p>		

¹ See *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor’s Office Report No. 15-009, November 2014); *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor’s Office Report No. 15-042, August 2015); *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor’s Office Report No. 17-009, October 2016); and *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor’s Office Report No. 17-043, July 2017).

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/ Subchapter	Title	Issue Rating ^a
<p>A chapter/subchapter is rated Medium if the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.</p> <p>A chapter/subchapter is rated Low if the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.</p>		

Summary of Management's Response

At the end of certain chapters in this report, auditors made recommendations to address the issues identified during this audit. Dimmitt ISD and Pecos-Barstow-Toyah ISD agreed with the recommendations addressed to them. However, Highland ISD did not agree with certain findings and recommendations addressed to it.

After review and consideration of management's responses from Highland ISD, the **State Auditor's Office stands by its conclusions based on the evidence presented** and compiled during this audit.

Audit Objectives and Scope

The objectives of this audit were to:

- Determine whether selected major agreements under the Texas Economic Development Act:
 - Accomplish the purposes of Texas Tax Code, Section 313.003.
 - Comply with the intent of the Legislature in enacting Texas Tax Code, Section 313.004.
 - Were executed in compliance with the provisions of Texas Tax Code, Chapter 313.
- Determine whether there are ways to increase the efficiency and effectiveness of the administration of the Texas Economic Development Act.

The scope of this audit covered selected applications and agreements with ISDs under the Texas Economic Development Act processed from January 1, 2007, through December 31, 2017.

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Detailed Results

Chapter 1

Summary of the Agreements Audited

The three agreements for limitations on the appraised value of property (agreements) audited include:

- Dimmitt Independent School District’s (ISD) agreement with Bethel Wind Farm, LLC (Application No. 1085).
- Highland ISD’s agreement with Sweetwater Wind Power, L.L.C. (Application No. 55).
- Pecos-Barstow-Toyah ISD’s agreement with Regency Field Services, LLC (Application No. 1030).

Each ISD had a hired consultant to assist in the administration of the audited agreements, including addressing reporting requirements and performing annual calculations of revenue protection payments and payments in lieu of taxes that the agreement required.

Table 2 summarizes the agreements audited, the applications and businesses associated with the agreements, the time lines of the agreements, and the associated appraised values.

Table 2

Information on Agreements Audited and Associated Applications ^a			
Item	Highland ISD	Pecos-Barstow-Toyah ISD	Dimmitt ISD
Names of businesses associated with the agreement.	Sweetwater Wind Power, L.L.C. Sweetwater Wind 4, L.L.C. Sweetwater Wind 5, L.L.C.	Regency Field Services, LLC	Bethel Wind Farm, LLC
Appraisal value limitation.	\$10,000,000	\$25,000,000	\$20,000,000
Tax year 2017 appraised value.	\$89,663,280	\$177,966,440	\$329,228,460
Tax year the appraisal limitation ends.	2016	2025	2026
Tax year in which the property covered under the agreement is fully taxable for maintenance and operations tax purposes.	2017	2026	2027
Date on which the businesses submitted the original application to the school board.	August 31, 2006	July 17, 2014	June 25, 2015

Information on Agreements Audited and Associated Applications ^a			
Item	Highland ISD	Pecos-Barstow-Toyah ISD	Dimmitt ISD
Date on which the businesses submitted an amended application to the school board.	December 4, 2006	December 12, 2014	July 27, 2015 August 10, 2015 December 2, 2015
Date on which the Office of the Comptroller of Public Accounts (Comptroller's Office) recommended that the amended application be favorably considered.	December 28, 2006	February 25, 2015	December 8, 2015
Date on which the school board issued its findings related to the effect of the appraisal limitation on the ISD and approved the agreement.	December 19, 2006	April 16, 2015	December 28, 2015
Gross tax savings resulting from tax limitation (reported on the 2016 biennial cost data request form).	\$25,281,706	\$1,172,080	\$0 ^b
Projected total gross tax savings resulting from tax limitation (based on the 2016 biennial cost data request form).	\$25,281,706	\$14,417,839	\$23,596,502
Number of qualifying jobs created as reported by the businesses (as of December 31, 2016).	22.2	14	10
Projected total qualifying jobs.	10	10	10
Projected total gross tax savings per qualifying job created (calculated by auditors).	\$1,138,816	\$1,029,846	\$2,359,650
Total projected investment.	\$277,300,000	\$194,600,000	\$421,200,000
Qualified investment as of December 31, 2016 (based on the biennial progress report).	\$289,147,500	\$194,600,000	\$0 ^c
Revenue protection payments that the ISD received from the business.	\$2,394,885	\$45,286	\$3,215,976
Supplemental payments the ISD received.	\$10,119,143	\$463,000	\$110,000
<p>^a Some information presented in this table, including the projected total qualifying jobs and total projected investment, is based on self-reported information from the businesses and was not verified by auditors.</p> <p>^b As of December 31, 2016, a net tax benefit had not been reported for the business and the ISD had not collected any revenue protection payments from the business. The agreement was still within the qualifying time period for tax years 2015 and 2016. The appraisal limitation period for the agreement started on January 1, 2017.</p> <p>^c The first year of this agreement was 2015; therefore, no qualified investment was made as of December 31, 2016.</p>			

Sources: The Comptroller's Office, the Castro County Appraisal District, the Nolan County Appraisal District, the Ward County Appraisal District, Highland ISD, Pecos-Barstow-Toyah ISD, and Dimmitt ISD.

Table 3 provides information on the appraised value and the appraisal limitation value of the properties in the audited agreements with the ISDs through tax year 2017. The information presented in Table 3 provides background information on the audited agreements for the subsequent chapters of this report.

Table 3

Property Appraisal Values Compared to Appraisal Limitation Values for Agreements Audited January 2007 through December 2017									
Agreement Year	Highland ISD Agreement			Pecos-Barstow-Toyah ISD Agreement			Dimmitt ISD Agreement		
	Tax Year	Appraised Value	Appraisal Limitation Value	Tax Year	Appraised Value	Appraisal Limitation Value	Tax Year	Appraised Value	Appraisal Limitation Value
1	2007	\$58,785,300	No limitation ^a	2015	\$25,200,000	No Limitation ^b	2015	\$0	No Limitation ^c
2	2008	\$228,333,000	No limitation	2016	\$92,919,500	\$25,000,000	2016	\$0	No Limitation
3	2009	\$351,271,460	\$10,000,000	2017	\$177,966,440	\$25,000,000	2017	\$329,228,460	\$20,000,000
4	2010	\$333,707,890	\$10,000,000						
5	2011	\$290,990,700	\$10,000,000						
6	2012	\$271,972,650	\$10,000,000						
7	2013	\$258,373,930	\$10,000,000						
8	2014	\$247,364,270	\$10,000,000						
9	2015	\$227,517,830	\$10,000,000						
10	2016	\$170,333,350	\$10,000,000						
11	2017	\$89,663,280	No limitation ^d						

^a The agreement went into effect prior to January 1, 2014, and was not eligible for the appraisal limitation value during the first two agreement years (the qualifying time period).

