

**RECEIVED**

By Opinion Committee at 1:26 pm, Sep 20, 2022

**RQ-0479-KP**

**FILE# ML-49175-22**

**I.D.# 49175**

Capitol Office:  
P.O. Box 12068  
Austin, Texas 78711  
Phone: (512) 463-0102  
Fax: (512) 463-7202

Canton Office:  
17585 State Highway 19, Suite 200  
Canton, Texas 75103  
Phone: (903) 567-0531  
Fax: (903) 567-0533



**SENATOR BOB HALL**  
DISTRICT 2

Rockwall Office:  
Alliance Building #2  
6537 Horizon Road, Suite B-1  
Rockwall, Texas 75032  
Phone: (972) 722-3131  
Fax: (972) 722-3132

Greenville Office:  
2816 Lee Street, Suite A  
Greenville, Texas 75401  
Phone: (903) 454-2880  
Fax: (903) 454-2885

The Honorable Ken Paxton  
Office of the Attorney General  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, TX 78711

Via email to [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

RE: Request for opinion regarding compliance with the Texas Economic Development Act.

Dear Attorney General Paxton,

Under the authority of Section 402.042(a) and (b)(7), Government Code, I respectfully request an opinion regarding the application of the Texas Economic Development Act, Tex. Tax Code Ch. 313. Stated plainly, I find these questions to be ones of public interest:

Does the Texas Economic Development Act require that an application for a certificate of limitation on appraised value reflect that all qualifying criteria are met as of the date the application is submitted?

Even if the Texas Economic Development Act permits the criteria to be met after the application is submitted, does the Act require all qualifying criteria to be met before a certificate of limitation on appraised value is issued?

**Discussion regarding the Texas Economic Development Act.**

The ability to apply for a certificate of limitation of value under Texas Tax Code Chapter 313 expires on December 31, 2022. Against this backdrop, the Texas Comptroller has experienced a high volume of applications for the Chapter 313 program.<sup>1</sup> Pursuant to the plain language of Section 313.004(4), the Comptroller is required to implement the law by strictly interpreting the criteria and selection guidelines set out in the law.

My office's review of the application and supporting information for many Chapter 313 projects reveals that the project does not qualify for certification at the time the application is submitted.<sup>2</sup> Nevertheless, the Texas Comptroller's application form<sup>3</sup> appears to allow for required application components to be created

---

<sup>1</sup> <https://comptroller.texas.gov/economy/local/ch313/faq.php> (stating "with the program expiring we're seeing an increase in the volume of applications coming in this year" and "to be safe, we recommend that all applications be submitted to the Comptroller's office by June 1, 2022, to ensure there is ample time for processing and approvals.")

<sup>2</sup> Per Tax Code Section 313.025(a-1) and 313.0265, the application and supporting documentation, as well as the Comptroller's decision regarding each application, as available online at <https://comptroller.texas.gov/economy/local/ch313/agreement-docs.php>

<sup>3</sup> The Comptroller created an application form for all Appraised Value Limitation requests. That form can be found at <https://comptroller.texas.gov/forms/50-296-a.pdf>

or considered *after* the application is submitted. Texas Tax Code Section 313.025(a) recites the overriding requirements to apply for a certificate of limitation of value, stating:

Sec. 313.025. APPLICATION; ACTION ON APPLICATION. (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) any information required by the comptroller for the purposes of Section [313.026](#).

Texas Tax Code Sec. 313.025(a), emphasis added.

The highlighted sections above appear to require, at the time of the application and not after, that the “qualified property” be owned or leased by the applicant and meet the criteria in Section 313.021(2) that define “qualified property.”

By way of example, the application for the Hopkins Energy LLC solar project, which is located in my district, reflects that the real estate for the proposed project was not owned or leased by the applicant at the time the application was submitted. The application clearly indicates that the applicant does not meet the most basic requirement to receive a certificate of limitation of value; namely, the applicant did not own or lease the property upon which it was asking to limit the valuation:

SECTION 8: Limitation as Determining Factor		
1. Does the applicant currently own the land on which the proposed project will occur? .....	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
2. Has the applicant entered into any agreements, contracts or letters of intent related to the proposed project? .....	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
3. Does the applicant have current business activities at the location where the proposed project will occur? .....	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
4. Has the applicant made public statements in SEC filings or other documents regarding its intentions regarding the proposed project location? .....	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
5. Has the applicant received any local or state permits for activities on the proposed project site? .....	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
6. Has the applicant received commitments for state or local incentives for activities at the proposed project site? .....	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

See Hopkins Energy application, Section 8, page 8 of 47. Thus, it appears the application did not meet the requirements of Section 313.025(a) at the time the application was submitted to the Comptroller.

Similarly, the application admits that the real estate for the project was not “qualified property” at the time the application was submitted because it was not in a reinvestment zone or enterprise zone. Section 313.021(2) defines “qualified property” as such:

(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; . . .

Texas Tax Code Sec. 313.021(2), emphasis added.

