

Texas Economic  
Development Act  
Purpose

This policy outlines the procedures to be used by the District for filing, accepting, and reviewing applications made under the Texas Economic Development Act, set forth in Chapter 313, Texas Tax Code. It shall also provide for procedures for the Board to consider amendments to, and where necessary, provide for enforcement of agreements made by the District under the Texas Economic Development Act, set forth in Chapter 313, Texas Tax Code.

Definitions

As used in this policy, the following phrases, words, and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" shall mean the Texas Economic Development Act as set forth in Chapter 313, Texas Tax Code.

"Agreement" means a written contract between the District and an applicant, which creates, implements, and governs the terms of a limitation on the appraised value for District maintenance and operations ad valorem property tax purposes on an entity's qualified property, as provided by Tax Code, Chapter 313, which is consistent with the requirements of Texas Tax Code 313.027(d).

"Applicant" means a business entity including an "affiliated group" that is subject to taxation under Texas Tax Code, 171.001, which has applied to the District for a limitation on the appraised value of qualified property in a reinvestment zone under the Texas Economic Development Act.

"Application" means the application for appraised value limitation on qualified property adopted by the Comptroller at 34 Administrative Code 9.1052, together with its supporting schedules and documentation. The term application shall also include any application amendment or application supplement filed by the applicant.

"Application fee" means the nonrefundable application fee to be paid by an applicant to the District, determined in accordance with this policy, to cover the District's costs incurred in the processing and consideration of the application.

"Application review period" means the period of time during which the Board is required to consider the application. The application review period begins on the day the application is filed with the District, and expires on the 151st day after the application is filed with the District, unless the application re-

view period is extended by Board action taken prior to the expiration of the application review period, in which case the application review period shall include any such extension.

“Application review start date” means the later date of either the date on which the District issues its written notice that an applicant has submitted a completed application or the date on which the comptroller issues its written notice that an applicant has submitted a completed application.

“Appraisal district” means each appraisal district that appraises property proposed to be subject to a limitation on appraised value.

"Board" shall mean the Board of Trustees of the Ector County Independent School District.

"Comptroller" means the comptroller of public accounts of the State of Texas.

"Comptroller's rules" means those rules adopted by the Comptroller that are set forth at 34 Administrative Code, Subchapter F.

“Deferral” means a forward adjustment of the date upon which the qualifying time period, defined by Texas Tax Code 313.021(4), begins.

"District" means the Ector County Independent School District.

“Substantive document” means a document or other information or data in electronic media that includes or transmits information or data significant to an application, the evaluation or consideration of such application, or the agreement or implementation of such Agreement for limitation of appraised value pursuant to Tax Code, Chapter 313. The term includes, but is not limited to, any application requesting a limitation on appraised value and any amendments or supplements, any economic impact evaluation made in connection with an application, any agreement between an applicant and the District and any subsequent amendments or assignments, any District written finding or report filed with the comptroller as required under this subchapter, and any application requesting school tax credits under Tax Code 313.103.

**Filing of the  
Application**

Three copies of every application filed under this policy shall be filed by the applicant with the Superintendent. The Superintendent shall acknowledge the date of the receipt of the application and application fee in writing.

**Amending  
Application**

An application may be amended by the applicant at any time prior to final action on the application by the Board. In the event that an amended application is filed within 60 days of the end of the application review period, the application review period shall, by operation of this policy, automatically be extended to the 61st day after the date upon which the last amended application was filed.

Applications shall be considered for final approval by the Board only after receipt by the District of the application fee established by the Board and after the completion of the economic and the school facilities impact analyses required by the Act.

Upon receipt of any amended application or supplemental information, the Superintendent shall, after review, forward such material to the comptroller and to each applicable appraisal district.

Applications submitted without the application fee shall be held by the Superintendent until satisfactory arrangements for the payment of the application fee have been made. The Superintendent's determination of whether satisfactory arrangements for the payment of the application fee have been made shall be final.

The actual application submitted to the District shall not be considered to be public information by the Board until eight days before the date of the public hearing held under this policy. At that time, information submitted to the District in connection with the application shall be presumed to be public information unless the applicant clearly identifies such as confidential or proprietary information prior to its release.