^b The tax limitation period for this agreement started on January 1, 2016. The 2015 appraised value reflects the historical tax appraised value.

^c The tax limitation period for this agreement started on January 1, 2017.

^d The tax limitation period for this agreement ended on December 31, 2016.

Sources: The Castro County Appraisal District, the Nolan County Appraisal District, the Ward County Appraisal District, Highland ISD, Pecos-Barstow-Toyah ISD, and Dimmitt ISD.

Application, Agreement, and Conflicts of Interest

The three ISDs audited processed applications and executed their agreements with businesses in compliance with Texas Tax Code, Chapter 313. In addition, the ISDs complied with statutory requirements related to board members disclosing conflicts of interest in Texas Local Government Code, Chapters 171 and 176. However, the ISDs should strengthen certain conflict of interest processes.

Chapter 2-A
Processing Applications for Agreements and Developing Agreements

Chapter 2-A
Rating:
Low²

The ISDs audited ensured that: (1) their processes to review applications that the businesses submitted complied with the requirements in Chapter 313 of the Texas Tax Code; (2) the applications complied with the purpose and intent of the Texas Economic Development Act; and (3) the Chapter 313 agreements and amendments between the ISDs and the businesses contained all provisions required by statute at the time of the agreements.

Table 4 summarizes the results of auditors’ testing of the applications that the businesses submitted and the agreements entered into by the three ISDs.

Table 4

Testing Results - Applications for Agreements and Developing Agreements			
Attribute	Highland ISD	Pecos-Barstow-Toyah ISD	Dimmitt ISD
Did the ISD verify the applicant was eligible and ensure that the application complied with the purposes and intent of Texas Tax Code, Chapter 313?	Yes	Yes	Yes
Did the ISD obtain an economic impact evaluation, which included a recommendation from the Office of the Comptroller of Public Accounts, and obtain a facilities impact evaluation?	Yes	Yes	Yes
Did the ISD follow its evaluation process to approve the application and document its decision?	Yes	Yes	Yes
Was the application fee reasonable, and was the full application fee collected at the time the application was submitted?	Could Not Determine ^a	Yes	Yes

² The risk related to the issues discussed in Chapter 2-A is rated as Low because the audit identified strengths that support the audited entity’s ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity’s ability to effectively administer the program(s)/function(s) audited.

Testing Results - Applications for Agreements and Developing Agreements			
Attribute	Highland ISD	Pecos-Barstow-Toyah ISD	Dimmitt ISD
Do the provisions contained in the agreement and amendments comply with the provisions required by Tax Code, Chapter 313?	Yes	Yes	Yes
^a Highland ISD asserted that it no longer maintained documentation supporting its application fee. Auditors determined that this practice was in compliance with Highland ISD's record retention policies.			

Chapter 2-B
Disclosing Conflicts of Interest

The audited ISDs' conflict of interest policies included all requirements in Texas Local Government Code, Chapters 171 and 176 (see text box). In addition, each ISD filed conflict of interest statements when required by their written policies and procedures. The practices for disclosing conflicts of interest varied among the three ISDs audited. Specifically:

Chapter 2-B
Rating:
Medium ³

- The practice of both Pecos-Barstow-Toyah ISD and Highland ISD was to require school board members to submit conflict of interest statements whether or not a conflict existed. That practice exceeded the ISDs' documented policies, which required a conflict of interest statement submission only when a conflict existed. No conflicts were identified for the agreements audited at those two ISDs. Ensuring that their documented policies are consistent with their practices would help the ISDs apply their conflict of interest processes consistently.
- Dimmitt ISD's practices required school board members to submit conflicts of interest statements only when a conflict existed (which was consistent with its policies), and it asserted that no conflicts were identified for its agreement with Bethel Wind Farm, LLC. Statute does not mandate the submission of conflicts of interest statements when conflicts do not exist. However, requiring school board members to submit conflict of interest statements prior to voting on approval of an agreement or subsequent associated amendments, regardless of whether a conflict exists, would help Dimmitt ISD to ensure that it identifies any potential conflicts of interest.

Conflicts of Interest Requirements

Texas Local Government Code, Chapters 171 and 176, includes several requirements relating to disclosing conflicts of interest. For example, those provisions require:

- A local public official who has a substantial interest in a business entity or real property to file an affidavit stating the nature and extent of the interest and abstain from voting if the action on the matter will have a special economic effect on the business entity or the value of the real property that is distinguishable from the effect on the public.
- A local government officer who has a business or family relationship with a vendor to file a conflict disclosure statement when the local government entity enters or considers entering into a contract with that vendor.

³ The risk related to the issues discussed in Chapter 2-B is rated as Medium because they present risks or results that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

Recommendation

Pecos-Barstow-Toyah ISD, Highland ISD, and Dimmitt ISD should consider updating their documented policies to require the submission of conflict of interest statements, regardless of whether a conflict exists, by all school board members prior to voting on the approval of an agreement or subsequent associated amendments.

Management's Response from Pecos-Barstow-Toyah ISD

PBTISD management agrees that the recommendation made by the SAO can be beneficial to both the school district and the State of Texas. PBTISD has implemented a procedure for all agreements entered into beginning in 2017 which provides for reviewing Conflict of Interest Policy CCO (Local) and requires school board members to disclose potential conflicts of interest prior to taking up the associated agreement and/or amendment for consideration.

The PBTISD Board Policy CCO (Local) related to conflicts of interest will be updated to include annual conflict of interest disclosure requirements. The revisions will be completed by January 2019. The PBTISD Board of Trustees will review on an annual basis the conflict of interest policies and procedures associated with Board Policy CCO (Local). The policy review will be listed on the board agenda and reflected in the board meeting minutes from that particular meeting. As a part of the review, PBTISD Board Members will be reminded of the necessity to comply with conflict of interest questionnaire requirements.

Management's Response from Highland ISD

The District disagrees with this recommendation as it duplicates existing District practice. As noted, the District does already require as regular practice that Board members, the Superintendent and Business Manager/CFO annually disclose whether or not a conflict exists with any vendor as part of the third party independent audit of the school district.