Because the term “designated” is past tense, this section appears to indicate that the land must have been designated prior to the submission of the application to the Comptroller. Nevertheless, the application for the Hopkins Energy LLC solar project reflects that the proposed project was not qualified property (because the property was not in an area designated as a reinvestment zone or enterprise zone as required by law) at the time the application was submitted in June 2019:

2. Is the land upon which the new buildings or new improvements will be built part of the qualified property described by §313.021(2)(A)?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
2a. If yes, attach complete documentation including:		
a. legal description of the land (Tab 9);		
b. each existing appraisal parcel number of the land on which the new improvements will be constructed, regardless of whether or not all of the land described in the current parcel will become qualified property (Tab 9);		
c. owner (Tab 9);		
d. the current taxable value of the land. Attach estimate if land is part of larger parcel (Tab 9); and		
e. a detailed map showing the location of the land with vicinity map (Tab 11).		
3. Is the land on which you propose new construction or new improvements currently located in an area designated as a reinvestment zone under Tax Code Chapter 311 or 312 or as an enterprise zone under Government Code Chapter 2303?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
3a. If yes, attach the applicable supporting documentation:		
a. evidence that the area qualifies as an enterprise zone as defined by the Governor's Office (Tab 16);		
b. legal description of reinvestment zone (Tab 16);		
c. order, resolution or ordinance establishing the reinvestment zone (Tab 16);		
d. guidelines and criteria for creating the zone (Tab 16); and		
e. a map of the reinvestment zone or enterprise zone boundaries with vicinity map (Tab 11)		
3b. If no, submit detailed description of proposed reinvestment zone or enterprise zone with a map indicating the boundaries of the zone on which you propose new construction or new improvements to the Comptroller's office within 30 days of the application date. What is the anticipated date on which you will submit final proof of a reinvestment zone or enterprise zone?		
Please See Tab 16		

See Hopkins Energy application, Section 12 page 10 of 47.

<h2>Tab 16</h2> <p><i>Description of Reinvestment Zone</i></p> <p>Hopkins Energy LLC is to be located within a proposed reinvestment zone. The proposed reinvestment zone will be created by Sulphur Springs ISD. We anticipate this will occur in third fiscal quarter of 2019. Upon the creation and designation of this zone, the ordinance establishing this zone will be submitted to the comptroller.</p>
---

See Hopkins Energy application, appendix at Tab 16, page 45 of 47. Like the deficiency above regarding Section 313.025(a), it appears the application also did not meet the requirements of Section 313.021(2) at the time the application was submitted to the Comptroller. It appears that Hopkins Energy intended to ask

the Sulphur Springs ISD to create the proposed reinvestment zone well after the Comptroller's certificate of limitation of value was issued. The Comptroller approved the certificate of limitation of value on September 19, 2019. The certificate was awarded unconditionally and without reservation.

These are just two of the myriad statutory violations that appear to be consistently overlooked by the Comptroller in its assessment of whether these projects qualify for a certificate of limitation of value under the Texas Economic Development Act. For example, applications such as the Hopkins Energy application regularly request a waiver of the jobs requirement in Chapter 313 but do not secure a waiver from the ISD in advance of the application or certification process. It is against this background that I submit my initial question for your consideration:

Does the Texas Economic Development Act require that an application for a certificate of limitation on appraised value reflect that all qualifying criteria are met as of the date the application is submitted?

There is no indication that the Sulphur Springs ISD had created or approved the required reinvestment zone until January 2020, which was after the Comptroller's September 2019 unconditional award of the certificate for limitation of value. It is unclear when the applicant either purchased or leased the real property upon which the project will be built. And the jobs creation waiver appears to have been executed by the ISD sometime in 2020. Against this backdrop, I submit my second question:

Even if the Texas Economic Development Act permits the criteria to be met after the application is submitted, does the Act require all qualifying criteria to be met before a certificate of limitation on appraised value is issued?

I therefore respectfully request your opinion regarding when a proposed economic development project must meet the criteria to qualify for a certificate of limitation of value under the Texas Economic Development Act. School districts receive direct payments from applicants such as Hopkins Energy in exchange for sponsoring the application for a Comptroller's certificate of limitation of value. The Hopkins Energy project paid the Sulphur Springs ISD \$75,000 in exchange for having the school district sponsor the application. Given the need to balance economic incentives for a particular area with foregoing the broad base ad valorem tax dollars that our Texas schools desperately require and share, it seems contrary to the letter and the spirit of the Texas Economic Development Act to permit an individual school district to receive funds paid directly to the district in exchange for creating a reinvestment zone or enterprise zone after the fact. Such action may be contrary to the plain language of the Texas Economic Development Act, and awarding a certificate of limitation of value to non-qualifying projects shifts the state's ad valorem tax burden to other counties and school districts.

Thank you for your consideration of these questions. I stand ready to answer any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Bob Hall". The signature is written in a cursive, flowing style.

Senator Bob Hall