



## Chapter 9

# TAX ABATEMENTS

## CHAPTER NINE: TAX ABATEMENTS

### A. Overview

#### 1. What are tax abatements?

Tax abatements are artificial reductions on the amount of tax a property owner would otherwise pay. The term is generally interchangeable with terms like “tax breaks” and “tax exemptions.” The exemption can apply: at the federal, state or local level; to certain types of taxes at each level (e.g., school district taxes); and for a limited time period (e.g., ten years, after which the “normal” tax rate will be applied). An applicant typically qualifies for a tax exemption by applying to the overseeing entity, providing (usually minimal) documentation that it qualifies for the exemption, and having its application be approved or denied based on a vote by the various decision-making bodies prescribed by law. Sometimes the exemption recipient must provide follow-up documentation to show that the facility continues to qualify for the exemption; sometimes not. This chapter focuses on the two main state-level tax exemptions available in Texas and Louisiana; it also summarizes some other federal and local incentives that an LNG developer might pursue.

#### 2. Why do facilities apply for tax abatements and incentives?

Unlike all of the other permissions and permits discussed in this guide, LNG terminals are not required to apply for tax exemptions as part of any permitting process.

Most LNG developers apply for the tax exemptions that state and local governments offer to industries because it is basically free money—millions of dollars in free money. In fact, LNG facilities receive some of the largest state tax exemptions of all industries: for example, the biggest beneficiaries under Texas’s corporate tax exemptions have been two LNG facilities: Corpus Christi Liquefaction and Freeport LNG, each receiving more than \$55 million in subsidies *annually*.<sup>1060</sup> Louisiana is even more generous to LNG companies—*eight* LNG facilities were granted more than \$50 million in the first year of each’s 10-year subsidy period, with the biggest winners being Sabine Pass LNG LP (d/b/a Cheniere Energy) and Cameron LNG LLC (d/b/a Sempra Energy), which respectively secured exemptions to the tune of over *\$553 and \$392 million* in years one of their subsidies.<sup>1061</sup>

LNG developers use these tax breaks to artificially inflate the project’s profitability and attract investors. However, these exemptions come at a cost to localities because valuable tax revenue is not collected<sup>1062</sup>—revenue that could fund schools, pollution-reduction measures, health services,

<sup>1060</sup> Brown, Alleen. *Corporate Subsidy Quietly Dies in Texas—Topping Off Bad Week for Big Oil*. The Intercept. (June 1, 2021) at 5. [https://d3n8a8pro7vnm.cloudfront.net/gulfcoastlc/pages/1561/attachments/original/1622690659/Brown\\_Alleen\\_Corporate\\_Subsidy\\_Quietly\\_Dies\\_in\\_Texas\\_-The\\_Intercept.pdf?1622690659](https://d3n8a8pro7vnm.cloudfront.net/gulfcoastlc/pages/1561/attachments/original/1622690659/Brown_Alleen_Corporate_Subsidy_Quietly_Dies_in_Texas_-The_Intercept.pdf?1622690659).

<sup>1061</sup> Together Louisiana. Conference Presentation. (Sept. 21, 2021). In the 10-year lifespan of Sabine Pass LNG, LP’s subsidies, it will have avoided over *\$4.762 billion* in taxes. Cameron LNG, LLC will have avoided over *\$3.376 billion*. For more information about the size of Louisiana’s subsidies (including that Louisiana gives away 32 times as much per capita in corporate subsidies as Texas does), see Together Baton Rouge. “GIVING AWAY THE FARM: a cost-benefit analysis of the industrial tax exemption program in East Baton Rouge Parish, 1998 - 2017.” (Aug. 2017) at 8. [https://d3n8a8pro7vnm.cloudfront.net/togetherbr/pages/2303/attachments/original/1503346818/Final\\_TBR\\_Giving\\_away\\_the\\_farm\\_8-17-2017.pdf?1503346818](https://d3n8a8pro7vnm.cloudfront.net/togetherbr/pages/2303/attachments/original/1503346818/Final_TBR_Giving_away_the_farm_8-17-2017.pdf?1503346818).

<sup>1062</sup> Sometimes that revenue is partially replaced as part of the exemption’s legal framework. But there’s no such thing as a free lunch—that replacement money is pulled from other sources and the shortfall is simply moved onto others’ shoulders. *Id.* at 5 (“Texas’s Chapter 313 program allowed corporations building new facilities to apply to local school boards for a property tax waiver. The school boards hardly ever said no — likely because the local school district didn’t stand to lose money. Instead,

municipal services, or infrastructure improvements. And the justifications for these tax exemptions—that they are necessary for the project to break even, increase jobs and grow the local economy—are drastically overblown. When challenging a project’s permits, advocates should also consider challenging these exemptions—many are vulnerable because so little scrutiny has been given them.

### **3. What is unique about challenging tax abatements and incentives?**

Of the advocacy avenues discussed in this guide, tax exemption challenges are unique for two major reasons: (1) defeating an exemption is not guaranteed to stop a project; (2) a larger range of concessions may be more quickly offered by developers, potentially dividing the coalitions initially united against the exemption. These are factors to be aware of, not necessarily reasons to avoid fighting exemptions.

As for the first issue: that defeating an exemption is not guaranteed to stop a project. This can be counter-intuitive, because lawmakers and industry often justify exemptions as necessary to make the project economical in the proposed location. The facts don’t back this assumption up—for example, many oil and gas projects in Louisiana and Texas are built either before they receive an exemption or despite not receiving one.

Challenging exemptions for projects that may be built anyway is worthwhile because it combats public subsidy of harm (and may actually stop a project—it can be hard to predict the future). These projects (that are built regardless) can be classified as those that clearly do not qualify under the spirit or letter of the laws for an exemption, even under minimal scrutiny. The stated purpose of many exemption programs is to attract good jobs to the state. Yet many projects get exemptions without needing any financial incentive at all: the projects have already been constructed (and thus need no continued “incentive” to be constructed); the projects are expansions or routine capital upgrades that would be built regardless; the projects have no other possible location except in a particular state, county or parish; the projects will not increase high-paying jobs or add to development; the projects are time-barred from receiving exemptions (e.g., the legal exemption period has elapsed). And attracting a project is no guarantee that good jobs will follow—Louisiana and Texas historically have failed to ensure that companies live up to their job promises. Local government entities that reject exemptions from these aforementioned projects will likely be able to tax these entities for the full value anyway, because either they will be built anyway or the increased scrutiny will show that they simply did not qualify for the exemption program. For these cases, a broad coalition of groups, from environmental advocates to local organizations will likely be aligned in arguing for an unqualified “No” to these exemptions.

As for the second issue: that a larger range of concessions may be more quickly offered by developers, potentially dividing the coalitions initially united against exemptions. Tax exemptions get processed much more quickly and with less public scrutiny than the environmental permit described in this guide (except for possibly certain states’ section 401 permits). And the conditions that are attached to permits are often more narrowly tailored to environmental and human health concerns—whereas tax exemptions can include conditions about real job creation, wages, economic development, supplemental payments to local organizations, and other measures outside the

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the property tax money that was waived would have gone into a state fund, which should have especially benefitted overstretched urban school districts.”) See Section 9.C for more details about how this happens in Texas.

bounds of human and environmental health.<sup>1063</sup> If a developer offers attractive-enough economic concessions, coalitions united against a project can break down. **Robust and compassionate communication in a coalition is critical**—those interested in such concessions should be open to hearing how enforceable (or not) they may be plus any environmental / human health tradeoffs; and those opposed to any concessions should be open to hearing the very real concerns and needs of those with different viewpoints.

#### 4. What are avenues of advocate involvement?

There are two main avenues for challenging tax abatements: on a macro (exemption-wide, state and local) and on an individual level (for each facility).