Auditor Follow-Up Comment on Management's Response from Highland ISD

After review and consideration of management's responses from Highland ISD, the State Auditor's Office stands by its conclusions based on the evidence presented and compiled during this audit.

Management's Response from Dimmitt ISD

Subject to Board Approval, which the Dimmitt Independent School District (the "District") anticipates, the District will update Board Policy CCG (LOCAL) so that the superintendent, each member of the Board of Trustees and any other employee of the District who is considered to be a local government official, as defined in Texas Local Government Code, Chapter 176, is required to submit a conflict of interest statement ("Statement") on a form developed by the District, confirming or denying the existence of a conflict of interest and/or a substantial business interest in each project that is the subject of a 313 Application or Agreement with the District. Such Statement shall be completed within 60 days following each general trustee election, or within 60 days of a trustee being appointed onto the Board. The completed Statements will be retained by the District with each respective 313 Application or Agreement. If a conflict or substantial interest exists, the appropriate disclosure forms) will be completed and filed, as applicable and as required by the Texas Local Government Code, Chapters 171 and/or 176.

Chapter 3
Rating:
Medium ⁴

All three ISDs audited relied on the consultants' calculations of revenue protection payments and payments in lieu of taxes collected from the businesses (see Appendix 4 for additional detail on these payments). The consultants for Dimmitt ISD used the correct information to calculate those payments for fiscal years 2016 and 2017.

However, the consultants for Highland ISD and Pecos-Barstow-Toyah ISD did not always use the correct information in their calculations, and did not work with their consultants to establish a process to verify the accuracy of those calculations. In addition, auditors were not able to determine whether Highland ISD received all of the payments in lieu of taxes that it should have received. Specifically, auditors identified the following issues:

Highland ISD

- For revenue protection payments and payments in lieu of taxes made to Highland ISD in tax years 2010, 2015, and 2016, the consultant's calculations used market values that differed from the appraised values provided by the county appraisal district. The errors in market values during those tax years may have resulted in overstatements of payments in lieu of taxes totaling \$224,973.
- Auditors were not able to determine whether Highland ISD received 2 required payments in lieu of taxes totaling \$400,000 from the business during the first 2 years of the agreement because Highland ISD was not able to provide documentation to support whether it received those payments (see text box for additional information).

Tax Credits Not Taken for Highland ISD's Agreement with Sweetwater Wind Power, L.L.C.

The agreement between Highland ISD and Sweetwater Wind Power, L.L.C. went into effect on January 1, 2007.

Sweetwater Wind Power, L.L.C. was eligible to apply for tax credits under the terms of the agreement.

However, the business did not apply for or receive tax credits.

Consequently, Highland ISD did not apply for or receive additional state aid from the Texas Education Agency for possible tax credits associated with the agreement.

Sources: Highland ISD and the Texas Education Agency.

Pecos-Barstow-Toyah ISD

- Pecos-Barstow-Toyah ISD's agreement with Regency Field Services, LLC was effective April 16, 2015, and the ISD ensured that it received revenue protection payments and payments in lieu of taxes from the business for tax years 2016 and 2017. However, the consultant's calculations for the 2016 tax year did not use the correct taxable value for the property or the correct maintenance and operations tax rate, which could have

⁴ The risk related to the issues discussed in Chapter 3 is rated as Medium because they present risks or results that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

affected the amount of the revenue protection payments that Pecos-Barstow-Toyah ISD received.⁵

Recommendations

Highland ISD and Pecos-Barstow-Toyah ISD should work with their consultants to develop a process to verify the accuracy of the calculations for revenue protection payments and payments in lieu of taxes.

Highland ISD should ensure that it receives all required payments in lieu of taxes and maintains supporting documentation of those payments.

Management's Response from Highland ISD

Highland ISD agrees with this recommendation. Highland ISD will revise its document retention policy that currently matches the statutory time to specifically require the maintenance of documents through the life of the agreement.

Highland ISD does currently have a process to ensure accuracy of calculations. Initial project values are requested from the appraisal district. The values are sent to consultants directly in written form. The initial revenue loss and benefit calculations are delivered to both the District and Company prior to November of each year, three months in advance of any payment being due to the District. The District reviews the letter for accuracy of the school district data (student counts, local certified values, tax rates, and Chapter 313 project values). The Applicant also has the same initial time period to verify and review the data and calculations. If there are any appeals or adjustments to the final taxable values after this time, both the Applicant and District have the ability to amend the third party calculations under the Agreement. The District and Consultant need to be notified by either the Applicant and/or Appraisal District of any adjustment to the final value.

Management's Response from Pecos-Barstow-Toyah ISD

PBTISD management agrees that the recommendation made by the SAO can be beneficial to both the school district and the State of Texas. PBTISD will work with their consultants to develop a procedure to verify the accuracy of calculations and will implement the procedure prior to the 2018 billing cycle (November 1, 2018 deadline) for Revenue Protection Payments.

⁵ Prior to 2017, Pecos-Barstow-Toyah ISD used another consultant that performed the 2016 tax year calculations.

Compliance Reporting

Chapter 4
Rating:
Medium ⁶

The three ISDs audited submitted required annual and biennial reports to the Office of the Comptroller of Public Accounts (Comptroller's Office). Dimmitt ISD's consultant provided documentation showing that it verified historical information in the reports tested.

However, the consultants for Pecos-Barstow-Toyah ISD and Highland ISD did not provide documentation supporting the verification of historical information in the reports tested. Verifying the information in those reports would help to ensure that the reports submitted to the Comptroller's Office are accurate. Specifically:

- Pecos-Barstow-Toyah ISD's consultant asserted that it verified the information in the annual eligibility report that it submitted for 2017, but it did not retain support of that verification⁷.
- Highland ISD's consultant did not verify the information in the reports tested.
- Table 5 summarizes the results of auditors' testing of compliance reporting requirements.

Table 5

Testing Results - Compliance Reporting			
Requirement Tested	Highland ISD	Pecos-Barstow-Toyah ISD	Dimmitt ISD
Did the ISD submit the Annual Eligibility Report and the Biennial Progress Report to the Comptroller's Office ?	Yes	Yes	Yes
Did the business submit its most recent Job Creation Compliance Report to the Comptroller's Office ?	Not Applicable ^a	Yes	Yes
Did the superintendent submit the Biennial School District Cost Data Request to the Comptroller's Office ?	Yes	Yes	Yes
Did the ISD's Web site contain a link to the Comptroller's Office -maintained Web page with Chapter 313 limitation agreement information? (Applies to agreements in effect on or after January 1, 2014.)	Not Applicable ^b	Yes	Yes

⁶ The risk related to the issues discussed in Chapter 4 is rated as Medium because they present risks or results that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

⁷ Prior to 2017, the Pecos-Barstow-Toyah ISD used another consultant; as a result, the ISD's current consultant has not submitted other reports for this agreement.

