

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas






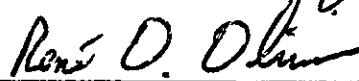


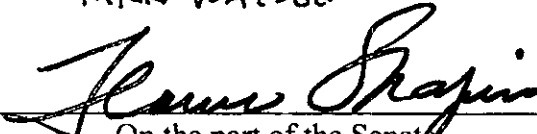
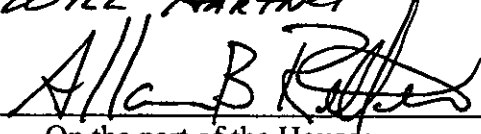
May 30, 2009
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3676 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

 _____ KEL SELIGER	 _____ JOE HEFLIN
 _____ ELIOT SHAPLEIGH	 _____ DAVID SWINFORD
 _____ KEVIN ELTIFE	 _____ RENE OLIVERA
 _____ KIRK WATSON	 _____ WILL HARTNETT
 _____ On the part of the Senate FLORENCE SHAPIRO	 _____ On the part of the House ALAN RITTER

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3676

A BILL TO BE ENTITLED

AN ACT

1

2 relating to the Texas Economic Development Act.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 313.007, Tax Code, is amended to read as
5 follows:

6 Sec. 313.007. EXPIRATION. Subchapters B, C, and D expire
7 December 31, 2014 [~~2011~~].

8 SECTION 2. Section 313.021, Tax Code, is amended to read as
9 follows:

10 Sec. 313.021. DEFINITIONS. In this subchapter:

11 (1) "Qualified investment" means:

12 (A) tangible personal property that is first
13 placed in service in this state during the applicable qualifying
14 time period that begins on or after January 1, 2002, without regard
15 to whether the property is affixed to or incorporated into real
16 property, and that is described as Section 1245 property by Section
17 1245(a), Internal Revenue Code of 1986;

18 (B) tangible personal property that is first
19 placed in service in this state during the applicable qualifying
20 time period that begins on or after January 1, 2002, without regard
21 to whether the property is affixed to or incorporated into real
22 property, and that is used in connection with the manufacturing,
23 processing, or fabrication in a cleanroom environment of a
24 semiconductor product, without regard to whether the property is

1 actually located in the cleanroom environment, including:

2 (i) integrated systems, fixtures, and
3 piping;

4 (ii) all property necessary or adapted to
5 reduce contamination or to control airflow, temperature, humidity,
6 chemical purity, or other environmental conditions or
7 manufacturing tolerances; and

8 (iii) production equipment and machinery,
9 moveable cleanroom partitions, and cleanroom lighting;

10 (C) tangible personal property that is first
11 placed in service in this state during the applicable qualifying
12 time period that begins on or after January 1, 2002, without regard
13 to whether the property is affixed to or incorporated into real
14 property, and that is used in connection with the operation of a
15 nuclear electric power generation facility, including:

16 (i) property, including pressure vessels,
17 pumps, turbines, generators, and condensers, used to produce
18 nuclear electric power; and

19 (ii) property and systems necessary to
20 control radioactive contamination;

21 (D) tangible personal property that is first
22 placed in service in this state during the applicable qualifying
23 time period that begins on or after January 1, 2002, without regard
24 to whether the property is affixed to or incorporated into real
25 property, and that is used in connection with operating an
26 integrated gasification combined cycle electric generation
27 facility, including:

1 (i) property used to produce electric power
2 by means of a combined combustion turbine and steam turbine
3 application using synthetic gas or another product produced by the
4 gasification of coal or another carbon-based feedstock; or

5 (ii) property used in handling materials to
6 be used as feedstock for gasification or used in the gasification
7 process to produce synthetic gas or another carbon-based feedstock
8 for use in the production of electric power in the manner described
9 by Subparagraph (i); [~~or~~]

10 (E) tangible personal property that is first
11 placed in service in this state during the applicable qualifying
12 time period that begins on or after January 1, 2010, without regard
13 to whether the property is affixed to or incorporated into real
14 property, and that is used in connection with operating an advanced
15 clean energy project, as defined by Section 382.003, Health and
16 Safety Code; or

17 (F) a building or a permanent, nonremovable
18 component of a building that is built or constructed during the
19 applicable qualifying time period that begins on or after January
20 1, 2002, and that houses tangible personal property described by
21 Paragraph (A), (B), (C), [~~or~~] (D), or (E).

22 (2) "Qualified property" means:

23 (A) land:

24 (i) that is located in an area designated as
25 a reinvestment zone under Chapter 311 or 312 or as an enterprise
26 zone under Chapter 2303, Government Code;

27 (ii) on which a person proposes to

1 construct a new building or erect or affix a new improvement that
2 does not exist before the date the person [~~owner~~] applies for a
3 limitation on appraised value under this subchapter;

4 (iii) that is not subject to a tax abatement
5 agreement entered into by a school district under Chapter 312; and

6 (iv) on which, in connection with the new
7 building or new improvement described by Subparagraph (ii), the
8 owner or lessee of, or the holder of another possessory interest in,
9 the land proposes to:

10 (a) make a qualified investment in an
11 amount equal to at least the minimum amount required by Section
12 313.023; and

13 (b) create at least 25 new jobs;

14 (B) the new building or other new improvement
15 described by Paragraph (A)(ii); and

16 (C) tangible personal property that:

17 (i) is not subject to a tax abatement
18 agreement entered into by a school district under Chapter 312; and

19 (ii) except for new equipment described in
20 Section 151.318(q) or (q-1), is first placed in service in the new
21 building or in or on the new improvement described by Paragraph
22 (A)(ii), or on the land on which that new building or new
23 improvement is located, if the personal property is ancillary and
24 necessary to the business conducted in that new building or in or on
25 that new improvement.

26 (3) "Qualifying job" means a permanent full-time job
27 that:

- 1 (A) requires at least 1,600 hours of work a year;
- 2 (B) is not transferred from one area in this
3 state to another area in this state;
- 4 (C) is not created to replace a previous
5 employee;
- 6 (D) is covered by a group health benefit plan[
7 ~~as defined by Section 481.151, Government Code,~~] for which the
8 business offers to pay at least 80 percent of the premiums or other
9 charges assessed for employee-only coverage under the plan,
10 regardless of whether an employee may voluntarily waive the
11 coverage; and
- 12 (E) pays at least 110 percent of:
- 13 (i) the county average weekly wage for
14 manufacturing jobs in the county where the job is located; or
- 15 (ii) the county average weekly wage for all
16 jobs in the county where the job is located, if the property owner
17 creates more than 1,000 jobs in that county.
- 18 (4) "Qualifying time period" means:
- 19 (A) the period that begins on the date that a
20 person's application for a limitation on appraised value under this
21 subchapter is approved by the governing body of the school district
22 and ends on December 31 of the second tax year that begins after
23 that date [~~first two tax years that begin on or after the date a~~
24 ~~person's application for a limitation on appraised value under this~~
25 ~~subchapter is approved~~], except as provided by Paragraph (B) or (C)
26 of this subdivision or Section 313.027(h); [~~or~~]
- 27 (B) in connection with a nuclear electric power

1 generation facility, the first seven tax years that begin on or
2 after the third anniversary of the date the school district
3 approves the property owner's application for a limitation on
4 appraised value under this subchapter, unless a shorter time period
5 is agreed to by the governing body of the school district and the
6 property owner; or

7 (C) in connection with an advanced clean energy
8 project, as defined by Section 382.003, Health and Safety Code, the
9 first five tax years that begin on or after the third anniversary of
10 the date the school district approves the property owner's
11 application for a limitation on appraised value under this
12 subchapter, unless a shorter time period is agreed to by the
13 governing body of the school district and the property owner.

14 (5) "County average weekly wage for manufacturing
15 jobs" means:

16 (A) the average weekly wage in a county for
17 manufacturing jobs during the most recent four quarterly periods
18 for which data is available at the time a person submits an
19 application for a limitation on appraised value under this
20 subchapter, as computed by the Texas Workforce Commission; or

21 (B) the average weekly wage for manufacturing
22 jobs in the region designated for the regional planning commission,
23 council of governments, or similar regional planning agency created
24 under Chapter 391, Local Government Code, in which the county is
25 located during the most recent four quarterly periods for which
26 data is available at the time a person submits an application for a
27 limitation on appraised value under this subchapter, as computed by

1 the Texas Workforce Commission.