- Challenges at a macro (state) level. The overall structure of many tax abatement programs is set at the state level, even if individual localities and governing entities may add requirements for all or a subset of projects. It's usually the politicians in the state legislature or the governor's office who can make wholesale changes to the state tax exemption framework.<sup>1064</sup> Therefore, advocating at the state level for changes to the tax abatement programs themselves can improve the process for all projects (as advocates in Louisiana and Texas have succeeded at—see Section 9.B and 9.C, respectively). This is much more about political organizing and mobilizing to change the overall legal framework instead of working within a pre-existing framework. Grassroots organizers and coalitions outside of environmental groups are key to making this change happen.
- Challenges at a macro (local) level. Although the overall framework for many tax abatement programs is set at the state level through state legislation, the local entities—e.g., the city, county, school district, or other local entities often have significant leeway in shaping the requirements that all companies planning on developing in their jurisdiction must meet before qualifying for an exemption from that local entity.<sup>1065</sup> Again, organizers and coalitions are key to convincing the local entities that macro-level changes to these local incentives are necessary. For example, if local entities can be convinced to adopt living wages, benefits, and local hire standards as conditions for receiving certain tax exemptions, this can affect all future projects that seek exemptions in that locality (as Austin Interfaith, Workers Defense, and other advocates were able to convince the City of Austin to do in 2013<sup>1066</sup>). This requires researching each parish, county, and city individually to understand the incentives a facility might seek from these entities.
- Challenges to the tax exemptions sought by an individual facility. This avenue of challenge requires picking off each individual tax exemption. Advocates can prioritize those that are

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<sup>1063</sup> Technically, challenging a permit can lead to a wide spectrum of concessions like these, but typically only after protracted litigation dissolves into a settlement agreement. Negotiations over tax exemptions do not have such a long and expensive timeline. FERC's certification could also include economic mitigation measures, but that process is also much longer and much more expensive.

<sup>1064</sup> Whether the exemption programs should be abolished or narrowly tailored to green industries like wind and solar is outside the scope of this guide.

<sup>1065</sup> For example, in Texas some of the local incentives are codified in Chapter 380 and 381 of the state's tax code. These laws give the local taxing authority (the city or county, respectively) a lot of power in deciding the scope of the exemption programs, both across the board for all companies and in each individual case.

<sup>1066</sup> Mosqueda, Priscila. "In Austin, Workers Score a Big Win." Texas Observer. (Oct. 25, 2013) <https://www.texasobserver.org/austin-workers-score-big-win/>. The same advocates have also pushed Travis County to incorporate labor protections in its economic development agreements. For some history on that work, see: Aldridge, Olivia. "Travis County votes to accept application for Silicon Silver development incentives agreement." Community Impact Newsletter. (Jan. 26, 2021) <https://communityimpact.com/austin/central-austin/business/2021/01/26/travis-county-votes-to-accept-application-for-silicon-silver-development-incentives-agreement/>.

expected to be the largest. Public momentum will be key to help decisionmakers see that each tax exemption will bring more harm than good to a community. Partnering with experienced organizers and building coalitions at the grassroots level is key to success.

## 5. How is this chapter organized?

Because tax exemptions are state specific, this chapter is divided into two sections, one for the main tax break available in Louisiana (Section 9.B) and one for Texas (Section 9.C) as of January 2022. Section 9.D briefly summarizes other types of tax exemptions a facility might be offered that an advocate could challenge.

## B. Louisiana tax exemptions

### 1. What is the main tax exemption LNG developers seek in Louisiana?

The largest tax exemption that LNG developers have access to in Louisiana is the Industrial Tax Exemption Program, or ITEP,<sup>1067</sup> which has its origins in the state constitution.<sup>1068</sup> Advocates, including in particular, Together Louisiana, have played key roles in fighting this exemption and have compiled a wealth of information about the program and how best to reform the program so it is not simply a gift to polluting industries like LNG, which have received millions.<sup>1069</sup> Advocates challenging ITEP are highly encouraged to reach out to these experienced advocates and to review the material already compiled by these organizations.<sup>1070</sup>

Until 2016, ITEP exemptions from property taxes of up to 100% for 10 years were granted with no local oversight or input. These decisions were made by a largely unelected state entity housed in the state department of Louisiana Economic Development (LED): the Board of Commerce and Industry. But in June 2016, Louisiana Governor John Bel Edwards signed an executive order giving local school districts, sheriff departments, parishes and cities the authority to determine for themselves whether to approve industrial tax exemptions and on what terms,<sup>1071</sup> although the state Board of Commerce

<sup>1067</sup> Groner, Anya. "One Oppressive Economy Begets Another." *The Atlantic*. May 7, 2021.

<https://www.theatlantic.com/culture/archive/2021/05/louisiana-chemical-plants-thriving-off-slavery/618769/> ("According to a study by Together Louisiana, a statewide network of community organizers, from 1997 to 2016 the ITEP board approved all but eight of 16,931 corporate-tax-exemption applications. In 2017 alone, those exemptions cost state parishes about \$1.9 billion, money that could've been spent on local parks, libraries, and schools.")

<sup>1068</sup> Louisiana Constitution Art. 7 § 21(F) ("Notwithstanding any contrary provision of this Section, the State Board of Commerce and Industry or its successor, with the approval of the governor, may enter into contracts for the exemption from ad valorem taxes of a new manufacturing establishment or an addition to an existing manufacturing establishment, on such terms and conditions as the board, with the approval of the governor, deems in the best interest of the state.")

<sup>1069</sup> See e.g., the tax break given to Cheniere Energy. <https://www.opportunitylouisiana.com/case-studies/cheniere-energy>.

<sup>1070</sup> Together Louisiana's summary page on Fair Taxes is a great place to start. "*The Biggest Corporate Welfare Program in the Nation . . .*" <https://www.togetherla.org/fairtaxes>; See also Together Louisiana, "*Why Louisiana Stays Poor.*"

<https://www.youtube.com/watch?v=RWTic9btP38>. For an in-depth dissection of the costs of the program (both directly and indirectly as it shifts the burden to other taxpayers) and debunking the myths of job-creation and business growth, see Together Baton Rouge's report: "GIVING AWAY THE FARM: a cost-benefit analysis of the industrial tax exemption program in East Baton Rouge Parish, 1998 - 2017." (Aug. 2017) [https://d3n8a8pro7vhmx.cloudfront.net/togetherbr/pages/2303/attachments/original/1503346818/Final\\_TBR\\_Giving\\_away\\_the\\_farm\\_8-17-2017.pdf?1503346818](https://d3n8a8pro7vhmx.cloudfront.net/togetherbr/pages/2303/attachments/original/1503346818/Final_TBR_Giving_away_the_farm_8-17-2017.pdf?1503346818).

<sup>1071</sup> Office of the Louisiana Governor. "*Gov. Edwards Ties Industrial Tax Breaks to Job Creation and Local Approval.*" (June 24, 2016) <https://gov.louisiana.gov/news/gov-edwards-ties-industrial-tax-breaks-to-job-creation-and-local-approval>. See also "*The Biggest Corporate Welfare Program in the Nation . . .*" <https://www.togetherla.org/fairtaxes>. These entities also have the power to recommend penalties for non-compliance. See e.g., Cobler, Paul. "*Baton Rouge car-parts maker not punished for flouting tax break, decision delayed for brewery*" *The Advocate*. (Nov. 10, 2021)

[https://www.theadvocate.com/baton\\_rouge/news/article\\_2bd2339a-4290-11ec-b3fa-9b139dd20d63.html](https://www.theadvocate.com/baton_rouge/news/article_2bd2339a-4290-11ec-b3fa-9b139dd20d63.html) ("As the representatives of the three East Baton Rouge Parish entities that would have received the exempted tax dollars, Metro Council, the Sheriff's Office and the School Board all have the power to recommend a penalty to the state board, defer to the board or mandate on their own that the companies pay a penalty.")

and Industry is still heavily involved.<sup>1072</sup> The Governor further limited the amount of tax exemption available from 100% to 80%.<sup>1073</sup> In 2020, the Governor amended the ITEP rules to allow applicants that were denied tax breaks to—in limited circumstances—appeal those denials to the state board.<sup>1074</sup>

Even though new projects seeking tax breaks through ITEP will be subject to the new rules requiring local approval, some projects are grandfathered into the old system in which the Board of Commerce and Industry rubberstamped approvals without sharing authority with local entities.<sup>1075</sup> Whether such facilities should be grandfathered is a possible point of advocacy, especially if those projects seek ITEP exemptions for facility expansions.

