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Texas Economic Incentives: Jobs, Energy, Technology & Innovation Act

by **Kelley Rendziperis**, on Jul 18, 2023 8:00:00 AM

Perhaps one of the most recent important pieces of economic incentive legislation in Texas was signed into law on June 8, 2023. The Jobs, Energy, Technology & Innovation ("JETI") Act replaces the Texas Economic Development Act, known as Chapter 313, and allows Texas to remain competitive in the pursuit of attracting new jobs and investment to the state. Without a tool to reduce school district property tax millage for large capital-intensive projects, Texas would have unilaterally decided not to be as competitive as many other states throughout the United States with lower property tax rates and more favorable property tax policies or incentives. While many are relieved that this measure passed, several details have yet to be fleshed out; however, in the meantime, this blog summarizes the new JETI program as enacted and highlights the key differences in the programs.

Overview of Texas Jobs, Energy, Technology & Innovation (JETI) Act

Texas House Bill 5 was drafted and introduced by Representative Todd Hunter and went through significant scrutiny and revisions by the Senate before passing in its final version. While this new incentive program is viewed as replacing Chapter 313 which expired on December 31, 2022, it is a sharp turn from the prior program. The JETI Act is likely less lucrative than the prior program and not as accessible to companies. Moreover, with the elimination of supplemental payments to school districts and limits on application fees, one may question the school districts' motivation to entertain such an incentive.

The following chart summarizes some of the key differences between the two programs:

Chapter 403 **Jobs, Energy, Technology & Innovation Act**	**Chapter 313** **Texas Economic Development Act**
• Authorized in government code	• Authorized in tax code
• 50% abatement, 75% in an Opportunity Zone, of ISD M&O taxes for 10 years 100% abatement for construction in progress	• Appraised value limitation with bene 100% of ISD M&O taxes on amount i limitation for 10 years
• Eliminates renewables	• Includes renewables and data cente
• Application fees to comptroller (TBD) and school districts (not to exceed $30k) to cover administrative costs. • No supplemental payments to school districts allowed.	• Application fees to comptroller and supplemental payments to school d 40% of the benefit received by the ap
• Tiered headcount and investment requirements based on county population. • No ability to waive job requirement.	• 25 minimum job requirement; 10 in r • Ability for ISD to waive job requireme
• 110% of average county wage	• 110% of average county manufactur
• Tax revenue generated yields a 20-year return on investment to the state	• Tax revenue generated yields a 25-y investment to the state
• Reinvestment Zone, Enterprise Zone or Opportunity Zone required	• Designated Reinvestment Zone or E required

• Economic benefit statement required	• Economic impact analysis requeste not required
• Incentive a “compelling factor in a competitive site selection determination”	• Incentive a “determining factor”
• 90 days maximum for a determination once the application is deemed completed by comptroller: 60 days for comptroller review and 30-day simultaneous review by governor and ISD (including public notice and approval)	• 150 days maximum for a determina application deemed completed by c
• Biennial reporting by applicant and comptroller	• Annual reporting by applicant and bi by comptroller
• Oversight committee to provide recommendations and insight on program and “eligible projects”	
• Performance bond required	

A few significant differences are the value of benefits, the elimination of renewables as eligible projects and the job and capital investment requirements.

Value of benefits

Under Chapter 313 the benefit was not capped, and it was a complete exemption on the M&O tax rate based on the taxable value above a certain threshold. In other words, a company would pay full property taxes on the minimum required appraised value for the jurisdiction and then any investment beyond that limitation would enjoy the benefit of the reduced M&O tax. The JETI program’s benefit is based on the taxable value for M&O tax purposes being calculated based on 50% of market value or 75% in an Opportunity Zone. While this means that the taxable value is based on the first dollar of investment rather than only on the amount above a required minimum assessed value, the overall savings are generally less than the prior program for large capital-intensive projects. However, with the elimination of supplemental payments to the school districts, companies are able to retain the total benefit which generally results in the same level of overall value, assuming a 40% supplemental payment.

Eligible projects

Eligible projects for purposes of the JETI Act include the construction or expansion of a new or existing facility and may include the following:

- A manufacturing facility
- A facility related to the provision of utility services, including an electric generation facility that is considered to be dispatchable because the facility's output can be controlled primarily by forces under human control
- A facility related to the development of natural resources
- A facility engaged in the research, development, or manufacture of high-tech equipment or technology
- An expansion or the construction of critical infrastructure.

Eligible programs do not include a project to build or expand a new or existing non-dispatchable electric generation facility or electric energy storage facility. This eliminates the benefit of wind and solar farm projects. Fortunately, manufacturing was included because one of the Senate versions of the bill excluded broad manufacturing, but the final version included manufacturing with no limitation on qualifying NAICS codes.

Job and capital investment requirements

The JETI Act now has a tiered structure to determine the level of required new headcount and capital investment to qualify for this benefit, as shown below:

County Population	Headcount & Investment by End of First Year of Incentive Period
At least 750,000	• 75 required jobs • $200 million minimum investment

At least 250,000 – 750,000	• 50 required jobs • $100 million minimum investment
At least 100,000 – 250,000	• 35 required jobs • $50 million minimum investment
At less than 100,000	• 10 required jobs • $20 million minimum investment

These commitments are significantly above the prior job commitments which only required 25 jobs and could even be waived by the school district.

While there are substantial differences between the two programs, there are also some positive changes. The JETI Act eliminates supplemental payments to school districts and makes the application fees and estimated benefits to companies more transparent and streamlined. In addition, the time frame for review and approval once a completed application is submitted is faster, 90 days rather than 150 days.

Conclusion

The JETI Act is effective on January 1, 2024, and, in the meantime, the comptroller is required to adopt rules and develop forms and materials by September 1, 2023, which is the beginning of the new biennium. Thus, there is still a lot to be learned about how the comptroller will impose various provisions and whether school districts will be enticed to assist and offer this incentive to companies without supplemental payments. The reality is that similar to how property tax abatements are currently negotiated with Texas cities and counties to attract projects, this tool enables school districts to compete for new investments that would not otherwise be located within their borders and generate property tax revenue. Since a school district is still made whole by the state, districts should still be interested in participating.

Another major outstanding piece of legislation is property tax relief for individuals and corporations which is now being considered via special session. The outcome of that legislation could also affect the overall value that the JETI Act provides in the future. SSG will continue to monitor the comptroller's guidelines and forms, as well as impending property tax relief.

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