2 SECTION 3. Section 313.024(b), Tax Code, is amended to read
3 as follows:

4 (b) To be eligible for a limitation on appraised value under
5 this subchapter, the entity must use the property in connection
6 with:

- 7 (1) manufacturing;
- 8 (2) research and development;
- 9 (3) a clean coal project, as defined by Section 5.001,
10 Water Code;
- 11 (4) an advanced clean energy project, as defined by
12 Section 382.003, Health and Safety Code;
- 13 (5) renewable energy electric generation;
- 14 (6) electric power generation using integrated
15 gasification combined cycle technology; ~~[or]~~
- 16 (7) nuclear electric power generation; or
- 17 (8) a computer center primarily used in connection
18 with one or more activities described by Subdivisions (1) through
19 (7) conducted by the entity.

20 SECTION 4. Section 313.024(e), Tax Code, is amended by
21 amending Subdivision (1) and adding Subdivisions (5) and (6) to
22 read as follows:

23 (1) "Manufacturing" means an establishment primarily
24 engaged in activities described in sectors 31-33 of the 2007 North
25 American Industry Classification System [and "research and
26 development" have the meanings assigned by Section 171.751].

27 (5) "Research and development" means an establishment

1 primarily engaged in activities described in category 541710 of the
2 2002 North American Industry Classification System.

3 (6) "Computer center" means an establishment
4 primarily engaged in providing electronic data processing and
5 information storage.

6 SECTION 5. Section 313.025, Tax Code, is amended by
7 amending Subsections (a), (b), and (d) and adding Subsections
8 (a-1), (d-1), (h), and (i) to read as follows:

9 (a) The owner or lessee of, or the holder of another
10 possessory interest in, any qualified property described by Section
11 313.021(2)(A), (B), or (C) may apply to the governing body of the
12 school district in which the property is located for a limitation on
13 the appraised value for school district maintenance and operations
14 ad valorem tax purposes of the person's qualified property. An
15 application must be made on the form prescribed by the comptroller
16 and include the information required by the comptroller, and it
17 must be accompanied by:

18 (1) the application fee established by the governing
19 body of the school district;

20 (2) information sufficient to show that the real and
21 personal property identified in the application as qualified
22 property meets the applicable criteria established by Section
23 313.021(2); and

24 (3) information relating to each applicable criterion
25 listed in Section 313.026.

26 (a-1) Within seven days of the receipt of each document, the
27 school district shall submit to the comptroller a copy of the

1 application and the agreement between the applicant and the school
2 district. If an economic analysis of the proposed project is
3 submitted to the school district, the district shall submit a copy
4 of the analysis to the comptroller. In addition, the school
5 district shall submit to the comptroller any subsequent revision of
6 or amendment to any of those documents within seven days of its
7 receipt. The comptroller shall publish each document received from
8 the school district under this subsection on the comptroller's
9 Internet website. If the school district maintains a generally
10 accessible Internet website, the district shall provide on its
11 website a link to the location of those documents posted on the
12 comptroller's website in compliance with this subsection. This
13 subsection does not require the comptroller to post information
14 that is confidential under Section 313.028.

15 (b) The governing body of a school district is not required
16 to consider an application for a limitation on appraised value that
17 is filed with the governing body under Subsection (a). If the
18 governing body of the school district does elect to consider an
19 application, the governing body shall deliver three copies of the
20 application to the comptroller and request that the comptroller
21 provide an economic impact evaluation of the application to the
22 school district. Except as provided by Subsection (b-1), the
23 comptroller shall conduct or contract with a third person to
24 conduct the evaluation, which shall be completed and provided to
25 the governing body of the school district as soon as practicable.
26 The governing body shall provide to the comptroller or third person
27 any requested information. A methodology to allow comparisons of

1 economic impact for different schedules of the addition of
2 qualified investment or qualified property may be developed as part
3 of the economic impact evaluation. The governing body shall
4 provide a copy of the evaluation to the applicant on request. The
5 comptroller may charge and collect a fee sufficient to cover the
6 costs of providing the economic impact evaluation. The governing
7 body of a school district shall approve or disapprove an
8 application before the 151st [~~121st~~] day after the date the
9 application is filed, unless the economic impact evaluation has not
10 been received or an extension is agreed to by the governing body and
11 the applicant.

12 (d) Before the 91st [~~61st~~] day after the date the
13 comptroller receives the copy of the application, the comptroller
14 shall submit a recommendation to the governing body of the school
15 district as to whether the application should be approved or
16 disapproved.

17 (d-1) The governing body of a school district may approve an
18 application that the comptroller has recommended should be
19 disapproved only if:

20 (1) the governing body holds a public hearing the sole
21 purpose of which is to consider the application and the
22 comptroller's recommendation; and

23 (2) at a subsequent meeting of the governing body held
24 after the date of the public hearing, at least two-thirds of the
25 members of the governing body vote to approve the application.

26 (h) After receiving a copy of the application, the
27 comptroller shall determine whether the property meets the

1 requirements of Section 313.024 for eligibility for a limitation on
2 appraised value under this subchapter. The comptroller shall
3 notify the governing body of the school district of the
4 comptroller's determination and provide the applicant an
5 opportunity for a hearing before the determination becomes final.
6 A hearing under this subsection is a contested case hearing and
7 shall be conducted by the State Office of Administrative Hearings
8 in the manner provided by Section 2003.101, Government Code. The
9 applicant has the burden of proof on each issue in the hearing. The
10 applicant may seek judicial review of the comptroller's
11 determination in a Travis County district court under the
12 substantial evidence rule as provided by Subchapter G, Chapter
13 2001, Government Code.

14 (i) If the comptroller's determination under Subsection (h)
15 that the property does not meet the requirements of Section 313.024
16 for eligibility for a limitation on appraised value under this
17 subchapter becomes final, the comptroller is not required to
18 provide an economic impact evaluation of the application or to
19 submit a recommendation to the school district as to whether the
20 application should be approved or disapproved, and the governing
21 body of the school district may not grant the application.

22 SECTION 6. Sections 313.026(a) and (b), Tax Code, are
23 amended to read as follows:

24 (a) The economic impact evaluation of the application must
25 include the following:

- 26 (1) the recommendations of the comptroller;
27 (2) the name of the school district;

1 (3) the name of the applicant;

2 (4) the general nature of the applicant's investment;

3 (5) [(2)] the relationship between the applicant's
4 industry and the types of qualifying jobs to be created by the
5 applicant to the long-term economic growth plans of this state as
6 described in the strategic plan for economic development submitted
7 by the Texas Strategic Economic Development Planning Commission
8 under Section 481.033, Government Code, as that section existed
9 before February 1, 1999;

10 (6) [(3)] the relative level of the applicant's
11 investment per qualifying job to be created by the applicant;

12 (7) the number of qualifying jobs to be created by the
13 applicant;

14 (8) [(4)] the wages, salaries, and benefits to be
15 offered by the applicant to qualifying job holders;

16 (9) [(5)] the ability of the applicant to locate or
17 relocate in another state or another region of this state;

18 (10) [(6)] the impact the project [added
19 infrastructure] will have on this state and individual local units
20 of government [the region], including:

21 (A) tax and other revenue gains, direct or
22 indirect, that would be realized during the qualifying time period,
23 the limitation period, and a period of time after the limitation
24 period considered appropriate by the comptroller [by the school
25 district]; and

26 (B) [subsequent] economic effects of the
27 project, including the impact on jobs and income, during the

1 qualifying time period, the limitation period, and a period of time
2 after the limitation period considered appropriate by the
3 comptroller [~~on the local and regional tax bases~~];

4 (11) [~~7~~] the economic condition of the region of the
5 state at the time the person's application is being considered;

6 (12) [~~8~~] the number of new facilities built or
7 expanded in the region during the two years preceding the date of
8 the application that were eligible to apply for a limitation on
9 appraised value under this subchapter; [~~and~~]

10 (13) [~~9~~] the effect of the applicant's proposal, if
11 approved, on the number or size of the school district's
12 instructional facilities, as defined by Section 46.001, Education
13 Code;

14 (14) the projected market value of the qualified
15 property of the applicant as determined by the comptroller;

16 (15) the proposed limitation on appraised value for
17 the qualified property of the applicant;

18 (16) the projected dollar amount of the taxes that
19 would be imposed on the qualified property, for each year of the
20 agreement, if the property does not receive a limitation on
21 appraised value with assumptions of the projected appreciation or
22 depreciation of the investment and projected tax rates clearly
23 stated;

24 (17) the projected dollar amount of the taxes that
25 would be imposed on the qualified property, for each tax year of the
26 agreement, if the property receives a limitation on appraised value
27 with assumptions of the projected appreciation or depreciation of

1 the investment clearly stated;

2 (18) the projected effect on the Foundation School
3 Program of payments to the district for each year of the agreement;

4 (19) the projected future tax credits if the applicant
5 also applies for school tax credits under Section 313.103; and

6 (20) the total amount of taxes projected to be lost or
7 gained by the district over the life of the agreement computed by
8 subtracting the projected taxes stated in Subdivision (17) from the
9 projected taxes stated in Subdivision (16).