## **2. Where should advocates focus in challenging individual exemptions?**

Defeating ITEP tax exemptions requires quickly mobilizing local opposition to convince local authorities to reject the tax exemptions LNG developers seek. The local entities with decision-making power are parish governing bodies, municipal governing bodies, school boards, and sheriffs. Each of these entities has the power to approve or reject the portions of tax exemptions it would be forgoing. Because of this it can be useful to educate these officials about the ITEP program's costs *before* an individual project is up for review, and to encourage the election of ITEP-opposed individuals to these positions. The Board of Commerce and Industry is still a largely rubberstamp entity unresponsive to community concerns.

## **3. When are localities officially involved in the ITEP process?**

Localities are only presented with the opportunity to weigh in on ITEP exemptions *after* the Board of Commerce and Industry has approved the applicant's initial application and negotiated the terms and conditions of the tax exemption (memorialized in a document known as "Exhibit A").<sup>1076</sup> Within three business days of the Board approval, LED forwards the approved application and Exhibit A to local governmental authorities. Notice of the approval is posted on the LED Board website,<sup>1077</sup> and the posted date begins the 30-day period for the local governing authorities to initiate action to approve or reject the board's approved tax exemption. There are several nuances to note:

- Within the 30-day period, a local governing authority has the option of placing the application on a public meeting agenda (and publishing notice of that action), which would extend the deadline for approving or rejecting the tax exemption for an additional 30 days (for a total of 60 days from

<sup>1072</sup> "Industrial Tax Exemption Program." <https://www.opportunitylouisiana.com/business-incentives/industrial-tax-exemption>; see also Louisiana Economic Development. "Louisiana Board of Commerce and Industry."

<https://www.opportunitylouisiana.com/boards-reports-and-rules/louisiana-board-of-commerce-and-industry>.

<sup>1073</sup> 13 LAC § I-537(B).

<sup>1074</sup> Houston, Matt. "New ITEP rules spark fear locals will lose say in granting tax breaks." WAFB9. (Feb. 21, 2020), <https://www.wafb.com/2020/02/21/new-itep-rules-spark-fear-locals-will-lose-say-granting-tax-breaks/>. Companies typically can only appeal if a local entity has set up rules that are "in conflict" with the state rules. As of January 2022, no company has prevailed on an appeal.

<sup>1075</sup> Mosbrucker, Kristen. "Why plastic maker Formosa's big Louisiana property tax break is not likely at risk despite delays." The Advocate. (June 20, 2021). [https://www.theadvocate.com/baton\\_rouge/news/business/article\\_68dce452-c3b9-11eb-b8e1-1bf42c7e5145.html](https://www.theadvocate.com/baton_rouge/news/business/article_68dce452-c3b9-11eb-b8e1-1bf42c7e5145.html) ("Since [Formosa's original application in 2014], Gov. John Bel Edwards has changed the state's ITEP incentive to an 80% property tax break over 10 years rather than 100% tax break and given local government entities a say in whether tax abatements are granted. However, Formosa and many other megaprojects — some like Formosa that have not yet begun construction — were "grandfathered in" by Edwards to receive the more generous tax break under the old rules. This special status also forgoes the approval of parish councils or police juries, school boards and sheriff's offices.")

<sup>1076</sup> The Louisiana Department of Revenue (LDR) is also involved, but like with the Board's review, most applications are approved for submittal to the local entities with little substantive scrutiny of actual costs and benefits.

<sup>1077</sup> ITEP "Board Approved Projects" can be found by searching the Business Incentives in the public search of LED's FastLane: <https://fastlaneng.louisianaeconomicdevelopment.com/public/search/bi>.

start of notice period). If the local governing authority elects to place the application on a public meeting agenda, it must notify LED of such action within three business days.

- If a local governmental entity does not take action or provide notice of the application's placement on a public agenda within the 30-day period, the application is deemed approved by that entity.<sup>1078</sup>

This thirty- to sixty-day window for official action is small, but it has been sufficient to enable local officials to reject proposals. Advocates also can and should work to educate local entities about the ITEP program costs well before any individual project applies for an ITEP exemption.

#### **4. What is the timing for advocacy on an individual project and how do I find out about pending applications?**

The window for action in the ITEP process is small. Local entities typically have only thirty days—and at most sixty—to approve or reject the exemption agreed to by the Board and the applicant. Failure to act puts the entity at risk of having the exemption deemed approved, even if there is substantial opposition.

But advocates need not wait to mobilize against a project until the Board and applicant have finished negotiating an exemption and present it to local entities for approval. The ITEP process starts with the applicant filing an “Advanced Notification” through the state’s “FastLane NextGen” website. This is the official notice that an applicant *intends* to seek an ITEP exemption. This notice of intent often is the first public indication that an applicant plans to act and is typically filed at least a few months before the localities are invited to participate.<sup>1079</sup>

Advocates should be able to check on whether a project has taken this initial step in two different ways using the FastLane website: <https://fastlaneng.louisianaeconomicdevelopment.com/>, using either the Public Reports interface or the Public Search Function.

With the Public Reports option, navigate to “Public Reports” (<https://fastlaneng.louisianaeconomicdevelopment.com/public/reports>) and download the latest “Advance Report.” Projects in the ITEP program will include the tag “ITE” in the “Project Id”; filtering by “ITE” and sorting “Advance Received Date” from newest to oldest will show projects that have most recently expressed interest in an ITEP exemption.<sup>1080</sup> This dataset also contains useful information about the estimated jobs, payroll, and investments that will be made.

The second option, which avoids downloading the entire report, is to use the public search function, which allows the user to screen on narrower criteria before downloading data. The public search function is located here: <https://fastlaneng.louisianaeconomicdevelopment.com/public/search/bi>. Set the “Criteria” to “Advance Notification” and keep the boxes for “EZ” “QJ” and “ITE” checked.

<sup>1078</sup> LED. “Industrial Tax Exemption Program: Next Steps.” <https://www.opportunitylouisiana.com/business-incentives/industrial-tax-exemption>. For the official rules and regulations governing new projects as of 2018, see Chapter 5: Industrial Ad Valorem Tax Exemption Program §§ 501 – 537. [https://www.opportunitylouisiana.com/docs/default-source/default-document-library/rules-2018\\_itep.pdf?sfvrsn=c460ba05\\_0](https://www.opportunitylouisiana.com/docs/default-source/default-document-library/rules-2018_itep.pdf?sfvrsn=c460ba05_0).

<sup>1079</sup> After the advance notice, an applicant must submit its application to LED. It is reviewed by both LED and the Louisiana Department of Revenue. LED and the applicant must agree on the terms of the tax exemption and then the Board of Commerce and Industry must approve it. The Board meets every other month to consider applications, for a total of six times per calendar year. The Board only gives one week of notice as to its monthly agenda. Only once all these steps are completed are the localities given a say. See LED. “Industrial Tax Exemption Program: Next Steps.” <https://www.opportunitylouisiana.com/business-incentives/industrial-tax-exemption>.

<sup>1080</sup> These suggestions are based on the format of the website on November 29, 2021.

After “Search” is clicked, the user should be able to search for certain phrases like “LNG” to further narrow the results before exporting the data.

### **5. Is there other useful data on FastLane?**

FastLane’s Public Reports page also includes other reports that advocates may find useful in understanding trends in the ITEP program and at particular facilities.<sup>1081</sup> The “Industrial Tax Exemption Projects Report” is one such report that advocates like Together Louisiana have used to uncover the real costs of the program. This report includes columns for Board Approvals, Contract Dates, and Renewal Requests if available for each project, which shows the history of exemptions received at specific facilities. The first column also shows whether the project is operating under the pre-2016 rules or after the Governor’s executive orders.

The historical data in the ITE Projects Report is helpful because not only new projects can take advantage of ITEP. Expansions to pre-existing facilities are also eligible. Many of these must go through the local approval process. Some of advocates’ successes have come from stopping expansions from benefiting from ITEP, as Section 9.B.7 highlights.

### **6. Won’t companies leave if they don’t get the tax exemptions, causing localities to lose tax revenue?**

The truth is that many companies that seek tax exemptions do not need them to be profitable and will build at the proposed location regardless of whether they receive exemptions. For example, companies expanding existing facilities are likely to do so with or without exemptions. Some facilities even complete all work before receiving an exemption—as Exxon did in East Baton Rouge parish (see Section 9.B.7). One Together Louisiana study found that one parish lost \$69.6 million in one year alone from exemptions—even if some of those projects would not have been constructed without exemptions it is clear that communities are forgoing millions of dollars that could be used for public services instead of subsidizing public harms.

