

**Texas Economic
Development Act**

Purpose

~~These provisions outline~~~~This policy outlines~~ the District's procedures ~~to be used by the District~~ for filing, accepting, and reviewing, and considering applications and amendments to applications, and, when necessary, enforcing agreements made under the Texas Economic Development Act (the Act), as set forth in Tax Code Chapter 313, [See CCGB(LEGAL)], ~~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

In addition to the definitions set out in CCGB(LEGAL), the following definitions apply in this policy:

~~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 will is required to consider and act on an~~ the application. The application review period begins on the day the application re-view start date is filed with the District, and ends expires on the 151st day thereafter after the application is filed with the District,

~~unless the application review 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 county appraisal district that appraises property that is the proposed to be subject of an application to a limitation on appraised value.~~

~~"Large project application" "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 which the qualified investment exceeds \$300,000,000 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 an of the
Application

In the form and formats required Three copies of every application filed under this policy shall be filed by the comptroller, an applicant shall file with the Superintendent the original and copies of the

completed application along with a searchable electronic copy certified to contain information identical to the original hard copy. [See CCGB(LEGAL) at Required Contents and Format]

-The Superintendent shall hold any incomplete applications or applications submitted without the full application fee until the application is properly completed and the application fee is paid. The Superintendent's determination of whether an application is complete shall be final.~~acknowledge the date of the receipt of the application and application fee in writing.~~

Confidentiality of Applicant Information

If the Board decides to consider an application, information provided in connection with an application will not be considered confidential except as allowed by law. [See CCGB(LEGAL) at Confidential Business Information]

Amending an Application

~~An applicant~~application may seek to amend an application~~be amended by the applicant~~ at any time prior to final Board action on the application. ~~If 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 be extended, ~~by operation of this policy,~~ automatically ~~be extended~~ to the 61st day after the date ~~on~~upon which the last amended application ~~is~~was filed, unless the Board takes action to extend the application review period otherwise.

~~The 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 and, forward such material to the comptroller~~ any amended application or supplemental information on receipt~~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 applica-~~

~~tion 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

An applicant shall pay a standard application fee of \$75,000 to the District to cover the District's costs in processing and considering the application. This fee is nonrefundable except as set forth in this policy.

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

- ~~1. For large project fees after the initial fee submission ~~tender as set forth below~~; or~~
- ~~2. If in the event the application is rejected ~~denied~~ after an initial Board review, ~~as defined below~~.~~

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

Large Project
Application Fee

For a large project application ~~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 ana higher application fee higher than the standard application fee, if in the opinion of the Board, an analysis or evaluation of the application warrants is of such complexity so as to require a higher fee. In this case, the ~~An applicant proposing a qualified investment in excess of \$300,000,000 in value shall initially submit the stand- ard ~~tender an~~ application fee. If ~~of~~ \$75,000. In the event that the Board sets a higher fee, the applicant may ~~shall be entitled to~~ withdraw its application and any ~~its~~ application fee submitted if the applicant disagrees with the higher fee ~~set by the Board~~.~~~~

Processing an ~~the~~
Application
Before Initial Board
Review

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

- ~~1. Send the applicant ~~Accept the filing of the application, and send~~ written confirmation of receipt 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. 2. Review the application and, as, 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~~ schedules ~~by the comptroller's rules.~~

3. Within seven days of receipt of a completed application, submit the application to the comptroller, together with any economic analysis of the proposed project submitted by the applicant.
4. Obtain necessary conflict of interest disclosures. [See BBFA(LLEGAL)]

Initial ~~Schedule~~
Board Review

As soon as practical after an application is filed, the Board shall conduct an initial review of the application during which the Board may consider the Superintendent's recommendation and written or oral presentations concerning the application.

If, after the initial review, the Board determines that the application is not in the best interests of the District, the Board shall reject the application and return to the applicant the application fee, less any necessary and reasonable costs of the initial review.

- 4.5. If the Board accepts a large project application for further consideration, of the application for initial Board ~~may~~ review, as set an appropriate fee ~~forth below, at the first available Board meeting for which notice can be posted~~ in accordance with this policy ~~the Texas Open Government Act.~~

After Initial ~~the initial~~
Board Review

If the Board elects to consider the 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 Superintendent shall:

- 5.1. Deposit the completed application fee and provide 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 applicant and comptroller, with a copy ~~electronic copies~~ to the applicant and the appraisal district, that the District has received and will consider the completed application; ~~Such notice shall include:~~
 - a. Deliver to ~~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. A request that the comptroller a copy of the application and required material along with a request for 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.~~
- ~~6.2. Accept on behalf of the Board, any amendments or supplements submitted by the applicant, and transmit copies to the comptroller within seven days of receipt;~~
 - ~~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.~~
 - ~~8.3. Direct appropriate District personnel the District's internet webmaster to create a link from on the District's website to the location on the Texas comptroller's website where copies of Economic Development Act applications are posted;~~
 - ~~9.4. Within the time allowed by law 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 ~~comptroller's~~ and the Texas Education Agency (TEA) ~~with~~ staffs in the analyses required analyses ~~by the Act and the comptroller's rules.~~~~
 - 5. On receipt, provide the applicant and District consultants with a copy of the economic impact evaluation and the school facilities impact analysis;
 - 6. Work with the applicant and District consultants to provide the District and the comptroller with copies of the proposed agreement in a timely manner [see CCGB(LEGAL) at Continued Eligibility];
 - 7. Take all action necessary or required to process the application;

- ~~40.8.~~ 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.~~
- ~~41.~~ ~~If in the event the Board approves an extension of time for final action of the application~~ review period is requested, report each such request to the comptroller, forward a notice of the Board's action on the extension within seven days of the decision such action to the comptroller, applicant, and appraisal district.
- ~~12.9.~~ Ensure that, at least ten days prior to grant the extension; and 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.
- ~~13.10.~~ After ~~Ensure that upon the completion of Board action, if any, on the application, if any, transmit all necessary and~~ required information ~~is transmitted~~ to the comptroller, the applicant, and the 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~~
District Consultants

~~On~~ 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, District the District's consultants, including legal counsel, shall review the application to ensure it includes that all required information, District ~~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 also simultaneously begin an analysis of the application, consider impact on District finances, any legal implications of the application, draft and negotiate development of an appropriate revenue protection agreement, and evaluate the analyses ~~when the reports become available, the studies from both the comptroller~~ comptroller's office and TEA on receipt the Texas Education Agency.~~

~~District~~ The consultants shall be paid for ~~their~~ services from the application fee and ~~The consultants~~ shall complete their analyses ~~in analysis within sufficient time to assist~~ be considered by the Board, as appropriate, in its initial review or final determination on the application.

Board Action on Application

Completed applications may be considered for approval by the Board only after completion of the economic impact evaluation and the school facilities impact analysis and receipt of the comptroller's certification, as required by the Act.

Public Hearing

The ~~Board's~~ Board's final determination on an ~~of the~~ application shall be made ~~only~~ after a public hearing at which the Superintendent, ~~District the District's~~ consultants, the applicant, and members of the public may provide input and information concerning ~~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 certification ~~recommendation~~ shall be ~~publicly~~ disclosed at the ~~such~~ public hearing.

The public hearing shall be held at a time that allows the Board to approve or disapprove an application before the expiration of the application review period, unless the deadline has been extended.

Findings of Fact

After the public hearing, the Board shall make specific written findings as required by law. [See CCGB(LEGAL) at Approval]

~~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

~~After considering the comptroller's certification, the economic impact evaluation, the school facilities impact analysis, information from District consultants, and any other relevant information~~At a meeting held after the public hearing, the Board may approve the application and enter into an agreement that complies with all legal requirements. [See CCGB(LEGAL) at Agreement] ~~The Board shall also consider and adopt an agreement with the applicant to .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

~~The~~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 accordance with the law. [See CCGB(LEGAL) at Waiver of New Jobs Creation Requirement] ~~[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 makes 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 subsequent to 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 finding findings.~~

SuperintendentEnfo
rcement
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 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.~~

District's Reporting
Obligations

~~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~~

~~Superintendent's
Responsibilities
After Agreement/
Delegation~~

~~to the comptroller. This request of time shall not exceed ten work-
ing days.~~

During the term of any agreement, the Superintendent shall ensure that all reporting requirements ~~are~~ under Chapter 313 ~~are being~~ met in a timely ~~manner~~ fashion by ~~both~~ the District and the applicant. The Superintendent is authorized to delegate this function to ~~Dis-~~ ~~trict~~ outside consultants; ~~however any fees for the consultants should be reimbursed by the applicant to the District.~~

Statements
Regarding Conflicts
of Interest

~~Each Board member and any District employee who is a local government official under Local Government Code Chapter 176 shall file a conflict of interest statement with the District confirming or denying the existence of a conflict of interest or a substantial business interest in each project that is the subject of an application to provide information updates amendment to an agreement with the District. Within 60 days after each Board election or the appointment of a Board member, each new Board member shall complete a statement. The completed statements shall be retained by the District with each affected application or agreement. If a conflict or substantial interest exists, the appropriate disclosure forms shall be completed and filed as required by law.~~

~~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.~~

~~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).~~

~~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.~~

~~The applicant shall keep the District updated with any changes in the following information:~~

- ~~1. Changes of the authorized representative(s);~~
- ~~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~~
- ~~3.11. Copies of any assignments of the agreement and contact information for authorized representative(s) of any assignees.~~