10 (b) The comptroller's recommendations shall be based on the
11 criteria listed in Subsections (a)(5)-(20) [~~(a)(2)-(9)~~] and on any
12 other information available to the comptroller, including
13 information provided by the governing body of the school district
14 under Section 313.025(b).

15 SECTION 7. Subchapter B, Chapter 313, Tax Code, is amended
16 by adding Section 313.0265 to read as follows:

17 Sec. 313.0265. DISCLOSURE OF APPRAISED VALUE LIMITATION
18 INFORMATION. (a) The comptroller shall post on the comptroller's
19 Internet website each document or item of information the
20 comptroller designates as substantive before the 15th day after the
21 date the document or item of information was received or created.
22 Each document or item of information must continue to be posted
23 until the appraised value limitation expires.

24 (b) The comptroller shall designate the following as
25 substantive:

26 (1) each application requesting a limitation on
27 appraised value;

1 (2) the economic impact evaluation made in connection
2 with the application; and

3 (3) each application requesting school tax credits
4 under Section 313.103.

5 (c) If a school district maintains a generally accessible
6 Internet website, the district shall maintain a link on its
7 Internet website to the area of the comptroller's Internet website
8 where information on each of the district's agreements to limit
9 appraised value is maintained.

10 SECTION 8. Section 313.027, Tax Code, is amended by
11 amending Subsection (f) and adding Subsections (h) and (i) to read
12 as follows:

13 (f) In addition, the agreement:

14 (1) must incorporate each relevant provision of this
15 subchapter and, to the extent necessary, include provisions for the
16 protection of future school district revenues through the
17 adjustment of the minimum valuations, the payment of revenue
18 offsets, and other mechanisms agreed to by the property owner and
19 the school district;

20 (2) may provide that the property owner will protect
21 the school district in the event the district incurs extraordinary
22 education-related expenses related to the project that are not
23 directly funded in state aid formulas, including expenses for the
24 purchase of portable classrooms and the hiring of additional
25 personnel to accommodate a temporary increase in student enrollment
26 attributable to the project;

27 (3) must require the property owner to maintain a

1 viable presence in the school district for at least three years
2 after the date the limitation on appraised value of the owner's
3 property expires;

4 (4) [~~3~~] must provide for the termination of the
5 agreement, the recapture of ad valorem tax revenue lost as a result
6 of the agreement if the owner of the property fails to comply with
7 the terms of the agreement, and payment of a penalty or interest, or
8 both, on that recaptured ad valorem tax revenue;

9 (5) [~~4~~] may specify any conditions the occurrence of
10 which will require the district and the property owner to
11 renegotiate all or any part of the agreement; and

12 (6) [~~5~~] must specify the ad valorem tax years
13 covered by the agreement.

14 (h) The agreement between the governing body of the school
15 district and the applicant may provide for a deferral of the date on
16 which the qualifying time period for the project is to commence or,
17 subsequent to the date the agreement is entered into, be amended to
18 provide for such a deferral. This subsection may not be construed
19 to permit a qualifying time period that has commenced to continue
20 for more than the number of years applicable to the project under
21 Section 313.021(4).

22 (i) A person and the school district may not enter into an
23 agreement under which the person agrees to provide supplemental
24 payments to a school district in an amount that exceeds an amount
25 equal to \$100 per student per year in average daily attendance, as
26 defined by Section 42.005, Education Code, or for a period that
27 exceeds the period beginning with the period described by Section

1 313.021(4) and ending with the period described by Section
2 313.104(2)(B) of this code. This limit does not apply to amounts
3 described by Subsection (f)(1) or (2) of this section.

4 SECTION 9. Subchapter B, Chapter 313, Tax Code, is amended
5 by adding Section 313.0275 to read as follows:

6 Sec. 313.0275. RECAPTURE OF AD VALOREM TAX REVENUE LOST.

7 (a) Notwithstanding any other provision of this chapter to the
8 contrary, a person with whom a school district enters into an
9 agreement under this subchapter must make the minimum amount of
10 qualified investment during the qualifying time period and create
11 the required number of qualifying jobs during each year of the
12 agreement.

13 (b) If in any tax year a property owner fails to comply with
14 Subsection (a), the property owner is liable to this state for a
15 penalty equal to the amount computed by subtracting from the market
16 value of the property for that tax year the value of the property as
17 limited by the agreement and multiplying the difference by the
18 maintenance and operations tax rate of the school district for that
19 tax year.

20 (c) A penalty imposed under Subsection (b) becomes
21 delinquent if not paid on or before February 1 of the following tax
22 year. Section 33.01 applies to the delinquent penalty in the manner
23 that section applies to delinquent taxes.

24 SECTION 10. Section 313.028, Tax Code, is amended to read as
25 follows:

26 Sec. 313.028. CERTAIN BUSINESS INFORMATION CONFIDENTIAL.
27 Information provided to a school district in connection with an

1 application for a limitation on appraised value under this
2 subchapter that describes the specific processes or business
3 activities to be conducted or the specific tangible personal
4 property to be located on real property covered by the application
5 shall be segregated in the application from other information in
6 the application and is confidential and not subject to public
7 disclosure unless the governing body of the school district
8 approves the application. Other information in the custody of a
9 school district or the comptroller in connection with the
10 application, including information related to the economic impact
11 of a project or the essential elements of eligibility under this
12 chapter, such as the nature and amount of the projected investment,
13 employment, wages, and benefits, may not be considered confidential
14 business information if the governing body of the school district
15 agrees to consider the application. Information in the custody of a
16 school district or the comptroller if the governing body approves
17 the application is not confidential under this section.

18 SECTION 11. Section 313.051(a), Tax Code, is amended to
19 read as follows:

20 (a) This subchapter applies only to a school district that
21 has territory in:

22 (1) an area that qualified as a strategic investment
23 area under Subchapter O, Chapter 171, immediately before that
24 subchapter expired [~~as defined by Section 171.721~~]; or

25 (2) a county:

26 (A) that has a population of less than 50,000;

27 and

1 (B) [~~that is not partially or wholly located in a~~
2 ~~metropolitan statistical area, and~~

3 [~~(C)~~] in which, from 1990 to 2000, according to
4 the federal decennial census, the population:

5 (i) remained the same;

6 (ii) decreased; or

7 (iii) increased, but at a rate of not more
8 than three percent per annum.

9 SECTION 12. Sections 313.103 and 313.104, Tax Code, are
10 amended to read as follows:

11 Sec. 313.103. APPLICATION. (a) An application for a tax
12 credit under this subchapter must be made to the governing body of
13 the school district to which the ad valorem taxes were paid. The
14 application must be:

15 (1) made on the form prescribed for that purpose by the
16 comptroller and verified by the applicant; and

17 (2) accompanied by:

18 (A) a tax receipt from the collector of taxes for
19 the school district showing full payment of school district ad
20 valorem taxes on the qualified property for the applicable
21 qualifying time period; and

22 (B) any other document or information that the
23 comptroller or the governing body considers necessary for a
24 determination of the applicant's eligibility for the credit or the
25 amount of the credit [~~and~~

26 [~~(3) filed before September 1 of the year immediately~~
27 ~~following the applicable qualifying time period].~~

1 (b) An application for a tax credit under this subchapter or
2 any information provided by the school district to the Texas
3 Education Agency under Section 42.2515, Education Code, is not
4 confidential.

5 Sec. 313.104. ACTION ON APPLICATION; GRANT OF CREDIT.
6 Before granting [~~the 90th day after the date~~] the application for a
7 tax credit [~~is filed~~], the governing body of the school district
8 shall:

9 (1) determine the person's eligibility for a tax
10 credit under this subchapter; and

11 (2) if the person's application is approved, by order
12 or resolution direct the collector of taxes for the school
13 district:

14 (A) in the second and subsequent six tax years
15 that begin after the date the application is approved, to credit
16 against the taxes imposed on the qualified property by the district
17 in that year an amount equal to one-seventh of the total amount of
18 tax credit to which the person is entitled under Section 313.102,
19 except that the amount of a credit granted in any of those tax years
20 may not exceed 50 percent of the total amount of ad valorem school
21 taxes imposed on the qualified property by the school district in
22 that tax year; and

23 (B) in the first three tax years that begin on or
24 after the date the person's eligibility for the limitation under
25 Subchapter B or C expires, to credit against the taxes imposed on
26 the qualified property by the district an amount equal to the
27 portion of the total amount of tax credit to which the person is

1 entitled under Section 313.102 that was not credited against the
2 person's taxes under Paragraph (A) in a tax year covered by
3 Paragraph (A), except that the amount of a tax credit granted under
4 this paragraph in any tax year may not exceed the total amount of ad
5 valorem school taxes imposed on the qualified property by the
6 school district in that tax year.