Testing Results - Compliance Reporting			
Requirement Tested	Highland ISD	Pecos-Barstow-Toyah ISD	Dimmitt ISD
<p>^a The requirement to submit the Job Creation Compliance Report does not apply to the business associated with Highland ISD's agreement because that agreement went into effect prior to the requirement's effective date.</p> <p>^b The requirement to have a link on the ISD's Web site to the Comptroller's Office-maintained Web page with Chapter 313 limitation agreement information does not apply to Highland ISD because its agreement went into effect prior to the effective date of that requirement.</p>			

Recommendation

Pecos-Barstow-Toyah ISD and Highland ISD should implement a process to (1) verify key information in the required reports submitted to the Comptroller's Office and (2) consistently maintain documentation to support that those verifications were performed.

Management's Response

Management's Response from Pecos-Barstow-Toyah ISD

PBTISD management agrees that the recommendation made by the SAO can be beneficial to both the school district and the State of Texas. PBTISD will work with their consultants to develop a procedure to verify the accuracy of key reporting data and will implement the procedure prior to the 2019 reporting cycle (May 2019 - August 2019).

Management's Response from Highland ISD

The District agrees partially with this recommendation. The District has changed the practice of its consultants regarding verification of the data reported on the company forms.

As noted, the District and Consultants rely on data provided by the local appraisal district, tax office, and Applicant to verify the taxable value information provided in the reports submitted to the Comptroller. Due to the changes in report filing deadlines, consultants are able to ensure consistency between the values presented on the reports and the values used in the initial revenue loss and benefit calculations.

There should be a periodic review of Chapter 313 taxable values performed by the District, its Consultants, Tax Offices and Appraisal Districts to verify that no adjustments have been made to the values provided to the District in

September of each year so that, if necessary, settle-up revenue loss and benefit calculations can be performed.

The District will also update its document retention policy to maintain documents related to active 313 agreements through the end of the main viable presence period.

However, the District disagrees that there is any additional process required to verify the accuracy of employment information provided in response to the Comptroller reports. As noted previously, since inception of the program, reports have been required to be submitted under oath. Further, Chapter 313 reports are governmental records under Tex. Penal Code §37.01(2)(A); and, all statements contained therein are representations of fact within the meaning of Tex. Penal Code §31.01(3). A false statement on a Chapter 313 report constitutes perjury under Tex. Penal Code §37.02. Sworn statements are routinely used as an acceptable verification method for reliance by fact finders in each of the three separate branches of government, including trials. These facts are sufficient for the District to be able to rely on the accuracy of the information provided by the company.

Auditor Follow-Up Comment **on Management's Response from Highland ISD**

After review and consideration of management's responses from Highland ISD, the State Auditor's Office stands by its conclusions based on the evidence presented and compiled during this audit.

The Texas Education Agency's Compliance with Statute

Chapter 5
Rating:
Low⁸

The Texas Education Agency (Agency) complied with statutory requirements related to evaluating the impact of Chapter 313 agreements on ISD facilities. It also issued updated guidance related to the issuance of tax credits that aligned with Texas Tax Code, Chapter 313.

Facilities Impact Evaluations

The Agency submitted within the required time frames written reports about the impact of the proposed agreement on school facilities for Dimmitt ISD and Pecos-Barstow-Toyah ISD. Those reports contained a determination by the Agency that the proposed projects should not have a significant impact on the number or size of school facilities in those ISDs.⁹ Texas Tax Code, Section 313.025(b-1), requires the Agency to submit a written report containing its determination about the impact of a business's proposal on the ISD's instructional facilities to the ISD's governing body no later than 45 days after the date the Agency received the application.¹⁰

Updated Guidance to ISDs

The Agency issued updated guidance to ISDs related to the issuance of tax credits that aligned with the applicable requirements in Texas Tax Code, Chapter 313. Texas Tax Code, Section 313.104(2), required an ISD to direct the county tax assessor-collector to apply tax credits granted to a business under an agreement against the future taxes imposed on the business's qualified property.¹¹ As discussed in *An Audit Report on Selected Major Agreements Under the Texas Economic Development Act* (State Auditor's Office Report No. 15-009, November 2014), the Agency's guidance to ISDs resulted in ISDs incorrectly paying tax credits directly to the businesses with which they had agreements. The Agency has corrected this issue by updating the guidance on its Web site to advise ISDs that tax credits should be applied to a business's future tax bill.

⁸ The risk related to the issues discussed in Chapter 5 is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

⁹ This requirement does not apply to the Highland ISD agreement because it went into effect January 1, 2007.

¹⁰ From December 31, 2007, through December 31, 2013, the Texas Education Agency was required to submit the written reports to the Office of the Comptroller of Public Accounts. For agreements created on or after January 1, 2014, the Texas Education Agency is required to submit the written reports to the governing board of the school district.

¹¹ The 83rd Legislature repealed Texas Tax Code, Section 313.104(2); as a result, this requirement is no longer in the Texas Tax Code. However, the current version as of June 2018 of Title 19, Texas Administrative Code, Chapter 61, requires a school district's request for additional state aid for ad valorem tax credits to include a copy of the tax bill sent to the business showing that the taxes imposed are net of the tax credit.

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to:

- Determine whether selected major agreements under the Texas Economic Development Act:
 - Accomplish the purposes of Texas Tax Code, Section 313.003.
 - Comply with the intent of the Legislature in enacting Texas Tax Code, Section 313.004.
 - Were executed in compliance with the provisions of Texas Tax Code, Chapter 313.
- Determine whether there are ways to increase the efficiency and effectiveness of the administration of the Texas Economic Development Act.

Scope

The scope of this audit covered selected applications and appraisal limitation agreements (agreements) with independent school districts (ISDs) under the Texas Economic Development Act processed from January 1, 2007, through December 31, 2017.

Methodology

The audit methodology included selecting agreements to audit at three ISDs. Auditors selected the agreements using information that the businesses with the agreements reported, including the estimated net tax benefit to the businesses as a result of the appraisal limitation, the total gross savings for the businesses as a result of the appraisal limitation and tax credits (if applicable), the number of qualified jobs the businesses reported that they created compared to the number of qualified jobs they committed to create, the qualified investment the businesses made, and the payments in lieu of taxes. The three agreements selected were:

- An agreement between Dimmitt ISD and Bethel Wind Farm, LLC for property used in renewable energy electric generation.

