

Publications

Texas Property Tax Exemption Program Replaces Chapter 313

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The Texas House and Senate have approved House Bill 5 (HB 5), which would create a new property tax incentive program and replace the recently expired Texas Economic Development Act, known as Chapter 313. The bill has been sent to Texas Governor Greg Abbott for signature.

For eligible property associated with approved projects, the bill provides a ten-year reduction of taxable value for school district maintenance and operations ad valorem tax (the School M&O Tax). In general, eligible property includes property (i) owned by an applicant or leased by an applicant under a capital lease, (ii) that is located in a reinvestment zone or enterprise zone, and (iii) that is a new building, an expansion of an existing building, or non-inventory tangible personal property first used in the project. Approved projects located in opportunity zones will receive a 75% reduction in the School District M&O Tax, and the remainder of the approved projects will receive a 50% reduction in the School M&O Tax. The bill also provides a 100% reduction of School M&O Tax for eligible property during a project's construction period.

Only certain types of projects can be approved for the new incentive. Eligible projects include only manufacturing facilities, utility service provision facilities (including dispatchable energy generation facilities), facilities related to the development of natural resources, technology research/development facilities, and critical infrastructure projects. Eligible projects expressly do not include nondispatchable energy projects (generally understood to include wind and solar projects) and electric energy storage facilities.

Projects must meet minimum job creation and investment amounts based on county population as follows:

1. Investment of at least \$200 million and creation of 75 new jobs in counties with a population of 750,000 or more;
2. Investment of at least \$100 million and creation of 50 new jobs in counties with a population of at least 250,000, but less than 750,000;

3. Investment of at least \$50 million and creation of 35 new jobs in counties with a population of at least 100,000, but less than 250,000;
4. Investment of at least \$20 million and creation of 10 new jobs in counties with a population of less than 100,000.

Projects will be approved for the new incentive pursuant to a detailed process prescribed by the bill that begins with a detailed application to the Comptroller that includes a multi-factor economic benefit analysis and that requires the Comptroller to find that the proposed investment would not be made in Texas if not for the incentive. If the Comptroller approves the application, the Comptroller must then give notice to the Governor and the applicable school district. Both the Governor and the applicable school district must then determine whether they are agreeable to entering into a detailed agreement that is the subject of the application. The bill specifies various topics that must be addressed in the detailed agreement and mandates that certain provisions, such as clawback provisions, be included. It also specifies that the agreement must contain a provision specifying that the applicant is prohibited from making a payment to the school district related to the agreement – a significant departure from Chapter 313.

The end of the Chapter 313 program created significant stress for economic development officials in Texas, particularly for those in areas with high property tax rates. The new program will enable those areas to become more competitive than they have been recently, but it will create new stresses and add new complexities to economic development deals – with a new, detailed application process, the required use of multi-factor economic benefit analyses, and the negotiation of new, detailed agreements.

Vorys encourages you to contact your Vorys attorney with any questions you may have. For questions on incentives matters, please contact: Scott Ziance, 614.464.8287, sjziance@vorys.com; Chris Knezevic, 614.464.5627, cjknezevic@vorys.com; Sean Byrne, 614.464.8247, spbyrne@vorys.com; Elissa Wilson, 614.464.6224, rewilson@vorys.com; or Jon Stock, 614.464.5647, jkstock@vorys.com.