7 SECTION 13. Section 403.302, Government Code, is amended by
8 amending Subsection (d) and adding Subsection (m) to read as
9 follows:

10 (d) For the purposes of this section, "taxable value" means
11 the market value of all taxable property less:

12 (1) the total dollar amount of any residence homestead
13 exemptions lawfully granted under Section 11.13(b) or (c), Tax
14 Code, in the year that is the subject of the study for each school
15 district;

16 (2) one-half of the total dollar amount of any
17 residence homestead exemptions granted under Section 11.13(n), Tax
18 Code, in the year that is the subject of the study for each school
19 district;

20 (3) the total dollar amount of any exemptions granted
21 before May 31, 1993, within a reinvestment zone under agreements
22 authorized by Chapter 312, Tax Code;

23 (4) subject to Subsection (e), the total dollar amount
24 of any captured appraised value of property that:

25 (A) is within a reinvestment zone created on or
26 before May 31, 1999, or is proposed to be included within the
27 boundaries of a reinvestment zone as the boundaries of the zone and

1 the proposed portion of tax increment paid into the tax increment
2 fund by a school district are described in a written notification
3 provided by the municipality or the board of directors of the zone
4 to the governing bodies of the other taxing units in the manner
5 provided by Section 311.003(e), Tax Code, before May 31, 1999, and
6 within the boundaries of the zone as those boundaries existed on
7 September 1, 1999, including subsequent improvements to the
8 property regardless of when made;

9 (B) generates taxes paid into a tax increment
10 fund created under Chapter 311, Tax Code, under a reinvestment zone
11 financing plan approved under Section 311.011(d), Tax Code, on or
12 before September 1, 1999; and

13 (C) is eligible for tax increment financing under
14 Chapter 311, Tax Code;

15 (5) for a school district for which a deduction from
16 taxable value is made under Subdivision (4), an amount equal to the
17 taxable value required to generate revenue when taxed at the school
18 district's current tax rate in an amount that, when added to the
19 taxes of the district paid into a tax increment fund as described by
20 Subdivision (4)(B), is equal to the total amount of taxes the
21 district would have paid into the tax increment fund if the district
22 levied taxes at the rate the district levied in 2005;

23 (6) the total dollar amount of any captured appraised
24 value of property that:

25 (A) is within a reinvestment zone:

26 (i) created on or before December 31, 2008,
27 by a municipality with a population of less than 18,000; and

1 (ii) the project plan for which includes
2 the alteration, remodeling, repair, or reconstruction of a
3 structure that is included on the National Register of Historic
4 Places and requires that a portion of the tax increment of the zone
5 be used for the improvement or construction of related facilities
6 or for affordable housing;

7 (B) generates school district taxes that are paid
8 into a tax increment fund created under Chapter 311, Tax Code; and

9 (C) is eligible for tax increment financing under
10 Chapter 311, Tax Code;

11 (7) the total dollar amount of any exemptions granted
12 under Section 11.251 or 11.253, Tax Code;

13 (8) the difference between the comptroller's estimate
14 of the market value and the productivity value of land that
15 qualifies for appraisal on the basis of its productive capacity,
16 except that the productivity value estimated by the comptroller may
17 not exceed the fair market value of the land;

18 (9) the portion of the appraised value of residence
19 homesteads of individuals who receive a tax limitation under
20 Section 11.26, Tax Code, on which school district taxes are not
21 imposed in the year that is the subject of the study, calculated as
22 if the residence homesteads were appraised at the full value
23 required by law;

24 (10) a portion of the market value of property not
25 otherwise fully taxable by the district at market value because of:

26 (A) action required by statute or the
27 constitution of this state that, if the tax rate adopted by the

1 district is applied to it, produces an amount equal to the
2 difference between the tax that the district would have imposed on
3 the property if the property were fully taxable at market value and
4 the tax that the district is actually authorized to impose on the
5 property, if this subsection does not otherwise require that
6 portion to be deducted; or

7 (B) action taken by the district under Subchapter
8 B or C, Chapter 313, Tax Code, before the expiration of the
9 subchapter;

10 (11) the market value of all tangible personal
11 property, other than manufactured homes, owned by a family or
12 individual and not held or used for the production of income;

13 (12) the appraised value of property the collection of
14 delinquent taxes on which is deferred under Section 33.06, Tax
15 Code;

16 (13) the portion of the appraised value of property
17 the collection of delinquent taxes on which is deferred under
18 Section 33.065, Tax Code; and

19 (14) the amount by which the market value of a
20 residence homestead to which Section 23.23, Tax Code, applies
21 exceeds the appraised value of that property as calculated under
22 that section.

23 (m) Subsection (d)(10) does not apply to property that was
24 the subject of an application under Subchapter B or C, Chapter 313,
25 Tax Code, made after May 1, 2009, that the comptroller recommended
26 should be disapproved.

27 SECTION 14. Section 313.029, Tax Code, is repealed.

1 SECTION 15. Sections 313.021(1)(A), (2), and (5),
2 313.024(e), and 313.025(a), Tax Code, as amended by this Act, are
3 intended to clarify rather than change existing law. The
4 clarification made by Section 313.021(5), Tax Code, as amended by
5 this Act, is necessary to allow the Texas Workforce Commission to
6 implement that subdivision in conformance with the data collection
7 requirements imposed by the federal government.

8 SECTION 16. The Legislative Budget Board shall conduct an
9 effectiveness and efficiency review of the economic development
10 program established under Chapter 313, Tax Code, and report the
11 results of the review to the legislature not later than January 1,
12 2011.

13 SECTION 17. (a) Except as provided by Subsection (b) of
14 this section:

15 (1) this Act takes effect immediately if it receives a
16 vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution; and

18 (2) if this Act does not receive the vote necessary for
19 immediate effect, this Act takes effect September 1, 2009.

20 (b) Sections 313.025(a-1), (h), and (i) and 313.0265, Tax
21 Code, as added by this Act, take effect January 1, 2010.

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SECTION 1. Section 313.007, Tax Code, is amended to read as follows:
Sec. 313.007. EXPIRATION. Subchapters B, C, and D expire December 31, 2015 [~~2014~~].

SECTION 2. Section 313.021, Tax Code, is amended to read as follows:

Sec. 313.021. DEFINITIONS. In this subchapter:

(1) "Qualified investment" means:

(A) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is described as Section 1245 property by Section 1245(a), Internal Revenue Code of 1986;

(B) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually located in the cleanroom environment, including:

(i) integrated systems, fixtures, and piping;

(ii) all property necessary or adapted to reduce contamination or to control airflow, temperature,

SENATE VERSION

SECTION 1. Section 313.007, Tax Code, is amended to read as follows:
Sec. 313.007. EXPIRATION. Subchapters B, C, and D expire December 31, 2014 [~~2014~~].

Same as House version.

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SECTION 1. Same as Senate version.

SECTION 2. Same as House version.

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humidity, chemical purity, or other environmental conditions or manufacturing tolerances; and

(iii) production equipment and machinery, moveable cleanroom partitions, and cleanroom lighting;

(C) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with the operation of a nuclear electric power generation facility, including:

(i) property, including pressure vessels, pumps, turbines, generators, and condensers, used to produce nuclear electric power; and

(ii) property and systems necessary to control radioactive contamination;

(D) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with operating an integrated gasification combined cycle electric generation facility, including:

(i) property used to produce electric power by means of a combined combustion turbine and steam turbine application using synthetic gas or another product produced by the gasification of coal or another carbon-based feedstock; or

(ii) property used in handling materials to be used as

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feedstock for gasification or used in the gasification process to produce synthetic gas or another carbon-based feedstock for use in the production of electric power in the manner described by Subparagraph (i); ~~or~~

(E) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2010, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with operating an advanced clean energy project, as defined by Section 382.003, Health and Safety Code; or

(F) a building or a permanent, nonremovable component of a building that is built or constructed during the applicable qualifying time period that begins on or after January 1, 2002, and that houses tangible personal property described by Paragraph (A), (B), (C), ~~or~~ (D), or (E).

(2) "Qualified property" means:

(A) land:

(i) that is located in an area designated as a reinvestment zone under Chapter 311 or 312 or as an enterprise zone under Chapter 2303, Government Code;

(ii) on which a person proposes to construct a new building or erect or affix a new improvement that does not exist before the date the person ~~owner~~ applies for a limitation on appraised value under this subchapter;

(iii) that is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

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(iv) on which, in connection with the new building or new improvement described by Subparagraph (ii), the owner or lessee of, or the holder of another possessory interest in, the land proposes to:

(a) make a qualified investment in an amount equal to at least the minimum amount required by Section 313.023;

and

(b) create at least 25 new jobs;

(B) the new building or other new improvement described by Paragraph (A)(ii); and

(C) tangible personal property that:

(i) is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(ii) except for new equipment described in Section 151.318(q) or (q-1), is first placed in service in the new building or in or on the new improvement described by Paragraph (A)(ii), or on the land on which that new building or new improvement is located, if the personal property is ancillary and necessary to the business conducted in that new building or in or on that new improvement.