- An agreement between Highland ISD and Sweetwater Wind Power, L.L.C. for property used in renewable energy electric generation.
- An agreement between Pecos-Barstow-Toyah ISD and Regency Field Services, LLC for property used in manufacturing.

The audit methodology also included testing applications, agreements, conflict of interest policies and disclosure statements, required reports submitted to the Office of the Comptroller of Public Accounts (Comptroller's Office), revenue protection payments, and payments in lieu of taxes; and conducting interviews with ISD staff and consultants. County appraisal districts provided documentation of property market values used in testing.

In addition, the audit methodology included conducting interviews with the management and staff at the Comptroller's Office and the Texas Education Agency (Agency). It also included verifying that the Agency (1) submitted the financial impact analysis reports as required and (2) provided ISDs with accurate guidance related to Chapter 313 agreements.

Data Reliability and Completeness

Auditors' assessment of the reliability of the agreement data that the Comptroller's Office used to prepare the January 2017 *Report of the Texas Economic Development Act* was based on (1) prior audit work performed and (2) a limited review of the data for reasonableness and completeness. Auditors determined the data was sufficiently reliable for the purposes of this audit.

Information collected and reviewed included the following:

- Agreements between the ISDs and businesses.
- Application documentation.
- Minutes from ISD school board meetings.
- Annual and biennial reports.
- ISD policies and procedures.
- Conflict of interest statements signed by selected ISD school board members and management.
- Property tax statements and receipts.
- Supporting documentation for calculations of revenue protection payments and payments in lieu of taxes.

- Agreement data used to develop the Comptroller's Office's *Report of the Texas Economic Development Act*, January 2017.

Procedures and tests conducted included the following:

- Reviewed ISD policies and procedures.
- Reviewed ISD school board meeting minutes.
- Reviewed application and supporting documentation for selected agreements.
- Reviewed conflict of interest questionnaires and disclosure statements prepared by members of ISD school boards and management.
- Reviewed annual eligibility reports, biennial progress reports, biennial cost data request reports, and job creation compliance reports for selected agreements.
- Reviewed supporting documentation for calculations of revenue protection payments and payments in lieu of taxes.

Criteria used included the following:

- Texas Tax Code, Chapter 313.
- Texas Local Government Code, Chapters 171 and 176.
- Title 34, Texas Administrative Code, Chapter 9.
- Title 19, Texas Administrative Code, Chapter 61.
- Texas Education Code, Chapter 42.
- ISD policies and procedures.
- Agreements between the ISDs and the businesses.

Project Information

Audit fieldwork was conducted from February 2018 through April 2018. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Shahpar Michelle Hernandez, CPA, M/SBT, CISA (Project Manager)
- Michael Edward Karnes, MBA, CPA (Assistant Project Manager)
- Michael Bennett
- Jonathan W. Morris, MBA
- Nakeesa Shahparasti, CPA, CFE, CISA
- George D. Eure, CPA (Quality Control Reviewer)
- Audrey O'Neill, CFE, CGAP, CIA (Audit Manager)

Issue Rating Classifications and Descriptions

Auditors used professional judgement and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Table 6 provides a description of the issue ratings presented in this report.

Table 6

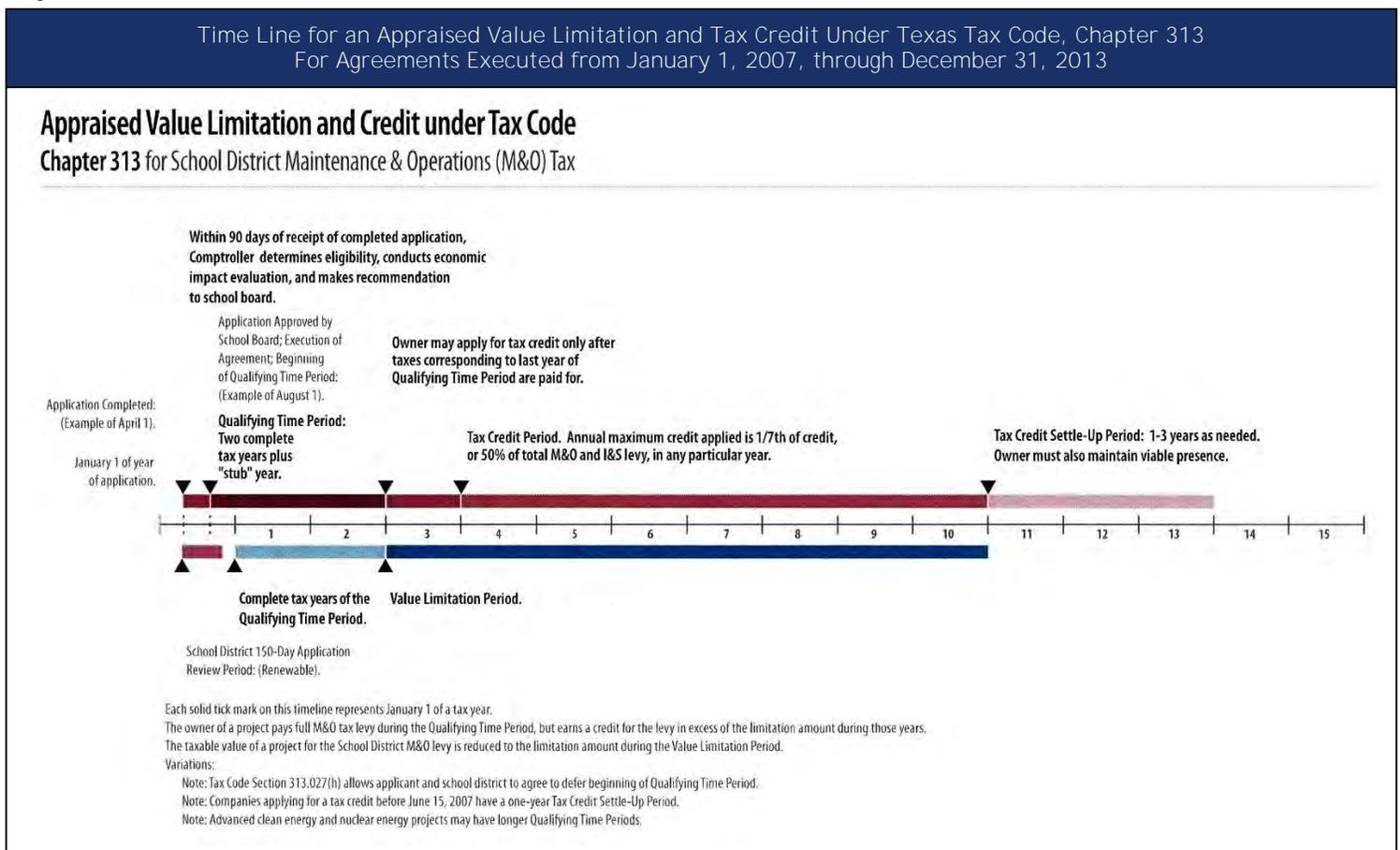
Summary of Issue Ratings	
Issue Rating	Description of Rating
Low	The audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited <u>or</u> the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.
Medium	Issues identified present risks or effects that if not addressed could <u>moderately affect</u> the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.
High	Issues identified present risks or effects that if not addressed could <u>substantially affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.
Priority	Issues identified present risks or effects that if not addressed could <u>critically affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