#### **\$69.6 MILLION IN OPPORTUNITY COSTS IN 2017 IN EAST BATON ROUGE ALONE**

Using FastLane data, advocates have found that in one parish alone, the amount of tax revenue schools, the parish government, sheriff, and other local entities lost in 2017 because of ITEP amounts to \$69.6 million, which could have been otherwise used to fully fund universal pre-K (or give teachers a \$9,000+ raise), improve drainage (or give police officers a \$14,000+ raise and fully fund an independent police monitor), cover the sheriff’s budget deficit and buy body cameras for all deputies, open and operate 168 new swimming pools, AND hire 190 new firefighters and 47 paramedics.<sup>1082</sup>

Ideally, the state would encourage bringing green industry to the state, which as Louisiana Together has repeatedly pointed out, is necessary to meet the state’s own climate change goals. And at a

<sup>1081</sup> LED “Public Reports.” <https://fastlaneng.louisianaeconomicdevelopment.com/public/reports>.

<sup>1082</sup> Together Louisiana. “GIVING AWAY THE FARM: a cost-benefit analysis of the industrial tax exemption program in East Baton Rouge Parish, 1998 - 2017.” (Aug. 2017) [https://d3n8a8pro7vhmx.cloudfront.net/togetherbr/pages/2303/attachments/original/1503346818/Final\\_TBR\\_Giving\\_away\\_the\\_farm\\_8-17-2017.pdf?1503346818](https://d3n8a8pro7vhmx.cloudfront.net/togetherbr/pages/2303/attachments/original/1503346818/Final_TBR_Giving_away_the_farm_8-17-2017.pdf?1503346818).



minimum, the facilities that create public harms—poor jobs, damage to human and environmental health—should do so by internalizing the costs of that harm, not by receiving public subsidies.

### **7. Are there success stories of advocates blocking an ITEP exemption?**

Yes, advocates in Louisiana have successfully convinced local entities to reject ITEP exemptions. One such success story highlighted in *the New York Times* centers on the Exxon facility in East Baton Rouge Parish.<sup>1083</sup> After being persuaded by concerned community members, the school board voted 5-4 to reject the \$2.9 million ITEP deal Exxon had struck with the state on tax exemptions for its already completed expansions of its refinery and a polymer plant.<sup>1084</sup> With the local schools in a budget crisis, needing to cut roughly \$30 million in future spending, agreeing to an Exxon tax break would have made the situation even more dire.<sup>1085</sup> In response, Exxon withdrew its request for the tax breaks entirely.<sup>1086</sup>

This is not the only case of local organizations rejecting ITEP proposals. In St. James Parish in 2020, all three entities: the parish, the school board, and the sheriff rejected \$24 million in tax breaks over five years for a hydrogen plant, recognizing the costs to the community of allowing these exemptions.<sup>1087</sup> The \$247 million plant was already under construction when the localities rejected the exemption proposal. As local media reports, “Under the deal St. James officials rejected, the taxing jurisdictions still would have split \$6 million in revenue over 10 years even after Linde’s [the industrial entity] \$24 million in breaks. Instead the local governments will split the full \$30 million if the decisions withstand any possible appeal to the state Board of Commerce and Industry.”<sup>1088</sup> It does not appear that the local authorities’ decisions were overturned.

Another win for Louisiana advocates was in the case of Marathon Oil’s Garyville refinery in St. John the Baptist Parish. For decades, 84% of all of Marathon’s property—valued at \$3.7 billion—was tax exempt.<sup>1089</sup> In 2019, both the school district and the parish council rejected Marathon’s request for \$25 million more in new tax breaks *for already completed work* (the sheriff’s office accepted the deal).<sup>1090</sup> This was the first time that the any St. John Parish board had the opportunity to approve an ITEP proposal, which the school district rejected resoundingly, 9-1. And when other previously exempt Marathon property finally came onto the tax rolls in 2020, it increased total property tax revenue in the parish from \$57 to \$86 million *in a single year*.<sup>1091</sup>

<sup>1083</sup> Fausset, Richard. “A School Board Says No to Big Oil, and Alarms Sound in Business-Friendly Louisiana.” *New York Times*. (Feb. 5, 2019) <https://www.nytimes.com/2019/02/05/us/louisiana-itep-exxon-mobil.html>.

<sup>1084</sup> *Id.*

<sup>1085</sup> *Id.* (“The school district is in a budget crisis, and it is looking for ways to cut roughly \$30 million in future spending. Layoffs may be on the table. Teachers say that administrators have even been rationing paper.”).

<sup>1086</sup> Mitchell, David. “In St. James, complete denial of industrial plant’s tax breaks a rare step in Louisiana.” *The Advocate*. (Oct. 14, 2020). <https://www.houmatoday.com/story/business/2020/10/14/st-james-complete-denial-industrial-plants-tax-breaks-rare-step-louisiana/5969887002/>.

<sup>1087</sup> Mitchell, David. “In St. James, complete denial of industrial plant’s tax breaks a rare step in Louisiana.” *The Advocate*. (Oct. 14, 2020). <https://www.houmatoday.com/story/business/2020/10/14/st-james-complete-denial-industrial-plants-tax-breaks-rare-step-louisiana/5969887002/>.

<sup>1088</sup> *Id.*

<sup>1089</sup> In other words, out of that \$3.7 billion, only \$600 million was taxable. Because the majority of the property was tax exempt, the community lost out on \$885 million in tax revenue from 1999-2017. “When Goliath stays in charge, places stay poor.” Together Louisiana. <https://www.youtube.com/watch?v=cNcbZKevTpg>.

<sup>1090</sup> Reimann, Nick. “St. John seeing cash windfall as Marathon gives \$20 million ahead of expiring tax breaks.” (Dec. 28, 2019) [https://www.nola.com/news/business/article\\_c836bdbc-21f1-11ea-9e5d-1fa308bcd381.html](https://www.nola.com/news/business/article_c836bdbc-21f1-11ea-9e5d-1fa308bcd381.html).

<sup>1091</sup> “When Goliath stays in charge, places stay poor.” Together Louisiana. 2:54-3:13. <https://www.youtube.com/watch?v=cNcbZKevTpg>.

## **8. What are advocacy avenues available other than fighting the revenue lost in individual projects?**

Beyond the cost-benefits of individual exemptions, global questions about ITEP may be fruitful avenues of advocacy involvement to combat this program on a wider scale. For example:

- An applicant expanding a facility may seek to grandfather itself into the pre-2016 system and avoid local review improperly. ITEP only allows expansions, not new facilities to be grandfathered into the system.
- The Board of Commerce and Industry is not required to conduct a public interest review of an application before approving it, despite the fact that ITEP exemptions represent the state forgoing massive amounts of public resources that could be used to support essential public services. This makes ITEP an outlier as compared to other actions that are taken by state agencies, which often are charged with protecting state resources. For example, agencies charged with protecting the state's natural resources have a duty to protect these resources and conduct specific analyses before impacting these resources.<sup>1092</sup>
- More scrutiny and advocacy may also help the Board of Commerce and Industry consider applications in a more procedurally sound manner. In the past, the Board has inconsistently followed its own rules and acted in a manner that could be argued as arbitrary and capricious. Advocates with experience in Louisiana administrative law are encouraged to investigate the Board's ITEP approvals to confirm that no procedural violations are occurring.

## **9. If the recent changes are executive action, what happens when the governor's term is up?**

Because the changes to the ITEP program allowing for local input are based on executive order, they are vulnerable once Governor Edwards' time in office is over. Groups like Together Louisiana are trying to embed the governor's executive order into the state constitution so that the program continues to have local oversight. One potential avenue is a constitutional amendment during the 2022 legislative session.

## **C. Texas tax exemptions**

### **1. What is the main tax exemption LNG developers seek in Texas?**

The most lucrative tax exemption that Texas LNG developers have sought is known as Chapter 313 tax exemptions, named for the location of this exemption in the Texas tax code.<sup>1093</sup> Created in 2001—and currently ending on December 31, 2022 thanks to the work of advocates like the Texas IAF Organizations, Every Texan, the Texas AFL-CIO, and others—Chapter 313 creates a state tax incentive program for certain large businesses (like LNG developers) to limit the appraised value of their property for the purposes of local Texas public school district property taxes. This program lets companies avoid local school district taxes for ten years. The local school district doesn't lose out on those funds, however; it is reimbursed with state funds that could have otherwise been invested

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<sup>1092</sup> See La. Const. art. VI §1 (1921); La. Const. art. IX §1.