(3) "Qualifying job" means a permanent full-time job that:

(A) requires at least 1,600 hours of work a year;

(B) is not transferred from one area in this state to another area in this state;

(C) is not created to replace a previous employee;

(D) is covered by a group health benefit plan[~~as defined by Section 481.151, Government Code,~~] for

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which the business offers to pay at least 80 percent of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage; and

(E) pays at least 110 percent of:

(i) the county average weekly wage for manufacturing jobs in the county where the job is located; or

(ii) the county average weekly wage for all jobs in the county where the job is located, if the property owner creates more than 1,000 jobs in that county.

(4) "Qualifying time period" means:

(A) the period that begins on the date that a person's application for a limitation on appraised value under this subchapter is approved by the governing body of the school district and ends on December 31 of the second tax year that begins after that date ~~[first two tax years that begin on or after the date a person's application for a limitation on appraised value under this subchapter is approved]~~, except as provided by Paragraph (B) or (C) of this subdivision or Section 313.027(h); ~~[or]~~

(B) in connection with a nuclear electric power generation facility, the first seven tax years that begin on or after the third anniversary of the date the school district approves the property owner's application for a limitation on appraised value under this subchapter, unless a shorter time period is agreed to by the governing body of the school district and the property owner; or

(C) in connection with an advanced clean energy project, as defined by Section 382.003, Health and Safety

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Code, the first five tax years that begin on or after the third anniversary of the date the school district approves the property owner's application for a limitation on appraised value under this subchapter, unless a shorter time period is agreed to by the governing body of the school district and the property owner.

(5) "County average weekly wage for manufacturing jobs" means:

(A) the average weekly wage in a county for manufacturing jobs during the most recent four quarterly periods for which data is available at the time a person submits an application for a limitation on appraised value under this subchapter, as computed by the Texas Workforce Commission; or

(B) the average weekly wage for manufacturing jobs in the region designated for the regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, in which the county is located during the most recent four quarterly periods for which data is available at the time a person submits an application for a limitation on appraised value under this subchapter, as computed by the Texas Workforce Commission.

SECTION 3. Section 313.024(b), Tax Code, is amended to read as follows:

(b) To be eligible for a limitation on appraised value under this subchapter, the entity must use the property in connection with:

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SECTION 3. Same as House version.

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- (1) manufacturing;
- (2) research and development;
- (3) a clean coal project, as defined by Section 5.001, Water Code;
- (4) an advanced clean energy project, as defined by Section 382.003, Health and Safety Code;
- (5) renewable energy electric generation;
- (6) electric power generation using integrated gasification combined cycle technology; [ø#]
- (7) nuclear electric power generation; or
- (8) a computer center primarily used in connection with one or more activities described by Subdivisions (1) through (7) conducted by the entity.

SECTION 4. Section 313.024(e), Tax Code, is amended by amending Subdivision (1) and adding Subdivisions (5) and (6) to read as follows:

(1) "Manufacturing" means an establishment primarily engaged in activities described in sectors 31-33 of the 2007 North American Industry Classification System [~~and "research and development" have the meanings assigned by Section 171.751~~].

(5) "Research and development" means an establishment primarily engaged in activities described in category 541710 of the 2002 North American Industry Classification System.

(6) "Computer center" means an establishment primarily engaged in providing electronic data processing and information storage.

Same as House version.

SECTION 4. Same as House version.

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SECTION 5. Section 313.025, Tax Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (a-1), (d-1), (h), and (i) to read as follows:

(a) The owner or lessee of, or the holder of another possessory interest in, any qualified property described by Section 313.021(2)(A), (B), or (C) may apply to the governing body of the school district in which the property is located for a limitation on the appraised value for school district maintenance and operations ad valorem tax purposes of the person's qualified property. An application must be made on the form prescribed by the comptroller and include the information required by the comptroller, and it must be accompanied by:

- (1) the application fee established by the governing body of the school district;
- (2) information sufficient to show that the real and personal property identified in the application as qualified property meets the applicable criteria established by Section 313.021(2); and
- (3) information relating to each applicable criterion listed in Section 313.026.

(a-1) Within seven days of the receipt of each document, the school district shall submit to the comptroller a copy of the application and the agreement between the applicant and the school district. If an economic analysis of the proposed project is submitted to the school district, the district shall submit a copy of the analysis to the comptroller. In addition, the school district shall submit to the comptroller any subsequent revision of or

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SECTION 5. Same as House version.

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amendment to any of those documents within seven days of its receipt. 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. This subsection does not require the comptroller to post information that is confidential under Section 313.028.

(b) The governing body of a school district is not required to consider an application for a limitation on appraised value that is filed with the governing body under Subsection (a). If the governing body of the school district does elect to consider an application, the governing body shall deliver three copies of the application to the comptroller and request that the comptroller provide an economic impact evaluation of the application to the school district. Except as provided by Subsection (b-1), the comptroller shall conduct or contract with a third person to conduct the evaluation, which shall be completed and provided to the governing body of the school district as soon as practicable. The governing body shall provide to the comptroller or third person any requested information. A methodology to allow comparisons of economic impact for different schedules of the addition of qualified investment or qualified property may be developed as part of the economic impact evaluation. The governing body shall

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provide a copy of the evaluation to the applicant on request. The comptroller may charge and collect a fee sufficient to cover the costs of providing the economic impact evaluation. The governing body of a school district shall approve or disapprove an application before the 151st [~~121st~~] day after the date the application is filed, unless the economic impact evaluation has not been received or an extension is agreed to by the governing body and the applicant.

(d) Before the 91st [~~61st~~] day after the date the comptroller receives the copy of the application, the comptroller shall submit a recommendation to the governing body of the school district as to whether the application should be approved or disapproved.

(d-1) The governing body of a school district may approve an application that the comptroller has recommended should be disapproved only if:

(1) the governing body holds a public hearing the sole purpose of which is to consider the application and the comptroller's recommendation; and

(2) at a subsequent meeting of the governing body held after the date of the public hearing, at least two-thirds of the members of the governing body vote to approve the application.

(h) After receiving a copy of the application, the comptroller shall determine whether the property meets the requirements of Section 313.024 for eligibility for a limitation on appraised value under this subchapter. The comptroller shall notify the governing body of the school

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district of the comptroller's determination and provide the applicant an opportunity for a hearing before the determination becomes final. A hearing under this subsection is a contested case hearing and shall be conducted by the State Office of Administrative Hearings in the manner provided by Section 2003.101, Government Code. The applicant has the burden of proof on each issue in the hearing. The applicant may seek judicial review of the comptroller's determination in a Travis County district court under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

(i) If the comptroller's determination under Subsection (h) that the property does not meet the requirements of Section 313.024 for eligibility for a limitation on appraised value under this subchapter becomes final, the comptroller is not required to provide an economic impact evaluation of the application or to submit a recommendation to the school district as to whether the application should be approved or disapproved, and the governing body of the school district may not grant the application.

SECTION 6. Sections 313.026(a) and (b), Tax Code, are amended to read as follows:

(a) The economic impact evaluation of the application must include the following:

(1) the recommendations of the comptroller;

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SECTION 6. Same as House version.

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- (2) the name of the school district;
(3) the name of the applicant;
(4) the general nature of the applicant's investment;
(5) [(2)] the relationship between the applicant's industry and the types of qualifying jobs to be created by the applicant to the long-term economic growth plans of this state as described in the strategic plan for economic development submitted by the Texas Strategic Economic Development Planning Commission under Section 481.033, Government Code, as that section existed before February 1, 1999;
(6) [(3)] the relative level of the applicant's investment per qualifying job to be created by the applicant;
(7) the number of qualifying jobs to be created by the applicant;
(8) [(4)] the wages, salaries, and benefits to be offered by the applicant to qualifying job holders;
(9) [(5)] the ability of the applicant to locate or relocate in another state or another region of this state;
(10) [(6)] the impact the project [added infrastructure] will have on this state and individual local units of government [the region], including:
(A) tax and other revenue gains, direct or indirect, that would be realized during the qualifying time period, the limitation period, and a period of time after the limitation period considered appropriate by the comptroller [by the school district]; and
(B) [subsequent] economic effects of the project, including the impact on jobs and income, during the

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qualifying time period, the limitation period, and a period of time after the limitation period considered appropriate by the comptroller [on the local and regional tax bases];

(11) [(7)] the economic condition of the region of the state at the time the person's application is being considered;

(12) [(8)] the number of new facilities built or expanded in the region during the two years preceding the date of the application that were eligible to apply for a limitation on appraised value under this subchapter; [and]

(13) [(9)] the effect of the applicant's proposal, if approved, on the number or size of the school district's instructional facilities, as defined by Section 46.001, Education Code;

(14) the projected market value of the qualified property of the applicant as determined by the comptroller;

(15) the proposed limitation on appraised value for the qualified property of the applicant;

(16) the projected dollar amount of the taxes that would be imposed on the qualified property, for each year of the agreement, if the property does not receive a limitation on appraised value with assumptions of the projected appreciation or depreciation of the investment and projected tax rates clearly stated;

(17) the projected dollar amount of the taxes that would be imposed on the qualified property, for each tax year of the agreement, if the property receives a limitation on appraised value with assumptions of the projected

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appreciation or depreciation of the investment clearly stated;

(18) the projected effect on the Foundation School Program of payments to the district for each year of the agreement;

(19) the projected future tax credits if the applicant also applies for school tax credits under Section 313.103; and

(20) the total amount of taxes projected to be lost or gained by the district over the life of the agreement computed by subtracting the projected taxes stated in Subdivision (17) from the projected taxes stated in Subdivision (16).