Time Line of Appraised Value Limitation and Tax Credits under Texas Tax Code, Chapter 313

Figure 1 shows an example of a time line for agreements for limitations on the appraised value of properties (agreements) executed from January 1, 2007, through December 31, 2013, as illustrated by the Office of the Comptroller of Public Accounts (Comptroller’s Office). The time line reflects certain changes the Legislature made to Texas Tax Code, Chapter 313. Specifically:

- The 80th Legislature expanded the tax credit settle-up period from one year to three years. That change was effective on June 15, 2007.
- The 81st Legislature changed the default date for the beginning of the qualifying time period from January 1 of the year following school board approval of the application to the execution date of the agreement (unless otherwise deferred). That change was effective June 19, 2009.

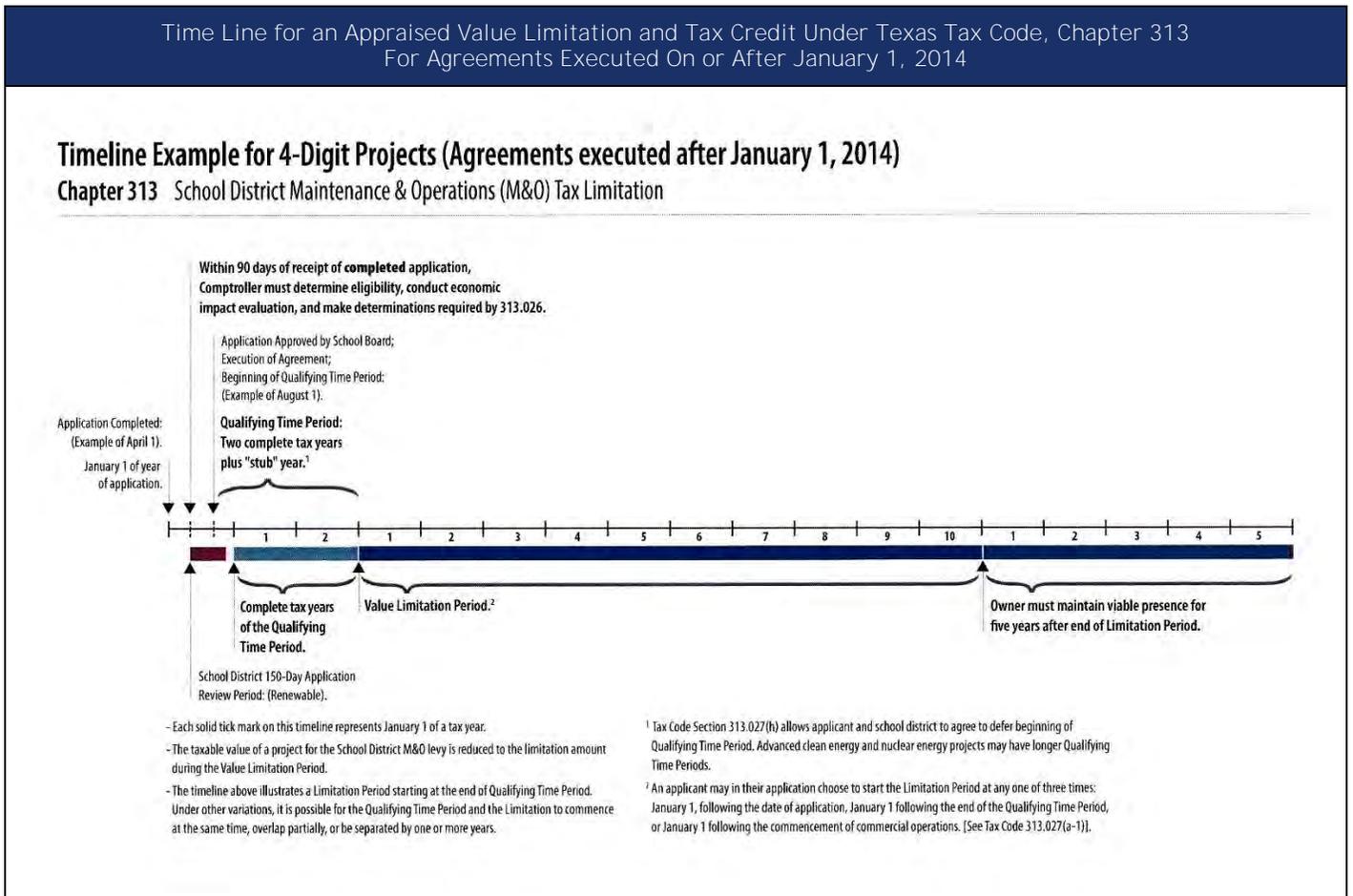
Figure 1



Source: The Comptroller’s Office.

Figure 2 shows an example of a time line for applications for agreements completed on or after January 1, 2014, as illustrated by the Comptroller's Office. The time line reflects certain changes the 83rd Legislature made. Specifically, it (1) enabled independent school districts (ISDs) to extend the appraisal limitation time period from 8 years to 10 years; (2) eliminated the ability of businesses with agreements to receive tax credits; and (3) extended the time period for a property owner to maintain a viable presence in the ISD from three years to five years after the date the limitation on the appraised value of the owner's property expires.

Figure 2



Source: The Comptroller's Office.