<sup>1093</sup> Chapter 313 is also known as the Texas Economic Development Act. See <https://statutes.capitol.texas.gov/docs/TX/htm/TX.313.htm>.

across all Texas school districts.<sup>1094</sup> In 2021, there were 509 projects getting Chapter 313 benefits.<sup>1095</sup>

The “appraised value limitation” that forms the backbone of Chapter 313 tax break is an agreement between the developer and the local school district in which the developer proposes to develop property—and create jobs meeting certain job and wage requirements—in exchange for a ten-year limitation (*i.e.*, a ten-year cap) on the facility’s property value for school district maintenance and operations tax purposes. This lets a company pretend that, for example, a \$500 million petrochemical plant is worth anywhere from \$10 million to \$100 million on a school district’s tax rolls for a decade, depending on the size of the district. The limitation can save a company tens of millions of dollars in property taxes.<sup>1096</sup> The tax break proposed for Annova LNG, for example, would have treated the \$1.4 billion proposed export terminal as if it were worth only \$25 million, for ten years.<sup>1097</sup> (And when it went back on the tax rolls, it would likely be valued less than originally promised.)

Local school boards are the ultimate decisionmaker on whether an exemption is granted, once the state Comptroller approves the application, which it almost invariably does. And if a school district grants a tax break for a project, it doesn’t lose a cent—the state is obliged to cover the difference. The cost of the tax break comes out of the state budget. The school board also has authority to negotiate for “payments in lieu of taxes” (“PILOTs” or “PILTs”)—basically supplemental money above and beyond what it could have collected from taxes.<sup>1098</sup>

Unlike other tax exemption programs, there is no limit on how much money can be exempted through the Chapter 313 program statewide. Over the past 20 years, Chapter 313 had delivered \$10 billion in tax cuts to corporations operating in Texas, with petrochemical

### WHAT ABOUT OTHER EXEMPTIONS?

Chapters 380 and 381 of the Texas tax code give cities and counties, respectively, power to grant tax exemptions and to offer economic development packages. These can be lucrative for developers but are not necessarily as big, and are not covered in depth in this guide.

<sup>1094</sup> For example, if these funds were reinvested across all school districts on a per-student basis instead of going to the few districts that agreed to Chapter 313 exemptions, 1061 districts and charters—which collectively serve 95% of public-school students—would be better off. App. 68, “Losers & Winners from Chapter 313.” Network of Texas Organizations. (Feb. 2021). Central Texas Interfaith’s analysis found that by using state money to reimburse Chapter 313 districts instead of investing it on a per-student basis across all districts, urban school districts like Houston and Dallas have each lost more than \$20 million annually from the exemption program. Brown, Alleen. *Corporate Subsidy Quietly Dies in Texas—Topping Off Bad Week for Big Oil*. The Intercept. (June 1, 2021) at 5.

[https://d3n8a8pro7vhmx.cloudfront.net/gulfcoastlc/pages/1561/attachments/original/1622690659/Brown\\_Alleen\\_Corporate\\_Subsidy\\_Quietly\\_Dies\\_in\\_Texas\\_-The\\_Intercept.pdf?1622690659](https://d3n8a8pro7vhmx.cloudfront.net/gulfcoastlc/pages/1561/attachments/original/1622690659/Brown_Alleen_Corporate_Subsidy_Quietly_Dies_in_Texas_-The_Intercept.pdf?1622690659).

<sup>1095</sup> The Texas Comptroller’s Webinar on Chapter 313 Value Limitation Agreements: <https://youtu.be/urF-fw2EbmA>, at 15:40-52.

<sup>1096</sup> The savings apply only to the school district’s operations taxes. Districts also levy taxes to pay off debts, and Chapter 313 recipients pay all taxes on that portion of their bill, which is typically a far smaller amount. See Texas Taxpayers and Research Association. “*Understanding Chapter 313: School Property Tax Limitations and the Impact on State Finances*,” at 1, 13 (2017). [https://www.ttara.org/wp-content/uploads/2018/09/UnderstandingChapter313\\_Final\\_Web\\_1\\_11\\_17.pdf](https://www.ttara.org/wp-content/uploads/2018/09/UnderstandingChapter313_Final_Web_1_11_17.pdf).

<sup>1097</sup> Michels, Patrick. “Free Lunch.” Texas Observer. (Mar. 14, 2016) <https://www.texasobserver.org/chapter-313-texas-tax-incentive/>.

<sup>1098</sup> “*Understanding Chapter 313: School Property Tax Limitations and the Impact on State Finances*,” at 7 (2017). [https://www.ttara.org/wp-content/uploads/2018/09/UnderstandingChapter313\\_Final\\_Web\\_1\\_11\\_17.pdf](https://www.ttara.org/wp-content/uploads/2018/09/UnderstandingChapter313_Final_Web_1_11_17.pdf).

companies and LNG companies being the biggest winners.<sup>1099</sup> But in the 2021 Legislative Session, the Chapter 313 tax program was not reauthorized, thanks in large part to community advocates like the Texas IAF Organizations, Every Texan, and the Texas AFL-CIO (see Section 9.C.4 for details on this success story). This means that unless a special legislative session is convened in the interim, the availability of new Chapter 313 exemptions will expire on December 31, 2022, and companies are scrambling to apply before the deadline to lock in ten years of tax exemptions.

## 2. What is involved in getting a Chapter 313 tax exemption?

Until the subsidy program sunsets, it is very easy to get a tax exemption unless sustained pressure is placed on the local school board.

The application process is described on the Texas Comptroller's website.<sup>1100</sup> The application itself can be downloaded here: <https://comptroller.texas.gov/forms/50-296-a.pdf>.<sup>1101</sup> For an example application and approval, see the Comptroller's webpage on the Freeport LNG project.<sup>1102</sup>

There are three main items that Chapter 313 facially requires: that the exemption create certain "qualifying" jobs; that it be a "determining factor" in the developer's decision to site the facility in the proposed location; and that the school board approve the exemption. In Practice, only the third item—a school board vote—is required.

### IN THEORY, THE EXEMPTION MUST:

- Create jobs (unless waived)
- Be a "determining factor" in a developer's decision to build the project in the proposed location
- Be approved by the school board

In practice, only the third item—a school board vote—is required.

- **Job creation.** In theory, Chapter 313 tax breaks are contingent on the company creating a minimum number of jobs (typically between 10 and 25) and paying certain minimum wages; both minimums are computed based on project's proposed location.<sup>1103</sup> The Comptroller and local school boards share the responsibility for ensuring that the promised jobs are created. But very few companies are penalized for not creating promised jobs—in the first ten years of the program's existence, only one company had been penalized for this.<sup>1104</sup> Even when jobs are created, it is at an exorbitant cost. A *Houston Chronicle* study found that "[b]y even a

<sup>1099</sup> "Texas IAF Blocks \$10 Billion Dollar Corporate Tax Giveaway to Big Oil." (June 1, 2021)

[https://www.tmohouston.org/2106\\_tmo\\_313win](https://www.tmohouston.org/2106_tmo_313win) The biggest beneficiaries under Texas's corporate tax exemptions have been two LNG facilities: Corpus Christi Liquefaction and Freeport LNG, each receiving more than \$55 million in subsidies annually. Brown, Alleen. *Corporate Subsidy Quietly Dies in Texas—Topping Off Bad Week for Big Oil*. The Intercept. (June 1, 2021) at 5.

[https://d3n8a8pro7vhmx.cloudfront.net/gulfcoastlc/pages/1561/attachments/original/1622690659/Brown\\_Alleen\\_Corporate\\_Subsidy\\_Quietly\\_Dies\\_in\\_Texas\\_-The\\_Intercept.pdf?1622690659](https://d3n8a8pro7vhmx.cloudfront.net/gulfcoastlc/pages/1561/attachments/original/1622690659/Brown_Alleen_Corporate_Subsidy_Quietly_Dies_in_Texas_-The_Intercept.pdf?1622690659).