(b) The comptroller's recommendations shall be based on the criteria listed in Subsections ~~(a)(5)-(20)~~ ~~[(a)(2)-(9)]~~ and on any other information available to the comptroller, including information provided by the governing body of the school district under Section 313.025(b).

SECTION 7. Subchapter B, Chapter 313, Tax Code, is amended by adding Section 313.0265 to read as follows:
Sec. 313.0265. DISCLOSURE OF APPRAISED VALUE LIMITATION INFORMATION. (a) The comptroller shall post on the comptroller's Internet website each document or item of information the comptroller designates as substantive before the 15th day after the date the document or item of information was received or created. Each document or item of information must continue to be posted until the

Same as House version.

SECTION 7. Same as House version.

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appraised value limitation expires.

(b) The comptroller shall designate the following as substantive:

(1) each application requesting a limitation on appraised value;

(2) the economic impact evaluation made in connection with the application; and

(3) each application requesting school tax credits under Section 313.103.

(c) If a school district maintains a generally accessible Internet website, the district shall maintain a link on its Internet website to the area of the comptroller's Internet website where information on each of the district's agreements to limit appraised value is maintained.

SECTION 8. Section 313.027, Tax Code, is amended by amending Subsection (f) and adding Subsections (h) and (i) to read as follows:

(f) In addition, the agreement:

(1) must incorporate each relevant provision of this subchapter and, to the extent necessary, include provisions for the protection of future school district revenues through the adjustment of the minimum valuations, the payment of revenue offsets, and other mechanisms agreed to by the property owner and the school district;

(2) may provide that the property owner will protect the school district in the event the district incurs extraordinary education-related expenses related to the

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SECTION 8. Same as House version.

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project that are not directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the project;

(3) must require the property owner to maintain a viable presence in the school district for at least three years after the date the limitation on appraised value of the owner's property expires;

(4) [~~(3)~~] must provide for the termination of the agreement, the recapture of ad valorem tax revenue lost as a result of the agreement if the owner of the property fails to comply with the terms of the agreement, and payment of a penalty or interest, or both, on that recaptured ad valorem tax revenue;

(5) [~~(4)~~] may specify any conditions the occurrence of which will require the district and the property owner to renegotiate all or any part of the agreement; and

(6) [~~(5)~~] must specify the ad valorem tax years covered by the agreement.

(h) The agreement between the governing body of the school district and the applicant may provide for a deferral of the date on which the qualifying time period for the project is to commence or, subsequent to the date the agreement is entered into, be amended to provide for such a deferral. This subsection may not be construed to permit a qualifying time period that has commenced to continue for more than the number of years applicable to the project under Section 313.021(4).

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(i) A person and the school district may not enter into an agreement under which the person agrees to provide supplemental payments to a school district in an amount that exceeds an amount equal to \$100 per student per year in average daily attendance, as defined by Section 42.005, Education Code, or for a period that exceeds the period beginning with the period described by Section 313.021(4) and ending with the period described by Section 313.104(2)(B) of this code. This limit does not apply to amounts described by Subsection (f)(1) or (2) of this section.

SECTION 9. Subchapter B, Chapter 313, Tax Code, is amended by adding Section 313.0275 to read as follows:
Sec. 313.0275. RECAPTURE OF AD VALOREM TAX REVENUE LOST. (a) Notwithstanding any other provision of this chapter to the contrary, a person with whom a school district enters into an agreement under this subchapter must make the minimum amount of qualified investment during the qualifying time period and create the required number of qualifying jobs during each year of the agreement.
(b) If in any tax year a property owner fails to comply with Subsection (a), the property owner is liable to this state for a penalty equal to the amount computed by subtracting from the market value of the property for that tax year the value of the property as limited by the agreement and multiplying the difference by the maintenance and operations tax rate of the school district

Same as House version.

SECTION 9. Same as House version.

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for that tax year.

(c) A penalty imposed under Subsection (b) becomes delinquent if not paid on or before February 1 of the following tax year. Section 33.01 applies to the delinquent penalty in the manner that section applies to delinquent taxes.

SECTION 10. Section 313.028, Tax Code, is amended to read as follows:

Sec. 313.028. CERTAIN BUSINESS INFORMATION CONFIDENTIAL. Information provided to a school district in connection with an application for a limitation on appraised value under this subchapter that describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property covered by the application shall be segregated in the application from other information in the application and is confidential and not subject to public disclosure unless the governing body of the school district approves the application. Other information in the custody of a school district or the comptroller in connection with the application, including information related to the economic impact of a project or the essential elements of eligibility under this chapter, such as the nature and amount of the projected investment, employment, wages, and benefits, may not be considered confidential business information if the governing body of the school district agrees to consider the application. Information in the custody of a school district or the

Same as House version.

SECTION 10. Same as House version.

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comptroller if the governing body approves the application is not confidential under this section.

SECTION 11. Section 313.051(a), Tax Code, is amended to read as follows:

(a) This subchapter applies only to a school district that has territory in:

(1) an area that qualified as a strategic investment area under Subchapter O, Chapter 171, immediately before that subchapter expired [~~as defined by Section 471.721~~]; or

(2) a county:

(A) that has a population of less than 50,000; and

(B) [~~that is not partially or wholly located in a metropolitan statistical area; and~~

~~(C)~~ in which, from 1990 to 2000, according to the federal decennial census, the population:

(i) remained the same;

(ii) decreased; or

(iii) increased, but at a rate of not more than three percent per annum.

SECTION 12. Sections 313.103 and 313.104, Tax Code, are amended to read as follows:

Sec. 313.103. APPLICATION. (a) An application for a tax credit under this subchapter must be made to the governing body of the school district to which the ad valorem taxes were paid. The application must be:

(1) made on the form prescribed for that purpose by the

Same as House version.

SECTION 11. Same as House version.

Same as House version.

SECTION 12. Same as House version.

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comptroller and verified by the applicant; and

(2) accompanied by:

(A) a tax receipt from the collector of taxes for the school district showing full payment of school district ad valorem taxes on the qualified property for the applicable qualifying time period; and

(B) any other document or information that the comptroller or the governing body considers necessary for a determination of the applicant's eligibility for the credit or the amount of the credit; ~~and~~

~~[(3) filed before September 1 of the year immediately following the applicable qualifying time period].~~

(b) An application for a tax credit under this subchapter or any information provided by the school district to the Texas Education Agency under Section 42.2515, Education Code, is not confidential.

Sec. 313.104. ACTION ON APPLICATION; GRANT OF CREDIT. Before granting ~~[the 90th day after the date]~~ the application for a tax credit ~~[is filed]~~, the governing body of the school district shall:

(1) determine the person's eligibility for a tax credit under this subchapter; and

(2) if the person's application is approved, by order or resolution direct the collector of taxes for the school district:

(A) in the second and subsequent six tax years that begin after the date the application is approved, to credit against the taxes imposed on the qualified property by the district in that year an amount equal to one-seventh

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of the total amount of tax credit to which the person is entitled under Section 313.102, except that the amount of a credit granted in any of those tax years may not exceed 50 percent of the total amount of ad valorem school taxes imposed on the qualified property by the school district in that tax year; and

(B) in the first three tax years that begin on or after the date the person's eligibility for the limitation under Subchapter B or C expires, to credit against the taxes imposed on the qualified property by the district an amount equal to the portion of the total amount of tax credit to which the person is entitled under Section 313.102 that was not credited against the person's taxes under Paragraph (A) in a tax year covered by Paragraph (A), except that the amount of a tax credit granted under this paragraph in any tax year may not exceed the total amount of ad valorem school taxes imposed on the qualified property by the school district in that tax year.