**Standard  
Application Fee**

The standard application fee is \$75,000. The standard application fee is not refundable except:

1. For large project fees after the initial tender as set forth below; or
2. In the event the application is denied after an initial Board review, as defined below.

The standard application fee shall not include any amount charged by the comptroller's office for its economic impact study, if such a fee is charged.

**Large Project  
Application Fee**

For each application for an appraised value limitation on qualified property where the qualified investment exceeds

\$300,000,000, the Board may, at its discretion, set a higher application fee than the standard application fee, if in the opinion of the Board, an analysis of the application is of such complexity so as to require a higher fee. An applicant proposing a qualified investment in excess of \$300,000,000 in value shall initially tender an application fee of \$75,000. In the event that the Board sets a higher fee, the applicant shall be entitled to withdraw its application and its application fee if the applicant disagrees with the higher fee set by the Board.

**Processing the  
Application**

Upon receipt of the application and the application fee, the Superintendent shall take the following actions:

1. Accept the filing of the application, and send written confirmation of the application and application fee to the applicant.
2. Identify appropriate consultants to assist the Board in completing the application review process and schedule Board action to retain such consultants.
3. Review the application, including schedules A-D for completeness and, where necessary, require the applicant to submit additional and/or supplementary information, including the completion of all schedules required by the comptroller's rules.
4. Schedule Board consideration of the application for initial Board review, as set forth below, at the first available Board meeting for which notice can be posted in accordance with the Texas Open Government Act.
5. After the initial Board review, determine the application's sufficiency; and if the application is incomplete, direct the applicant to immediately correct any deficiencies. Once the completed application has been received, file one original hard copy of the completed application and all required schedules and documentation, proof of payment of the application fee, and written notice certifying the application review start date in a three-ring binder with tabs separating each section of the documents submitted, and an additional electronically digitized copy formatted in searchable PDF format to the comptroller, with electronic copies to the applicant and the appraisal district. Such notice shall include:
  - a. The date on which the application was received;
  - b. The date on which the governing body elected to consider the application;

- c. The date on which the District determined that applicant has submitted a complete application;
  - d. A request that the comptroller provide an economic impact evaluation;
  - e. All other information relating to the application's consideration that has been prepared by the District's consultants to meet the requirements of 34 Administrative Code 9.1054.
6. Accept on behalf of the Board, any amendments or supplements submitted by the applicant and transmit copies to the comptroller.
7. Within 20 days of the receipt of a request from the comptroller, forward any amended or supplemental application, or any other information necessary to complete the comptroller's application recommendation, or economic impact study to the comptroller and the appraisal district.
8. Direct the District's internet webmaster to create a link on the District's website to the location on the Texas comptroller's website where copies of Economic Development Act applications are posted.
9. Ensure that the applicant and the District's consultants conduct all required analyses to properly protect the District's financial interests; and provide all required supplemental information necessary to assist the comptroller's and Texas Education Agency staffs in the analyses required by the Act and the comptroller's rules.
10. Not later than 151 days after the application review start date, present to the Board an agreement for final approval or a request for an extension of the application review period from the applicant.
11. In the event the Board approves an extension of time for final action of the application, forward a notice of the Board's action on the extension within seven days of such action to the comptroller, applicant, and appraisal district.
12. Ensure that, at least ten days prior to the meeting at which the Board is scheduled to consider final approval of an agreement, that the District and the comptroller are provided draft agreement copies of such agreement.

13. Ensure that upon the completion of Board action, if any, on the application, all required information is transmitted to the comptroller, applicant, and appraisal district.
14. Ensure that the applicant makes all required post-approval submissions to the comptroller and to the District within the required deadlines.

**Initial Board  
Review**

Following the filing of an application, at the first available Board meeting for which notice can be posted in accordance with the Texas Open Government Act, the Board should conduct an initial review of the application. At the initial review, the Board may consider either a written or oral presentation concerning the application.

If, after conducting the initial review, it is the opinion of the Board that the application is not in the best interests of the District, the application shall be rejected. In the event of a rejection by the Board at its initial review, the application fee shall be returned in full to the applicant. If the Board elects to consider the application, the Superintendent shall continue to process the application as set forth herein.