<sup>1100</sup> Chapter 313 Application Process. <https://comptroller.texas.gov/economy/local/ch313/process.php>.

<sup>1101</sup> This form (Form 50-296A, revised October 2020) and the required attachments (Excel "schedules") are found on the Comptroller's forms website: <https://comptroller.texas.gov/economy/local/ch313/forms.php>.

<sup>1102</sup> Texas Comptroller. "Brazosport ISD No. 1559, Freeport LNG Development, L.P."

<https://comptroller.texas.gov/economy/local/ch313/agreement-docs-details.php?id=1559> (containing application and agreement files).

<sup>1103</sup> A qualifying job is a full-time one that pays at least 110% of the county average weekly wage for manufacturing jobs in the county where the job is located (either 25 or 10), among other requirements. See Texas Tax Code Sec. 313.021(3); see also Sec. 313.051(b). Wage information for other jobs can be found here:

<https://comptroller.texas.gov/economy/local/ch313/wage-targets.php>.

<sup>1104</sup> Michels, Patrick. "Free Lunch." Texas Observer. (Mar. 14, 2016) <https://www.texasobserver.org/chapter-313-texas-tax-incentive/>.

conservative measure, Texas is paying \$211,600 in tax incentives for each job created under the program. Using a different metric cited in the past by state officials, the cost per job *tops \$1.1 million*.<sup>1105</sup> And the developer may not be required to create any jobs at all if it qualifies for the waiver of this requirement.<sup>1106</sup>

- **“Determining Factor.”** The Comptroller must also determine either that a tax break is “a determining factor” in a firm’s decision to proceed with a project in Texas<sup>1107</sup> or make a “qualitative determination that other considerations associated with the project result in a net positive benefit to the state” (a secondary loophole less often used).<sup>1108</sup> It must memorialize its decision in the certification it provides to the school district.<sup>1109</sup> In practice, these are very weak bars to surmount; the Comptroller often relies heavily on the applicant’s own material to inform its economic impact assessment without questioning underlying assumptions or considering contrary evidence. Many projects have been approved even when it’s been clear that the only viable location for the project is within a single district. The newspaper the *Houston Chronicle* highlighted one such example in its exposé series on Chapter 313:<sup>1110</sup>

*Enterprise Products Partners, like its competitors, had begun building a network of new pipelines dedicated to transporting “natural gas liquids” in the Eagle Ford to its processing plants in South Texas.*

*The Houston-based energy company said enormous demand for its services soon would overwhelm its South Texas plants. But in April 2011, the company sought taxpayers’ help in building a new gas processing plant in Lavaca County by applying for a Chapter 313 incentive for the project.*

*To prove the project qualified for the tax break, Enterprise told the comptroller’s office that it had a large pipeline network and gas processing plants in four other states, allowing “substantial flexibility in plant location.”*

*But like so many of its competitors, Enterprise had told its investors a different story.*

*The company had discussed the plant in public statements dating back 10 months — its location, its capacity, its construction timeline, the length of pipe needed to connect it to the company’s network — and described it as part of a series of projects necessary to “meet the needs of producers” in the Eagle Ford.*

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<sup>1105</sup> Morris, M. et al. “Huge corporations are saving \$10 billion on Texas taxes, and you’re paying for it” *Houston Chronicle*. (Updated June 3, 2021) <https://www.houstonchronicle.com/news/investigations/unfair-burden/article/unfair-burden-part-1-texas-tax-corporations-covid-16164744.php>.

<sup>1106</sup> See Texas Tax Code § 313.025(f-1).

<sup>1107</sup> Tax Code § 313.026(c)(2). See generally also Texas Comptroller’s website at: <https://comptroller.texas.gov/economy/local/ch313/>.

<sup>1108</sup> Tax Code § 313.026(f).

<sup>1109</sup> For example, here is the certification decision for Sabine Pass Train 3, issued in 2014. *Ltr fr. Martin A. Hubert (Deputy Comptroller) to Kristi Heid (Superintendent of Sabine Pass ISD)* (Mar. 4, 2014) <https://assets.comptroller.texas.gov/ch313/378/Sabine-Pass-ISD-378-Golden-Pass-Economic-Impact-and-Recommendation-Package-3-4-2014.pdf>. All documents associated with Sabine Pass Train 3 can be found here: <https://comptroller.texas.gov/economy/local/ch313/agreement-docs-details.php?id=378>.

<sup>1110</sup> Morris, M. et al. “Huge corporations are saving \$10 billion on Texas taxes, and you’re paying for it” *Houston Chronicle*. (Updated June 3, 2021) <https://www.houstonchronicle.com/news/investigations/unfair-burden/article/unfair-burden-part-1-texas-tax-corporations-covid-16164744.php>.

*If the comptroller's office was aware of these statements, they were not mentioned in the office's letter recommending the \$41 million in tax incentives be approved.*

A previous exposé in the *Texas Observer* documented many other examples of how non-existent of a hurdle “determining factor” is.<sup>1111</sup> Many companies barely pretend they have looked outside the state before deciding on a location for a facility. And LNG is no different. Despite advocates’ success in convincing the Point Isabel school board to reject Annova LNG’s application for millions in exemptions, within a day after the vote Annova announced its discovery that it actually didn’t need the tax break to build in Brownsville, and that it would be pushing ahead with its project unchanged.<sup>1112</sup>

- **School District Approval.** Other gatekeepers are elected members of local school boards. Most school boards approve exemptions because they are reimbursed from the state—ultimately at a cost to urban districts that do not have Chapter 313 agreements. In addition, Chapter 313 allows the local school district to negotiate for “supplemental” payments from developers, on top of the exemptions they grant, leaving the local school district not just even, but ahead, after the exemption is granted.<sup>1113</sup>

*The Houston Chronicle succinctly explained the school board process and incentives as follows:*<sup>1114</sup>

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

*State funding formulas ensure that school districts don't bear the cost of granting property tax breaks. And school officials negotiate additional payments from companies that can be used for a variety of education purposes — money they never would have received under the state's educational allotments.*

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

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

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<sup>1111</sup> Michels, Patrick. “Free Lunch.” *Texas Observer*. (Mar. 14, 2016) <https://www.texasobserver.org/chapter-313-texas-tax-incentive/> (giving examples highlighting the results of its review of 360 Chapter 313 deals that “suggests that much of this money was handed to projects that would have come to Texas anyway or couldn't have been located anywhere else”).

<sup>1112</sup> Michels, Patrick. “Free Lunch.” *Texas Observer*. (Mar. 14, 2016) <https://www.texasobserver.org/chapter-313-texas-tax-incentive/> (“If the deal truly was necessary to bring Annova to town, local residents hoped, then the board's rejection would keep the company out. But within a day, Annova announced that even without the break, it planned to press ahead with its terminal on the ship channel.”).

<sup>1113</sup> Michels, Patrick. “Free Lunch.” *Texas Observer*. (Mar. 14, 2016) <https://www.texasobserver.org/chapter-313-texas-tax-incentive/>.

<sup>1114</sup> Morris, M. et al. “A controversial tax program promised high-paying jobs. Instead, its costs spiraled out of control.” *Houston Chronicle*. (updated June 1, 2021). <https://www.houstonchronicle.com/news/investigations/unfair-burden/article/unfair-burden-part-2-tax-program-costs-spiral-16164758.php>.

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

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

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

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

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

The total amount of the exemption will depend on the project’s existing tax base and location, meaning that neighboring districts may be subject to different minimum discounts they can grant.<sup>1115</sup> Some coastal counties are classified as “Strategic Investment Areas” with increased opportunities for exemption available—which districts qualify is updated yearly and found here: <https://comptroller.texas.gov/economy/local/ch313/values.php>. Rural districts are treated like these Strategic Investment Area districts. Projects in these areas also need to create fewer jobs.