SECTION 13. Section 403.302(d), Government Code, is amended to read as follows:

(d) For the purposes of this section, "taxable value" means the market value of all taxable property less:

(1) the total dollar amount of any residence homestead exemptions lawfully granted under Section 11.13(b) or (c), Tax Code, in the year that is the subject of the study for each school district;

(2) one-half of the total dollar amount of any residence homestead exemptions granted under Section 11.13(n),

Same as House version.

SECTION 13. (part) Same as House version.

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Tax Code, in the year that is the subject of the study for each school district;

(3) the total dollar amount of any exemptions granted before May 31, 1993, within a reinvestment zone under agreements authorized by Chapter 312, Tax Code;

(4) subject to Subsection (e), the total dollar amount of any captured appraised value of property that:

(A) is within a reinvestment zone created on or before May 31, 1999, or is proposed to be included within the boundaries of a reinvestment zone as the boundaries of the zone and the proposed portion of tax increment paid into the tax increment fund by a school district are described in a written notification provided by the municipality or the board of directors of the zone to the governing bodies of the other taxing units in the manner provided by Section 311.003(e), Tax Code, before May 31, 1999, and within the boundaries of the zone as those boundaries existed on September 1, 1999, including subsequent improvements to the property regardless of when made;

(B) generates taxes paid into a tax increment fund created under Chapter 311, Tax Code, under a reinvestment zone financing plan approved under Section 311.011(d), Tax Code, on or before September 1, 1999; and

(C) is eligible for tax increment financing under Chapter 311, Tax Code;

(5) for a school district for which a deduction from taxable value is made under Subdivision (4), an amount

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equal to the taxable value required to generate revenue when taxed at the school district's current tax rate in an amount that, when added to the taxes of the district paid into a tax increment fund as described by Subdivision (4)(B), is equal to the total amount of taxes the district would have paid into the tax increment fund if the district levied taxes at the rate the district levied in 2005;

(6) the total dollar amount of any captured appraised value of property that:

(A) is within a reinvestment zone:

(i) created on or before December 31, 2008, by a municipality with a population of less than 18,000; and

(ii) the project plan for which includes the alteration, remodeling, repair, or reconstruction of a structure that is included on the National Register of Historic Places and requires that a portion of the tax increment of the zone be used for the improvement or construction of related facilities or for affordable housing;

(B) generates school district taxes that are paid into a tax increment fund created under Chapter 311, Tax Code; and

(C) is eligible for tax increment financing under Chapter 311, Tax Code;

(7) the total dollar amount of any exemptions granted under Section 11.251 or 11.253, Tax Code;

(8) the difference between the comptroller's estimate of the market value and the productivity value of land that qualifies for appraisal on the basis of its productive capacity, except that the productivity value estimated by

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the comptroller may not exceed the fair market value of the land;

(9) the portion of the appraised value of residence homesteads of individuals who receive a tax limitation under Section 11.26, Tax Code, on which school district taxes are not imposed in the year that is the subject of the study, calculated as if the residence homesteads were appraised at the full value required by law;

(10) a portion of the market value of property not otherwise fully taxable by the district at market value because of:

(A) action required by statute or the constitution of this state that, if the tax rate adopted by the district is applied to it, produces an amount equal to the difference between the tax that the district would have imposed on the property if the property were fully taxable at market value and the tax that the district is actually authorized to impose on the property, if this subsection does not otherwise require that portion to be deducted; or

(B) action taken by the district under Subchapter B or C, Chapter 313, Tax Code, before the expiration of the subchapter;

(11) the market value of all tangible personal property, other than manufactured homes, owned by a family or individual and not held or used for the production of income;

(12) the appraised value of property the collection of delinquent taxes on which is deferred under Section 33.06, Tax Code;

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(13) the portion of the appraised value of property the collection of delinquent taxes on which is deferred under Section 33.065, Tax Code; and

(14) the amount by which the market value of a residence homestead to which Section 23.23, Tax Code, applies exceeds the appraised value of that property as calculated under that section.

No equivalent provision.

SECTION __. Section 403.302, Government Code, is amended by adding Subsection (m) to read as follows:

(m) Subsection (d)(10) does not apply to property that was the subject of an application under Subchapter B or C, Chapter 313, Tax Code, made after May 1, 2009, that the comptroller recommended should be disapproved.

SECTION 13. (part) Same as Senate version.

No equivalent provision.

SECTION __. Amend Section 552.003(1)(B), Government Code, as follows:

(B) does not include:

(i) the judiciary; or

(ii) a nonprofit corporation that is organized for the purposes of a chamber of commerce and provides economic development services to a governmental body.

Same as House version.

SECTION 14. Section 313.029, Tax Code, is repealed.

Same as House version.

SECTION 14. Same as House version.

SECTION 15. Sections 313.021(1)(A), (2), and (5), 313.024(e), and 313.025(a), Tax Code, as amended by this Act, are intended to clarify rather than change existing law. The clarification made by Section

Same as House version.

SECTION 15. Same as House version.

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313.021(5), Tax Code, as amended by this Act, is necessary to allow the Texas Workforce Commission to implement that subdivision in conformance with the data collection requirements imposed by the federal government.

No equivalent provision.

SECTION 16. Effective date.

SECTION __. The Legislative Budget Board shall conduct an effectiveness and efficiency review of the economic development program established under Chapter 313, Tax Code, and report the results of the review to the legislature not later than January 1, 2011.

Same as House version.

SECTION 16. Same as Senate version.

SECTION 17. Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3676** by Heflin (Relating to the Texas Economic Development Act.), Conference Committee Report

The bill would result in school district levy losses due to changes in the Tax Code relating to the Texas Economic Development Act. As a result of the school funding formula, the bill would have a negative effect on the State's cash flow.

The bill would amend Chapter 313 of the Tax Code, relating to the Texas Economic Development Act.

The bill would amend Section 313.007 to extend from December 31, 2011 to December 31, 2014 the expiration date of significant portions of this Chapter.

The bill would amend Section 313.021(1)(A) to clarify that qualified property could include tangible personal property without regard to whether the property is affixed to, or incorporated into, real property. The bill would also clarify that a person owning qualified property need not own the land associated with the qualified property. The bill would amend Section 313.025(a) to clarify that lessees of, or other holders of possessory interest in, qualified property may apply for value limitations.

The bill would amend Section 313.021(1) of the Tax Code to allow as a "qualified investment" certain tangible personal property used in connection with an advanced clean energy project. The bill would also amend Section 313.021(4) to provide a three year delay of the beginning of a qualifying time period that could last as long as five years for such projects.

The bill would amend Section 313.021(3)(D) by striking a reference to a repealed statute.

The bill would amend the definition of qualifying time period in Section 313.021(4)(A). The beginning of the qualifying time period would be the date the application is approved by the school board, rather than the beginning of the tax year following the year in which the board approved the application. Section 7 of the bill would amend Section 313.027 adding a new subsection (h) allowing a school board and property owner to delay indefinitely the beginning of the qualifying time period.

The bill would amend Tax Code 313.021(3)(E) to specify that the wage target for qualifying jobs for projects creating more than 1,000 jobs in a county would be 110 percent of the county average weekly wage for all jobs, rather than 110 percent of the county average weekly wage for manufacturing jobs.

The bill would amend the definition "County average weekly wage for manufacturing jobs" in Tax Code 313.021(5) to create for project owners the choice of two wage targets for qualifying jobs. One definition, in 313.021(5)(A), would be the manufacturing wage in the county computed by the Texas Workforce Commission (TWC), based on the four most recent quarters of data available at the time an application is made to a school district. The second definition, in 313.021(5)(B), would be that wage computed by TWC for manufacturing wages in the region based on the four most recent quarters of data available at the time an application is made to a school district. Presumably, the wage target required for the applicant would be the lesser of the two options, and would remain a fixed wage target

for each project for the length of each agreement (10-15 years).

The bill would amend Tax Code 313.024(b) by adding to the list of eligibility criteria "a computer center primarily used in connection with one or more" of the other eligibility criteria listed in 313.024 (b).

The bill would also amend Section 313.025 to require school districts to submit to the Comptroller copies of applications, agreements, and any economic analyses (or any revisions of those documents) within seven days of receipt. The Comptroller would be required to post each document on the Comptroller Web site. Districts would be required to have links to the Comptroller Web site. Confidential information would be exempt from posting requirements.

The bill would amend Tax Code 313.025(b) to lengthen the application review period from 120 days to 150 days, and the period of time for Comptroller review of the application from 60 days to 90 days.

The bill would also amend Section 313.025 by adding a new subsection (d-1) to provide that, when the Comptroller recommends disapproval of an application, a district could only approve that application with at least a vote of two-thirds of the school board.