In the event that the Board decides to proceed with a full consideration of the application and the qualified investment in the application exceeds \$300,000,000, the Board shall set up an appropriate large project application fee.

Once the Board has accepted an application for consideration after initial Board review, the Superintendent is expressly delegated the authority to accept on behalf of the Board and the District any amended or supplemental application submitted by the applicant for the same project.

**Consulting  
Services**

Upon retention by the Board, the District's consultants shall review the application to ensure that all information required to be submitted by the comptroller's rules has been properly provided in the application documents, and in any other reports required by 34 Administrative Code 9.1054. The consultants shall simultaneously begin an analysis of the impact on District finances, any legal implications of the application, development of an appropriate revenue protection agreement, and when the reports become available, the studies from both the comptroller's office and the Texas Education Agency.

The consultants shall be paid for their services from the application fee. The consultants shall complete their analysis within sufficient time to be considered by the Board in its final determination on the application.

**Public Hearing**

The Board's final determination of the application shall be made only after a public hearing at which the Superintendent, the District's consultants, the applicant, and members of the public shall have a reasonable opportunity to present their views on the proposed application prior to the Board taking final action on the application.

The comptroller's recommendation shall be publicly disclosed at such public hearing.

The public hearing shall be scheduled for a time and place such that the consideration of the application and the comptroller's recommendation is the sole matter posted for the Board's consideration. Such public hearing shall also be scheduled at such a time so as to enable the Board to approve or disapprove an application before the 151st day unless an extension of this deadline is requested and has been previously granted by the Board. In the event that the comptroller has recommended to the Board that the application not be approved, no action may be taken by the Board to approve such application on the date of the public hearing. Board consideration of the application cannot occur until a subsequent meeting date. If the comptroller has recommended approval of the application, final Board action may occur on the same date as the public hearing, but at a separately posted meeting, held at a different time as the public hearing on the application.

Prior to final approval of an agreement, the Board shall deliberate and adopt such findings of fact regarding the application as are required by law, including but not limited to findings:

1. As to each criterion listed in Tax Code 313.026;
2. As to the criteria required by Tax Code 313.025(f-1) if applicable;
3. That the information in the application is true and correct;
4. That the applicant is eligible for the limitation on the appraised value of the entity's qualified property; and
5. That making a determination granting the application is in the best interest of the District and the state.

**Adoption of Agreement**

At a meeting held after the public hearing, the Board shall also consider and adopt an agreement with the applicant. Such agreement must provide for protection from and/or compensation for any financial risks undertaken by the District in accepting the application.

In the event that the comptroller has recommended to the Board that the application not be approved, the motion to approve such agreement must be adopted by at least two-thirds of the voting Board members in order to become effective. In the event that the comptroller has recommended to the Board that the application be approved, the motion to approve such agreement must be adopted by a majority of the voting Board members in order to become effective.

**Substantive Documents**

Unless claimed by the applicant to be confidential, all sections of any application, after presentation to the Board, all reports presented to the Board by its consultants, and all resolutions, findings of fact, agreements, or any other document adopted by the Board shall be considered to be a substantive document as defined in this policy and shall be available for public inspection. All such documents required by the comptroller's rule or by state law to be filed with the state of Texas shall be transmitted within seven days of adoption.

**Applicant's Claims of Information Confidentiality**

At the time that the applicant submits its application, or any amendment or supplement thereto, the applicant may request that all or parts of such document not be posted on the Internet and not otherwise be publicly released. In order to make such request, the applicant shall submit a written request that:

1. Specifically lists each document or portion of the document and each entry in any form prescribed by the comptroller that the applicant contends is confidential;
2. Identifies specific detailed reasons stating why the applicant believes each item listed should be considered confidential and identifies any relevant legal authority in support of the request;
3. Segregates the documents that are subject to the request from the other documents submitted with the application that are not subject to the request; and
4. Clearly designates each document subject to the request as "confidential."