### **3. What is the timing for advocate involvement on an individual project?**

Early intervention is key to rally support for a “no” vote by the school board. Once it receives an application, the school district has up to 151 days to act on it. The Comptroller, which conducts its own analysis, has up to 91 days to review an application after receiving it from the school district. The school district and the applicant can extend the deadline by agreement, and the school district and Comptroller work together during this time period to assess the application and determine economic impact.<sup>1116</sup> A sample timeline of projects for applications approved after December 31, 2013 can be found here: <https://comptroller.texas.gov/economy/docs/4-digit-313-timeline-processes-2014.pdf>. Because the Comptroller almost always rubberstamps these applications, advocates should focus on persuading the school board, which can be more receptive to advocates’ concerns. In addition, because the school district and Comptroller work together to determine economic impact, the Comptroller may be more receptive to economic concerns being presented to it by the school board itself, as opposed to advocates.

Applicants should assume that projects will apply for these tax breaks and mobilize early. Advocates should be prepared to bring public attention to what happens after the ten-year limitation period ends—once a property goes back on the tax rolls, it’s often at a valuation less than what the developer estimated they would be worth in it is initial Chapter 313 applications! Advocates should also be aware that applicants may attempt to pit neighboring districts against each other in a bidding

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<sup>1115</sup> Texas Tax Code §§ 313.022-23 (rules for typical districts); § 313.052-54 (rules for rural and Strategic Investment Area districts).

<sup>1116</sup> Texas Tax Code § 313.025.

war to “win” a project, as happened during Samsung’s search for a location in Central Texas.<sup>1117</sup> If this appears to be happening, it can be helpful to consult with organizations experienced in fighting incentives for advice on how to proceed. LNG projects often have fewer siting options because the goods they handle (gas) are geographically limited (both in which gas fields the gas originates from and which ports are equipped to handle the massive tankers), so it may be that any perceived bidding wars have been manufactured by the applicant.

#### **4. How have advocates successfully blocked Chapter 313 exemptions?**

Advocates have successfully fought Chapter 313 exemptions on the macro level (at the state legislature) and on a project-by-project basis, including with an LNG project in south Texas.

On a macro level, the Texas IAF Organizations (NTO), Every Texan, the AFL-CIO, and others fought hard leading up to and during the 2021 state legislative session to stop the reauthorization of the Chapter 313 program entirely. In prior years the Chapter 313 program—which required the Legislature to periodically reauthorize its existence—had been reauthorized with nothing more than a rubberstamp. But because of the intense pressure put on state legislators from these organizations, the public, and numerous exposés in the press, efforts in the 2021 session to extend or expand the program failed completely.<sup>1118</sup> Unless the program is revived in a special session before December 31, 2022, no new exemptions will be available after that date.

As for blocking exemptions at an individual level, experience has shown that these exemptions are stopped most effectively by applying pressure on the local school district and partnering with a diversity of organizations and community members.

For example, a coalition of shrimpers, fishermen, environmentalists, Native Americans and others successfully convinced the local Port Isabel school board to reject the tax-subsidy applications filed by two of three LNG projects in Brownsville (Rio Grande LNG<sup>1119</sup> and Annova LNG<sup>1120</sup>; the third, Texas LNG, never sought Chapter 313 protection). Although these rejections did not stop the projects in their tracks, the Annova LNG project is now dead, ostensibly because of “changes in the global LNG market.”<sup>1121</sup> But it’s possible that the Annova project might still be around today if it had been able to secure the millions of dollars in Chapter 313 tax breaks that advocates successfully fought.<sup>1122</sup>

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<sup>1117</sup> Samsung approached the school districts in both Travis and Williamson Counties for Chapter 313 exemptions. The school district in Travis County refused to grant a Chapter 313 exemption—the district in Williamson County was more sympathetic and ultimately joined the county and city in approving large exemption and incentives packages. It is unclear whether the fact that the Travis County school district (and other local entities) refused to “play ball” was the deciding factor on the facility’s location—those familiar with discussions believe that more important was Samsung’s ability to procure enough water, land, and electricity for its facility on more favorable terms in Williamson County. Clark-Madison, Mike. “Austin at Large: Brightness on the Edge of Town.” *Austin Chronicle*. (Dec. 10, 2021) <https://www.austinchronicle.com/news/2021-12-10/austin-at-large-brightness-on-the-edge-of-town/>.

<sup>1118</sup> Jensen, Nathan. “Could the Death of a Corporate Handout in Texas be a Turning Point?” *The Hill*. (July 27, 2021) [https://d3n8a8pro7vnmx.cloudfront.net/texasiaf/pages/86/attachments/original/1629393046/Jensen\\_Nathan\\_22Could\\_the\\_Death\\_of\\_a\\_Corporate\\_Handout\\_in\\_Texas\\_Be\\_a\\_Turning\\_Point\\_22-The\\_Hill.pdf?1629393046](https://d3n8a8pro7vnmx.cloudfront.net/texasiaf/pages/86/attachments/original/1629393046/Jensen_Nathan_22Could_the_Death_of_a_Corporate_Handout_in_Texas_Be_a_Turning_Point_22-The_Hill.pdf?1629393046).

<sup>1119</sup> Michels, Patrick. “Once Again, School District Shuts Down Tax Break for Gas Exporter.” *Texas Observer*. (Sept. 22, 2016) <https://www.texasobserver.org/port-isabel-isd-rio-grande-lng-tax-break/>.

<sup>1120</sup> Port Isabel South Padre Press. “WITHDRAWN: School board rejects Annova LNG tax break.” (Sept. 19, 2015) <https://www.portisabelsouthpadre.com/2015/09/19/withdrawn-school-board-rejects-annova-lng-tax-break/>.

<sup>1121</sup> Weber, Harry. Annova LNG discontinuing US export project.” Mar. 22, 2021. <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/032221-annova-lng-discontinuing-us-export-project-operator>.

<sup>1122</sup> For more on the Annova LNG saga, see the Texas Observer article: Michels, Patrick. “Free Lunch.” *Texas Observer*. (Mar. 14, 2016) <https://www.texasobserver.org/chapter-313-texas-tax-incentive/> (explaining how “In its application to Point Isabel ISD, Annova said its terminal would be valued at \$1.4 billion, but wanted the school district to pretend for the next 10 years that it was worth just \$25 million. The tax break, Annova told the district, would be “a key component” in its decision to build.”).



These success stories show that partnering with local organizations across the spectrum is essential: not just with environmental organizations, but cross-disciplinary, such as with teachers' unions, faith-based groups, and labor organizations like AFL-CIO chapters. Sustained outreach to the press, public, and decisionmakers is also essential to stop exemptions, both on a macro-level and for individual projects.

### **5. Where can I find the application materials and agreements for an individual project?**

Chapter 313 requires that the local school board and the Comptroller post applications that have been received to their respective websites.<sup>1123</sup> The Comptroller has a centralized location for this data: <https://comptroller.texas.gov/economy/local/ch313/agreement-docs.php>. Each school district should post this information on its website as well.

### **6. What might happen with Chapter 313, given that it has not yet been reauthorized?**

There is no regularly scheduled state legislative session before the December 31, 2022 expiration date of this tax exemption—the next such session will begin January 2023. However, the Governor could call a special session of the legislature at any time and name the Chapter 313 program as an item to be discussed. Indeed, there have been calls from industry and business interests to do just that! For this reason it is imperative that advocates continue to advocate at the state level and in all future legislative sessions to prevent the exemption program from being resurrected. As advocates' successes in the 2021 legislative session showed, sustained vigilant advocacy at the state level has the potential to stop exemptions across the board without the same difficulties inherent in mobilizing against each exemption individually.

In the meantime, developers are rushing to get approvals from local school districts to lock in ten years of tax breaks. According to the Comptroller, a developer's application must be approved by the governing body of the school district before December 31, 2022, to benefit under Chapter 313. "For the purpose of the program expiration, 'approved by the governing body' includes the execution of a Texas Economic Development Act [Chapter 313] Agreement by the authorized representative of the school district and the approved applicant."<sup>1124</sup>

It is possible that in a future legislative session, a Chapter 313-like program is reinstated. Advocates will want to keep an eye out for such proposals and work together to determine what, if any, state-wide exemption program would be beneficial to communities. For example, some advocates (like the Texas IAF Organizations) have suggested that any new tax exemptions should be more narrowly tailored to particular industries of public value, like renewable energy projects, and must avoid the dangers of unlimited tax breaks and their impact on the health of school districts across the state. Such exemptions would need to be structured to create good jobs and support local labor without harming communities.