The bill would also amend Section 313.025 by adding new subsections (h) and (i) requiring the Comptroller to determine whether the property described in the application meets the eligibility requirements of the chapter, and offer applicants the opportunity for a hearing on project eligibility conducted by the State Office of Administrative Hearings (SOAH). Under the bill, applicants could seek judicial review of the eligibility determination in a Travis County district court. If the Comptroller's determination was upheld by the appeals process, the Comptroller would not be required to provide the economic impact evaluation or recommendation otherwise required by the chapter.

The bill would amend section 313.026, to expand the Comptroller's economic impact evaluation to include the impact a project would have on the state and individual units of government instead of the region. It also would require the economic impact evaluation to include tax and other revenue gains, direct or indirect, that would be realized as well as economic effects of the project, including the impact on jobs and income, during the qualifying time period, the limitation period, and a period of time after the limitation period considered appropriate by the Comptroller.

The bill would add a new Section 313.0265 titled, "Disclosure of Appraised Value Limitation Information." The new section would require the Comptroller to designate applications and certain other documents related to value limitation applications and projects as "substantive" and post them within 15 days of their creation or receipt on the Comptroller Web site. The Comptroller would also be required to maintain them until the expiration of the limitation (at least 10 years and four months). School districts would be required to have links to the Comptroller Web site.

The bill would allow agreements to include a provision for payments from the owner to the school district for "extraordinary education-related expenses" related to the project.

The bill would limit "supplemental payments" from the project owner to the district to \$100 per student per year for a number of years not to exceed the number of years in the qualifying time period, the limitation period and the tax credit settle-up period.

The bill would create a new section of the chapter titled, "Recapture of Ad Valorem Tax Revenue Lost" specifying that if the owner of the project does not make the minimum qualified investment or create the "required" number of qualifying jobs, they lose the tax benefit in any year in which they were out of compliance. The section does not specify responsibility for oversight of the provisions of the new section.

The bill would amend Section 313.028 to specify that confidential information be segregated in the application from information not considered confidential, and that certain information could not be considered confidential business information.

The bill would amend Section 313.051(a)(1) to allow school districts to be classified as rural under

Subchapter C of Chapter 313 if the school district has territory in an area that was previously designated as a strategic investment area (SIA) immediately prior to the expiration of Subchapter O, Tax Code, Chapter 171. The bill would also delete Section 313.051(a)(2)(B) which currently prevents school districts partially or wholly located within a metropolitan statistical area (MSA) from being classified as rural under the subchapter.

The bill would amend Tax Code 313.103 to allow companies to file a tax credit application with the school district at any time, rather than before September 1 of the third year of an agreement, as specified in current law. Similarly, the bill would allow school boards to approve the tax credit at any time, rather than within 90 days after application filing.

The bill would amend Section 403.302(d) of the Government Code to specify that portions of a school district's tax base not taxed at full market value because of actions taken by a school district under subchapter B or C, Chapter 313, before the expiration of the subchapter, would be deducted from the Comptroller's annual property value study.

The bill would repeal Section 313.029, which prohibits school districts with Chapter 313 agreements from holding tax rate rollback elections in the two tax years following the approval of a value limitation application.

The bill would amend Section 403.302 of the Government Code to specify that portions of a school district's tax base not taxed at full market value because of actions taken by a school district under subchapter B or C, Chapter 313, before the expiration of the subchapter, would be deducted from the Comptroller's annual property value study. The Comptroller would not be required to deduct from the school district value study the value of any Chapter 313 projects that are applied for after May 1, 2009, and not recommended by the Comptroller.

The bill would require that the Legislative Budget Board conduct an efficiency and effectiveness review of the Texas Economic Development Act, reporting its findings to the legislature by January 1, 2011.

Without extension of the Texas Economic Development Act, the last group of Chapter 313 projects commencing would be those approved before December 31, 2011 and starting in tax year 2012. The proposed extension of the Act would allow three more groups of projects starting in tax years 2013, 2014, and 2015. The school district levy loss for a project approved in tax year 2012—beginning in tax year 2013—would not occur until tax year 2014, with associated state impact through the Foundation School Program in state fiscal year 2016. There would be no fiscal impact to the state or units of local government from the extension of the Texas Economic Development Act until state fiscal year 2016—outside the time frame of this fiscal note. There would be significant school district levy losses associated with three additional years of new Chapter 313 projects, beginning in state fiscal year 2016.

The modification of the wage target for projects creating more than 1,000 jobs would increase the applicant pool for Chapter 313 projects. This cost cannot be determined.

The creation of two new definitions for "county average weekly wage for manufacturing jobs" would appear to create a fixed wage target for each project for the length of each agreement, linked to the lesser of the manufacturing wage in the county or the manufacturing wage in the region in the four quarters preceding the application. This cost cannot be determined.

The number of new applicants eligible to apply for Chapter 313 limitations due to the addition of "computer centers" as an eligibility criteria cannot be determined.

To estimate the fiscal impact of modifying the definitions of "rural" under the chapter, existing Chapter 313 program data were analyzed to estimate probable higher school district levy loss due to reduced property tax value limitation amounts for school districts with territory in metropolitan statistical areas, and in areas previously designated as strategic investment areas. Chapter 313 projects applying during 2009 would fall under provisions of the bill if a school board approved an application after the effective date of the bill but before the end of the calendar year. Therefore the proposed

changes in criteria for being rural under the subchapter would initially affect school district levy losses for projects beginning in property tax year (calendar year) 2010. Levy losses associated with those tax year 2010 projects appear first in tax year 2012, which would be state fiscal year 2013. Projects beginning in tax year 2011 would create another "set" of levy losses starting in state fiscal year 2014.

In addition to the levy loss, these SIA-related and MSA-related provisions of the bill would have a slight negative effect on the state's cash flow during fiscal year 2014, as approximately eight percent of the total levy loss in the program is attributable to the tax credit features of the program paid through the Foundation School Program. (Tax credits earned by a company in the first two years of a project are first credited against other property tax levies in the fourth year of an agreement.) The addition of language in the chapter to allow districts and companies to delay the start of value limitation agreements could negatively affect school levies, but that possible loss cannot be determined.

The impact of proposed changes related to the tax credit, and the impact of considering certain districts rural for having territory in an area that was previously designated as a strategic investment area, and not excluding districts from the rural designation for having territory within metropolitan statistical areas, is shown in the following tables.

Fiscal Year: Gain/(Loss) to School District Levy Due to Rural Designations	
2010	\$0
2011	0
2012	0
2013	(4,992,000)
2014	(9,984,000)

Fiscal Year: Gain/(Loss) to School District Levy Due to Tax Credit Changes	
2010	(\$1,600,000)
2011	(750,000)
2012	(750,000)
2013	(750,000)
2014	(750,000)

Fiscal Year: Gain/(Loss) to Foundation School Program Due to Tax Credit Changes	
2010	(\$1,600,000)
2011	(750,000)
2012	(750,000)
2013	(750,000)
2014	(750,000)

The bill would require the Comptroller to post application information on the Web site within 15 days after receipt of each individual document related to an application. Section 5 of the bill would require additional information be included in the economic impact evaluation prepared by the Comptroller. Section 10 of the bill would require that value limitation application information be segregated into confidential and non-confidential information, with certain documents required to be posted on the Comptroller Web site.

A SOAH hearings process would be established for districts contesting a Comptroller determination of project eligibility.

The bill would allow companies to file for—and school district to grant—tax credits at any time, rather than according to the timeline currently specified in Chapter 313. This proposed change would have a fiscal impact equal to the sum of credits for which companies have not made a timely filing, estimated to be about \$4.6 million between fiscal year 2009 and fiscal year 2015.

The Texas Economic Development Act has provisions for continuation of the statute for projects already in existence at the time of the Act's expiration date, currently December 31, 2011.

Most sections of the bill would take effect immediately upon enactment, assuming that it received the

requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2009. Sections of the bill relating to posting of documents and Comptroller determination of project eligibility would not take effect until January 1, 2010.

Local Government Impact

The bill would have a negative impact on units of local government.

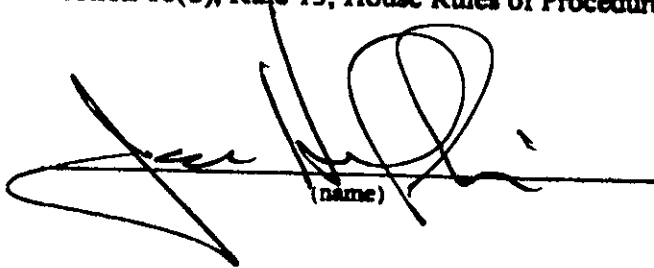
Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, JRO, SD, SJS, MN

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 3676 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.


(name)

5-30-09
(date)