Background Information and Glossary of Selected Terms Related to Agreements

In 2001, the 77th Legislature enacted the Texas Economic Development Act (Texas Tax Code, Chapter 313), which permitted independent school districts (ISDs) to offer eight-year limitations on the appraised value of a property for the maintenance and operations portion of the ISDs' property taxes (the properties remain fully taxable for the purposes of any ISD debt service tax). Texas Education Code, Section 42.2515, also entitled ISDs to receive additional state aid each tax year from the Texas Education Agency for tax credits that are associated with the agreements for limitations on the appraised value of property (agreements).

The purpose of the Texas Economic Development Act, as currently specified in Texas Tax Code, Section 313.003, is to:

- Encourage large-scale capital investments in Texas.
- Create new, high-paying jobs in Texas.
- Attract to Texas new, large-scale businesses that are exploring opportunities to locate in other states or other countries.
- Enable state and local government officials and economic development professionals to compete with other states by authorizing economic development incentives that are comparable to incentives being offered to prospective employers by other states and to provide state and local officials with an effective means to attract large-scale investment.
- Strengthen and improve the overall performance of the Texas economy.
- Expand and enlarge the ad valorem property tax base of Texas.
- Enhance the economic development efforts of Texas by providing state and local officials with an effective economic development tool.

The 83rd Legislature amended Texas Tax Code, Chapter 313. The new requirements were applicable to applications for agreements completed on or after January 1, 2014. Those new requirements:

- Enabled ISDs to extend the appraisal limitation time period from 8 years to 10 years beginning January 1 of the first tax year immediately following the application date, the qualifying time period, or the start of commercial operations at the project site.

- Eliminated businesses' ability to receive tax credits for all applications for agreements effective on or after January 1, 2014.
- Extended the time period for a property owner to maintain a viable presence in the ISD from three years to five years after the date the limitation on the appraised value of the owner's property expires.

Table 7 lists the definitions for selected terms used in the administration of agreements.

Table 7

Glossary of Selected Terms Related to Agreements	
Term	Definition
Annual eligibility report	<p>The Office of the Comptroller of Public Accounts (Comptroller's Office) requires each agreement holder or its authorized representative to submit annual eligibility reports to the school district every year and to use information from the previous tax year in those reports. In fiscal year 2018, these reports are due to the school district by June 15, 2018.</p> <p>School districts are required to review those reports, retain the original reports, and submit PDF versions of the completed and signed reports and any attachments to the Comptroller's Office. In fiscal year 2018, the reports should be submitted by August 15, 2018.</p>
Biennial progress report	<p>The Comptroller's Office requires each agreement holder or its authorized representative to submit biennial progress reports to the school district each even-numbered year. In fiscal year 2018, these forms are due to the school district by June 15, 2018.</p> <p>The Comptroller's Office requests that the agreement holder complete the spreadsheet version of the biennial progress report and submit an electronic version to the school district. School districts are required to forward those reports to the Comptroller's Office each even-numbered year. In fiscal year 2018, the reports must be forwarded by August 15, 2018.</p>
Biennial school district cost data request form	<p>The Comptroller's Office requires school districts to submit the biennial school district cost data request form to the Comptroller's Office each even-numbered year. In fiscal year 2018, these reports should be submitted by August 15, 2018. That form indicates, for each project that is the subject of an agreement, actual and estimated property values, tax rates, payments in lieu of taxes, extraordinary educational expenses, and revenue protection payments.</p>
Certificate for limitation of appraised value	<p>As of December 31, 2017, Texas Tax Code, Section 313.025, requires the Comptroller's Office to issue a certificate for a limitation on appraised value of the property and provide the certificate to the governing body of the school district or provide the governing body a written explanation of the Comptroller's Office's decision not to issue a certificate. The governing body of a school district may not approve an application unless the Comptroller's Office submits to the governing body a certificate for a limitation on appraised value of the property.</p> <p>That requirement was effective for all applications completed on or after January 1, 2014.</p> <p>Texas Tax Code, Section 313.026, requires the Comptroller's Office's determination on whether to issue a certificate for a limitation on appraised value to be based on the required economic impact evaluation and on any other information available to the Comptroller's Office, including information provided by the governing body of the school district.</p> <p>Additionally, the Texas Tax Code, Section 313.026, states that the Comptroller's Office may not issue a certificate for a limitation on appraised value unless it determines both of the following:</p> <ul style="list-style-type: none"> ▪ The project proposed by the applicant is reasonably likely to generate, before the 25th anniversary of the beginning of the limitation period, tax revenue, including state tax revenue, school district maintenance and operations ad valorem tax revenue attributable to the project, and any other tax revenue attributable to the effect of the project on the economy of the state, in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement. ▪ The limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in Texas.
Disclosure statements	<p>Disclosure statements are statements that individuals complete to disclose a conflict of interest with a school district's vendor or an interest in real property.</p>

Glossary of Selected Terms Related to Agreements

Term	Definition
Job creation compliance report	<p>The Comptroller's Office requires each agreement holder to submit job creation compliance reports directly to the Comptroller's Office annually. In fiscal year 2018, these reports should be submitted by August 15, 2018. The Comptroller's Office requests that agreement holders submit both an electronic version and a signed, hard-copy version.</p> <p>That requirement applies only to agreements resulting from applications determined to be complete after January 1, 2014.</p>
Payments in lieu of taxes/Supplemental payments	<p>The terms of the agreements audited specified that payments in lieu of taxes were intended to support a school district as a result of its consideration in executing an agreement with a business. More recent Chapter 313 agreements created refer to these payments as supplemental payments.</p>
Qualified property	<p>As of December 31, 2017, Texas Tax Code, Section 313.021(2), defined qualified property as follows:</p> <p>Land:</p> <ul style="list-style-type: none"> ▪ That is located in an area designated as a reinvestment zone under Chapter 311 or 312 or as an enterprise zone under Chapter 2303, Texas Government Code. ▪ On which a person proposes to construct a new building or erect or affix a new improvement that does not exist before the date the person submits a complete application for a limitation on appraised value under this subchapter. ▪ That is not subject to a tax abatement agreement entered into by a school district under Texas Tax Code, Chapter 312. ▪ On which, in connection with the new building or new improvement described by subparagraph (A)(ii) of Texas Tax Code, Section 313.021(2), the owner or lessee of, or the holder of another possessory interest in, the land proposes to: <ul style="list-style-type: none"> • Make a qualified investment in an amount equal to at least the minimum amount required by Texas Tax Code, Section 313.023; and • Create at least 25 new qualifying jobs. <p>The new building or other new improvement described by subparagraph (A)(ii) of Texas Tax Code, Section 313.021(2).</p> <p>Tangible personal property:</p> <ul style="list-style-type: none"> ▪ That is not subject to a tax abatement agreement entered into by a school district under Texas Tax Code, Chapter 312; ▪ For which a sales and use tax refund is not claimed under Texas Tax Code, Section 151.3186; and ▪ Except for new equipment described in Texas Tax Code, Section 151.318(q) or (q-1), that is first placed in service in the new building, in the newly expanded building, or in or on the new improvement described by subparagraph (A)(ii) of Texas Tax Code, Section 313.021(2), or on the land on which that new building or new improvement is located, if the personal property is ancillary and necessary to the business conducted in that new building or in or on that new improvement.