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<sup>1123</sup> Sec. 313.025(a-1) ("The comptroller shall publish each document received from the school district under this subsection on the comptroller's Internet website. If the school district maintains a generally accessible Internet website, the district shall provide on its website a link to the location of those documents posted on the comptroller's website in compliance with this subsection.") And if all else fails, non-confidential information is available through the Texas Public Information Act. See Texas Comptroller. "Property Tax Agreement Applications: Texas Government Code Chapter 313: Confidential Information Submitted to the Comptroller." <https://comptroller.texas.gov/economy/docs/confidentiality-notice.pdf>.

<sup>1124</sup> Texas Comptroller. "Chapter 313 Guidelines and Frequently Asked Questions." <https://comptroller.texas.gov/economy/local/ch313/faq.php>.

## 7. Where can I find more information?

In addition to the *Texas Observer* and *Houston Chronicle* articles about Chapter 313 cited above, there are a number of other resources about the program, including:

- The Texas Comptroller’s Webinar on Chapter 313 Value Limitation Agreements: <https://youtu.be/urF-fw2EbmA>. Annual Eligibility Report 50-772A; Job Creation Compliance Report (50-825);
- The Biennial Reports for Chapter 313 are available here: <https://comptroller.texas.gov/economy/local/ch313/biennial-reports.php>;
- The Comptroller has a Data Analysis and Transparency Division that can be contacted by email at [econ.dev@cpa.texas.gov](mailto:econ.dev@cpa.texas.gov) or at 844-519-5672, ext. 6-9231. A full list of personnel available to help is found here: <https://comptroller.texas.gov/economy/contact.php>;
- Chapter 313’s death is documented in the following article: Brown, Alleen. “Corporate Subsidy Quietly Dies In Texas — Topping Off Bad Week For Big Oil.” *The Intercept*. (June 1, 2021). [https://d3n8a8pro7vhmx.cloudfront.net/gulfcoastlc/pages/1561/attachments/original/1622690659/Brown\\_Alleen\\_Corporate\\_Subsidy\\_Quietly\\_Dies\\_in\\_Texas\\_-\\_The\\_Intercept.pdf?1622690659](https://d3n8a8pro7vhmx.cloudfront.net/gulfcoastlc/pages/1561/attachments/original/1622690659/Brown_Alleen_Corporate_Subsidy_Quietly_Dies_in_Texas_-_The_Intercept.pdf?1622690659).

## D. What are other tax exemptions and financial incentives that a facility might have access to?

At a federal level, there is a carbon sequestration tax credit (**the Section 45Q tax credit**) that at least one proposed LNG facility has sought to take advantage of.<sup>1125</sup> A main concern with carbon sequestration tax credits centers around the viability of the technology itself—facilities should not be rewarded for “sequestering” carbon if it does not remove carbon from the atmosphere long-term. A change in the 45Q law made in the Bipartisan Budget Act of 2018 made it easier for more companies to seek this credit and made the credit more lucrative.<sup>1126</sup>

In Louisiana, LNG developers may attempt to take advantage of other state programs<sup>1127</sup> like the Quality Jobs program,<sup>1128</sup> Enterprise Zone tax credit,<sup>1129</sup> and FastStart, a state-funded workforce training program.<sup>1130</sup> These programs do not have a clear role for local input but do increase the profitability of projects. At a local level, localities publicize other incentives that a company might qualify for.<sup>1131</sup>

In Texas, there are several state funds that an LNG developer might seek to exploit to lower the cost of a project. A summary of the available programs can be found here:

<sup>1125</sup> Namely, Rio Grande LNG in Brownsville, Texas. See “NextDecade Launches NEXT Carbon Solutions.” (Mar. 18, 2021) <http://investors.next-decade.com/news-releases/news-release-details/nextdecade-launches-next-carbon-solutions>.

<sup>1126</sup> For more information on this topic, see Rodgers, Michael and Dubov, Brandon. “Carbon capture and storage: The legal and regulatory context.” White & Case. (Jan. 29, 2021) <https://www.whitecase.com/publications/insight/carbon-capture/us-tax-credit-encourages-investment>. See also Congressional Research Service. “The Tax Credit for Carbon Sequestration (Section 45Q)” (June 8, 2021) <https://sgp.fas.org/crs/misc/IF11455.pdf>.

<sup>1127</sup> <https://www.opportunitylouisiana.com/business-incentives>.

<sup>1128</sup> Up to a 6 percent rebate on annual payroll expenses for up to 10 years and either a state sales/use tax rebate on capital expenses or a 1.5 percent project facility expense rebate for qualifying expenses. See LED. “Quality Jobs.” <https://www.opportunitylouisiana.com/business-incentives/quality-jobs>.

<sup>1129</sup> LED. “Enterprise Zone.” <https://www.opportunitylouisiana.com/business-incentives/enterprise-zone>.

<sup>1130</sup> LED. “LED FastStart - No. 1 State Workforce Development Program.” <https://www.opportunitylouisiana.com/faststart>.

<sup>1131</sup> See e.g., Port of South Louisiana Incentives. <https://portsl.com/incentives/>.

<https://gov.texas.gov/business/page/incentives><sup>1132</sup> and is also often on regional economic development websites<sup>1133</sup>; note that not all will apply to LNG projects. But LNG projects may be eligible for tax abatements for installing pollution control technology on the facility, under the TCEQ's program.<sup>1134</sup>

Texas local governments have broad authority to offer their own incentives,<sup>1135</sup> including under Chapters 380 and 381 of the Texas tax code (for municipalities and counties, respectively). Advocates that fight these economic development incentives have had success challenging individual projects (if not in stopping them completely, to secure wins for labor) and advocating for more stringent review of all projects across the board.<sup>1136</sup> More transparency should be coming to these deals soon, thanks to a 2021 amendment that requires these deals be made available online through a public database.<sup>1137</sup> It is likely that LNG developers use these incentive structures to reduce the cost of their projects.<sup>1138</sup>

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<sup>1132</sup> See also Office of the Governor Texas Economic Development & Tourism. "Texas Business Incentives & Programs Overview." (Revised Apr. 2021) <https://gov.texas.gov/uploads/files/business/IncentivesOverview.pdf>.

<sup>1133</sup> For example, see Southeast Texas Economic Development Foundation. "State Incentives" <https://www.setedf.org/store/pg/77-State-Incentives.aspx>.

<sup>1134</sup> TCEQ. "Tax Relief for Pollution Control Property." <https://www.tceq.texas.gov/airquality/taxrelief>.

<sup>1135</sup> For example, see Southeast Texas Economic Development Foundation. "Local Incentives"

<https://www.setedf.org/store/pg/78-Local-Incentives.aspx>. See, e.g., League City Texas Economic Development. "Local Incentives." <https://www.leaguecityedc.com/137/Local-Incentives>.

<sup>1136</sup> See Clark-Madison, Mike. "Austin at Large: Brightness on the Edge of Town." Austin Chronicle. (Dec. 10, 2021)

<https://www.austinchronicle.com/news/2021-12-10/austin-at-large-brightness-on-the-edge-of-town/> (describing the exemptions process with the Samsung expansion in Central Texas); see also Mosqueda, Priscila. "In Austin, Workers Score a Big Win." Texas Observer. (Oct. 25, 2013) <https://www.texasobserver.org/austin-workers-score-big-win/> (highlighting the success advocates had in changing Austin's economic development guidelines); see also Aldridge, Olivia. "Travis County votes to accept application for Silicon Silver development incentives agreement." Community Impact Newsletter. (Jan. 26, 2021)

(describing similar work being conducted on the county level).

<sup>1137</sup> See Texas Comptroller. "Chapter 380/381 Economic Development Agreements."

<https://comptroller.texas.gov/economy/local/ch380-381/index.php>.

<sup>1138</sup> See, e.g., Nichols, C. "Chapter 380 Economic Development Agreements" powerpoint at 10.

[https://tmleconomicdevelopment.org/wp-content/uploads/2015/10/CH.-380s\\_TML-Eco.-Dev.-Conf.\\_Nichols.pdf](https://tmleconomicdevelopment.org/wp-content/uploads/2015/10/CH.-380s_TML-Eco.-Dev.-Conf._Nichols.pdf) (describing how an LNG fractionator plant might structure Chapter 380 incentives).