**Waiver of Jobs Requirement**

At the time of the original application, or at any other time during the course of a Chapter 313 Agreement, the Board may waive the new jobs creation requirement in Texas Tax Code 313.021(2)(A)(iv)(b) or 313.051(b) and approve an application if the Board makes a finding that the jobs creation requirement exceeds the industry standard for the number of employees



reasonably necessary for the operation of the facility that is described in the application.

In the event that the applicant seeks a job waiver, the applicant must submit to the District as part of an application, or an amended application, a separated and clearly marked set of documentation on which the applicant intends to rely that demonstrates that the jobs creation requirement exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility by the applicant.

In the event that such request is made at a time other than at the time of the original application, the Board may charge the applicant a fee to cover the costs of any consultant required by the Board reviewing the request and in making the requisite findings.

**Enforcement  
Proceedings**

In the event that the Superintendent determines that the applicant has committed a material breach of this agreement, the Superintendent shall provide the applicant with a written notice of the facts that the Superintendent believes have caused the material breach of this agreement, and if a cure is possible, the cure proposed by the District.

Not later than the 60th day after sending such notice, the Superintendent shall schedule a Board hearing on the matter at which the applicant shall be given the opportunity to present any facts or arguments to the Board showing that it is not in material breach of its obligations under the agreement, or that it has cured or undertaken to cure any such material breach.

After hearing from both sides, the Board shall make findings as to whether or not a material breach of this agreement has occurred, the date such breach occurred, if any, and whether or not any such breach has been cured. After making its determination regarding any alleged breach, the Board shall cause the applicant to be notified in writing of its determination.

In the event that the Board determines that such a breach has occurred and has not been cured, it may commence enforcement proceedings.

**Applicant's  
Reporting  
Obligations**

During the course of its Chapter 313 Agreement with the District, the applicant shall timely make any and all reports that are or may be required under the provisions of law or administrative regulation, including but not limited to the comptroller's annual eligibility report (Form 50-772) and biennial progress report (Form 50-773), which may be required to be submitted by the applicant to the Texas comptroller of public

	<p>accounts under the provisions of Texas Tax Code 313.032. The applicant shall forward a copy of all such required reports or certifications to the District contemporaneously with the filing thereof. The obligation to make all such required filings shall be a material obligation under this agreement.</p>
District's Reporting Obligations	<p>If the comptroller requests information reasonably necessary to complete the recommendation or economic impact evaluations, the Superintendent shall provide the requested information within 20 working days from the date of request. The Superintendent may request for an extension of time to provide the additional information to the comptroller. This request of time shall not exceed ten working days.</p>
Superintendent's Responsibilities / Delegation	<p>During the term of any agreement, the Superintendent shall ensure that all reporting requirements under Chapter 313 are being met in a timely fashion by both the District and the applicant. The Superintendent is authorized to delegate this function to outside consultants; however any fees for the consultants should be reimbursed by the applicant to the District.</p>
Public Access to Information	<p>The Superintendent shall provide a copy of the economic impact evaluation and the facilities impact study to the applicant and the District's consultants upon receipt thereof.</p>
Tax Credit Eligibility	<p>Applicants meeting all requirements in Tax Code Chapter 313 and the agreement shall become eligible to receive tax credits under the provisions of Tax Code Chapter 313, Subchapter D. The District shall begin the processing of the applicant's tax credit request following the payment by the applicant of all ad valorem taxes due to the district of taxes levied in each year of the qualifying time period as defined by Texas Tax Code 313.021(4).</p>
Tax Credit Application Requirements	<p>Applicants seeking tax credits under the provisions of Tax Code Chapter 313, Subchapter D must file with the District a completed comptroller's tax credit application form signed by the applicant. The submission shall not be earlier than the date the property taxes are paid for the last year of the qualifying time period. The comptroller's form shall be accompanied by a tax receipt from the collector of taxes for the District showing full payment of District ad valorem taxes on the qualified property for each year of the qualifying time period.</p>
Applicant to Provide Information Updates	<p>The applicant shall keep the District updated with any changes in the following information:</p> <ol style="list-style-type: none"><li>1. Changes of the authorized representative(s);</li></ol>

2. Changes to the location and contact information for the approved applicant including all members of the combined group participating in the limitation agreement; and
3. Copies of any assignments of the agreement and contact information for authorized representative(s) of any assignees.