Glossary of Selected Terms Related to Agreements

Term	Definition
Qualifying investment	<p>As of December 31, 2017, Texas Tax Code, Section 313.021(1), defined qualifying investment as follows:</p> <p>Tangible personal property that is first placed in service in Texas during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is described as Section 1245 property by Section 1245(a) of the U.S. Internal Revenue Code of 1986.</p> <p>Tangible personal property that is first placed in service in Texas during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually located in the cleanroom environment, including:</p> <ul style="list-style-type: none"> ▪ Integrated systems, fixtures, and piping. ▪ All property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances. ▪ Production equipment and machinery, moveable cleanroom partitions, and cleanroom lighting. <p>Tangible personal property that is first placed in service in Texas during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with the operation of a nuclear electric power generation facility, including:</p> <ul style="list-style-type: none"> ▪ Property, including pressure vessels, pumps, turbines, generators, and condensers, used to produce nuclear electric power. ▪ Property and systems necessary to control radioactive contamination. <p>Tangible personal property that is first placed in service in Texas during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with operating an integrated gasification combined cycle electric generation facility, including:</p> <ul style="list-style-type: none"> ▪ Property used to produce electric power by means of a combined combustion turbine and steam turbine application using synthetic gas or another product produced by the gasification of coal or another carbon-based feedstock. ▪ Property used in handling materials to be used as feedstock for gasification or used in the gasification process to produce synthetic gas or another carbon-based feedstock for use in the production of electric power in the manner described by statute. <p>Tangible personal property that is first placed in service in Texas during the applicable qualifying time period that begins on or after January 1, 2010, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with operating an advanced clean energy project, as defined by Texas Health and Safety Code, Section 382.003;</p> <p>A building or a permanent, nonremovable component of a building that is built or constructed during the applicable qualifying time period that begins on or after January 1, 2002, and that houses tangible personal property described by statute.</p>
Qualifying job	<p>As of December 31, 2017, Texas Tax Code, Section 313.021(3), defined a qualifying job as a permanent, full-time job that meets all of the following:</p> <ul style="list-style-type: none"> ▪ Requires at least 1,600 hours of work a year. ▪ Is not transferred from one area in Texas to another area in Texas. ▪ Is not created to replace a previous employee. ▪ Is covered by a group health benefit plan for which a business offers to pay at least 80 percent of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage. ▪ Pays at least 110 percent of the county average weekly wage for manufacturing jobs in the county where the job is located.

Glossary of Selected Terms Related to Agreements

Term	Definition
Qualifying time period	<p>As of December 31, 2017, Texas Tax Code, Section 313.021(4), defined a qualifying time period as follows:</p> <p>The period that begins on the date that a person’s application for a limitation on appraised value under this subchapter is approved by the governing body of the school district and ends on December 31 of the second tax year that begins after that date, except as provided by the following:</p> <ul style="list-style-type: none"> ▪ In connection with a nuclear electric power generation facility, the first seven tax years that begin on or after the third anniversary of the date the school district approves the property owner’s application for a limitation on appraised value under this subchapter, unless a shorter time period is agreed to by the governing body of the school district and the property owner. ▪ In connection with an advanced clean energy project, as defined by Section 382.003, Texas Health and Safety Code, the first five tax years that begin on or after the third anniversary of the date the school district approves the property owner’s application for a limitation on appraised value under this subchapter, unless a shorter time period is agreed to by the governing body of the school district and the property owner. ▪ The agreement between the governing body of the school district and the applicant may provide for a deferral of the date on which the qualifying time period for the project is to commence or, subsequent to the date the agreement is entered into, be amended to provide for such a deferral. The agreement may not provide for the deferral of the date on which the qualifying time period is to commence to a date later than January 1 of the fourth tax year that begins after the date the application is approved except that if the agreement is one of a series of agreements related to the same project, the agreement may provide for the deferral of the date on which the qualifying time period is to commence to a date not later than January 1 of the sixth tax year that begins after the date the application is approved. This subsection may not be construed to permit a qualifying time period that has commenced to continue for more than the number of years applicable to the project under Section 313.021(4).
Revenue protection payments	<p>Revenue protection payments are intended to protect a school district against any loss of maintenance and operations tax revenues as a result of an agreement. They also may include any costs that the school district incurs during the term of the agreement including tax credits for which a school district does not receive additional state aid from the State.</p> <p>Initial payment amounts are based on estimates, but the agreements require that the payment calculation be recalculated based on the annual certified tax roll data prepared by the county appraisal district.</p>
Settle-up period	<p>Texas Tax Code, Section 313.104(B),^a defined settle-up period as:</p> <ul style="list-style-type: none"> ▪ The first three tax years that begin on or after the date the person’s eligibility for the limitation expires. ▪ To credit against the taxes imposed on the qualified property by the district an amount equal to the portion of the total amount of tax credit to which the person is entitled under Section 313.102 that was not credited against the person’s taxes during the limitation period. ▪ Except that the amount of a tax credit granted under this paragraph in any tax year may not exceed the total amount of ad valorem school taxes imposed on the qualified property by the school district in that tax year.
<p>^a Texas Tax Code, Section 313.104(B), was effective until January 1, 2014.</p>	

Sources: Texas Tax Code, Chapter 313; Texas Local Government Code, Chapters 171 and 176; the ISDs audited; and the Comptroller’s Office.

Related State Auditor's Office Work

Related State Auditor's Office Work		
Number	Product Name	Release Date
17-043	An Audit Report on Selected Major Agreements Under the Texas Economic Development Act	July 2017
17-009	An Audit Report on Selected Major Agreements Under the Texas Economic Development Act	October 2016
16-021	A Report on the Implementation Status of Prior State Auditor's Office Recommendations	April 2016
15-042	An Audit Report on Selected Major Agreements Under the Texas Economic Development Act	August 2015
15-009	An Audit Report on Selected Major Agreements Under the Texas Economic Development Act	November 2014

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